ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on November 10, 1994, at 10 a.m. in Room 149 of the Capitol Annex. See tentative agenda on pages 1211-1213 of this Administrative Register.

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - November 10, 1994 at 10 a.m.
Room 149, Capitol Annex

EXECUTIVE BRANCH ETHICS COMMISSION

Ethics Commission

9 KAR 1:050E. Approval of outside employment of a public servant. (Deferred from October)

DEPARTMENT OF LAW

Division of Consumer Protection

40 KAR 2:220 & E. Application procedure for obtaining going-out-of-business sale permits in excess of two (2) sales in a four (4) year period. (Deferred from October)

REVENUE CABINET

Ad Valorem Tax; Administration

103 KAR 8:041. Repeal of 103 KAR 8:040, 8:050 and 8:060.

GENERAL GOVERNMENT CABINET

Board of Medical Licensure

201 KAR 9:005. Ethical conduct. (Repeals 201 KAR 9:015) (Deferred from September)

TOURISM CABINET

Department of Fish and Wildlife Resources

Fish

301 KAR 1:085. Mussel shell harvesting.

Game

301 KAR 2:044E. Taking of migratory wildlife.
301 KAR 2:140. Seasons for wild turkey.
301 KAR 2:260E. Crow hunting season.

Hunting and Fishing

301 KAR 3:030. Year-round season for some birds and animals.

Department of Agriculture

Weights and Measures; Motor Fuel

302 KAR 79:010E. Testing and inspection program. (Deferred from October)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Administration

400 KAR 1:001. Definitions for 400 KAR Chapter 1. (Not Amended After Hearing) (Deferred from October)
400 KAR 1:030. Administrative service of process, computation of time and filing of documents. (Amended After Hearing) (Deferred from October)
400 KAR 1:040. Administrative discovery. (Amended After Hearing) (Deferred from October)
400 KAR 1:090. Administrative hearings practice provisions. (Amended After Hearing) (Deferred from October)

Division of Air Quality

(NOTE: The following 41 administrative regulations were deferred from the September meeting)

New Source Performance Standards

401 KAR 60:100. Standards of performance for petroleum refineries. (Repeals 401 KAR 59:045)
401 KAR 60:110. Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978.
401 KAR 60:111. Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984.
401 KAR 60:150. Standards of performance for sewage treatment plants. (Repeals 401 KAR 59:070)
401 KAR 60:160. Standards of performance for primary copper smelters. (Repeals 401 KAR 59:110)
401 KAR 60:170. Standards of performance for primary zinc smelters. (Repeals 401 KAR 59:115)
401 KAR 60:180. Standards of performance for primary lead smelters. (Repeals 401 KAR 59:120)
401 KAR 60:190. Standards of performance for primary aluminum reduction plants. (Repeals 401 KAR 59:125)
401 KAR 60:250. Standards of performance for coal preparation plants. (Repeals 401 KAR 59:155)
401 KAR 60:260. Standards of performance for ferroalloy production facilities. (Repeals 401 KAR 59:160)
401 KAR 60:330. Standards of performance for stationary gas turbines. (Repeals 401 KAR 59:019)
401 KAR 60:340. Standards of performance for lime manufacturing plants. (Repeals 401 KAR 59:171)
401 KAR 60:370.Standards of performance for lead-acid battery manufacturing plants. (Repeals 401 KAR 59:270)
401 KAR 60:380. Standards of performance for metallic mineral processing plants. (Repeals 401 KAR 59:285)
401 KAR 60:390. Standards of performance for automobile and light-duty truck surface coating operations. (Repeals 401 KAR 59:181)
401 KAR 60:400. Standards of performance for phosphate rock plants. (Repeals 401 KAR 59:265)
401 KAR 60:420. Standards of performance for ammonium sulfate manufacture. (Repeals 401 KAR 59:255)
401 KAR 60:440. Standards of performance for pressure sensitive tape and label surface coating operations. (Repeals 401 KAR 59:300)

401 KAR 60:450. Standards of performance for industrial surface coating: large appliances. (Repeals 401 KAR 59:201)
401 KAR 60:460. Standards of performance for metal coil surface coating. (Repeals 401 KAR 59:221)
401 KAR 60:470. Standards of performance for asphalt processing and asphalt roofing manufacture. (Repeals 401 KAR 59:042)
401 KAR 60:480. Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry. (Repeals 401 KAR 59:305)
401 KAR 60:490. Standards of performance for the beverage can surface coating industry. (Repeals 401 KAR 59:216) (Amended After Hearing)
401 KAR 60:500. Standards of performance for bulk gasoline terminals. (Repeals 401 KAR 59:099)
401 KAR 60:540. Standards of performance for the rubber tire manufacturing industry. (Repeals 401 KAR 59:236)
401 KAR 60:560. Standards of performance for volatile organic compound (VOC) emissions from the polymer manufacturing industry.
401 KAR 60:580. Standards of performance for flexible vinyl and urethane coating and printing. (Repeals 401 KAR 59:211)
401 KAR 60:590. Standards of performance for equipment leaks of VOC in petroleum refineries. (Repeals 401 KAR 59:049)
401 KAR 60:600. Standards of performance for synthetic fiber production facilities. (Repeals 401 KAR 59:280)
401 KAR 60:620. Standards of performance for petroleum dry cleaners. (Repeals 401 KAR 59:242)
401 KAR 60:630. Standards of performance for equipment leaks of VOC from on-shore natural gas processing plants. (Repeals 401 KAR 59:295)
401 KAR 60:640. Standards of performance for on-shore natural gas processing: SO_2 emissions.
401 KAR 60:680. Standards of performance for wool fiberglass insulation manufacturing plants. (Repeals 59:290)
401 KAR 60:700. Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.
401 KAR 60:730. Standards of performance for calciners and dryers in mineral industries.

General Standards of Performance

401 KAR 63:100. General provisions.
401 KAR 63:300. National emission standards for coke oven batteries.
401 KAR 63:320. National perchloroethylene air emission standards for dry cleaning facilities.

Environmental Protection

401 KAR 100:010. General administrative hearing practice provisions. (Repeals 400 KAR 1:050; 401 KAR 40:030) (Not Amended After Hearing) (Deferred from October)

Department for Surface Mining and Reclamation and Enforcement

Surface Effects of Noncoal Mining (Deferred from October)

405 KAR 5:001. Definitions for 405 KAR Chapter 5. (Amended After Hearing)
405 KAR 5:015. General provisions. (Amended After Hearing)
405 KAR 5:021. Permit and license fees. (Not Amended After Hearing)
405 KAR 5:025. License requirements. (Amended After Hearing)
405 KAR 5:030. Permit requirements. (Amended After Hearing)
405 KAR 5:035. Signs and markers. (Amended After Hearing)
405 KAR 5:038. Blasting. (Amended After Hearing)
405 KAR 5:040. Access roads and haul roads. (Amended After Hearing)
405 KAR 5:045. Protection of cultural and environmental resources. (Amended After Hearing)
405 KAR 5:050. Protection of the hydrologic balance. (Amended After Hearing)
405 KAR 5:055. Permanent and temporary impoundments. (Amended After Hearing)
405 KAR 5:060. Handling of materials. (Amended After Hearing)
405 KAR 5:065. Premining and postmining land use. (Amended After Hearing)
405 KAR 5:070. Revegetation. (Amended After Hearing)
405 KAR 5:075. Contemporaneous reclamation. (Not Amended After Hearing)
405 KAR 5:080. Reclamation bond. (Not Amended After Hearing)
405 KAR 5:085. Enforcement. (Amended After Hearing)
405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions. (Amended After Hearing)
405 KAR 5:096. Repeal of 405 KAR 5:010 and 405 KAR 5:020. (Not Amended After Hearing)

General Provisions

405 KAR 7:015. Documents incorporated by reference. (Not Amended After Hearing)
405 KAR 7:095. Assessment of civil penalties. (Amended After Hearing)

Bond and Insurance Requirements

405 KAR 10:010. General requirements for performance bond and liability insurance. (Not Amended After Hearing)

Performance Standards for Surface Mining Activities

405 KAR 16:010. General provisions. (Amended After Hearing)
405 KAR 16:020. Contemporaneous reclamation. (Not Amended After Hearing)
405 KAR 16:200. Revegetation. (Amended After Hearing)

Performance Standards for Underground Mining Activities

405 KAR 18:010. General provisions. (Amended After Hearing)
405 KAR 18:200. Revegetation. (Amended After Hearing)

Petroleum Storage Tank Environmental Assurance Fund Commission

Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:050 & E. Definitions.
415 KAR 1:060 & E. Financial responsibility account.
415 KAR 1:070 & E. Petroleum storage tank account.

415 KAR 1:080 & E. Claims procedures.
415 KAR 1:090 & E. Ranking system.
415 KAR 1:100 & E. Third party claims.
415 KAR 1:120 & E. Hearings.

JUSTICE CABINET
Department of Corrections

Office of the Secretary
501 KAR 6:030. Kentucky State Reformatory.
501 KAR 6:140. Bell County Forestry Camp.

Department of State Police

Driver Training
502 KAR 10:035E. Commercial driver's license skill testing.

TRANSPORTATION CABINET

Office of Minority Affairs
600 KAR 4:010E. Certification of disadvantaged, minority and women business enterprises.
600 KAR 4:020E. The disadvantaged, minority and women business enterprise program.

Department of Vehicle Regulation

Division of Motor Carriers
601 KAR 1:025. Transporting hazardous materials by air or highway.

Department of Highways

Right-of-way
603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.

EDUCATION, ARTS AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
Office of District Support Services

School Administration and Finance
702 KAR 3:270. SEEK funding formula. (Amended After Hearing) (Deferred from August)

Bureau of Learning Results Services

Learning Results Services
703 KAR 4:060. Academic expectations. (Amended After Hearing) (Deferred from August)

Office of Instruction
704 KAR 3:455 & E. Instructional material and textbook adoption process. (Not Amended After Hearing) (Deferred from September)

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals

Division of Mining
805 KAR 5:060. Electrical mine safety standards. (Repeals 805 KAR 3:090) (Amended after Hearing)

CABINET FOR HUMAN RESOURCES
Department for Social Services

Children's Residential Services
905 KAR 7:240 & E. Kentucky Educational Collaborative for State Agency Children. (Amended After Hearing) (Deferred from October)

Kentucky Health Policy Board

Administration
909 KAR 1:010E. Kentucky Health Policy Board meetings, minutes and transactions.

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
(Also see KRS Chapter 13A)

Notice of Intent

Beginning July 15, 1994, administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

After the scheduled hearing date, if held, the administrative body shall file with the Regulations Compiler a Statement of Consideration, setting forth a summary of the comments made at the public hearing, and the responses by the administrative body. This Statement shall not be published in the Administrative Register.

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

NOTICES OF INTENT
TO PROMULGATE ADMINISTRATIVE REGULATIONS

STATE BOARD OF ELECTIONS

Date: October 14, 1994
State Board of Elections

1. **31 KAR 4:090** - The subject matter of the proposed administrative regulation is mock elections for school children.

2. The State Board of Elections intends to promulgate an administrative regulation governing the subject listed above.

3. A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m. at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.

4.(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

5.(a) Persons wishing to request a public hearing should mail their written request to the following address: State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing" or

2. "I will not attend the public hearing."

6.(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the State Board of Elections at the address listed above.

7. Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to mock elections for school children is KRS 117.235.

(b) The administrative regulation that the Board of Elections intends to promulgate will not amend an existing administrative regulation. It will establish guidelines for conducting mock elections for school children.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation is necessary to insure that the regular election process will not be impaired if a county conducts mock elections for school children.

(d) The benefits to be expected from administrative regulation are: This regulation will provide guidance to counties conducting mock elections for school children.

(e) The administrative regulation will be implemented as follows: A mock election for school children conducted at a polling place in conjunction with any election shall not interfere with the regular voting process. If a mock election for school children is being conducted during an election, the precinct election officers shall maintain order at the polls to insure that the regular voting process is not impaired.

FINANCE AND ADMINISTRATION CABINET

Date: September 29, 1994
Finance and Administration Cabinet

(1) Procedures for the development, review and approval of financial plans for savings attributable to personnel pilot programs - **200 KAR 22:010**.

(2) The Finance and Administration Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 28, 1994, at 10 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body, or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 28, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Gail Prewitt, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Secretary at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 18A.445(3).

(b) The administrative regulation which the Finance and Administration Cabinet intends to promulgate will not amend an existing administrative regulation. The proposed administrative regulation will establish the procedures for developing, reviewing and approving financial plans for the retention and use of the actual savings resulting from a pilot personnel program implemented pursuant to KRS 18A.400, et seq.

(c) The "Necessity and Function" of the proposed administrative regulation is as follows: KRS 18A.445 provides that the Secretary of the Finance and Administration Cabinet shall develop a plan to permit up to fifty (50) percent of any actual savings attributed to a personnel pilot program approved and implemented pursuant to KRS 18A.400, et seq., to be retained and used by the agency. This statute also provides that prior to the expenditure of any funds, the pilot agency shall prepare and submit a plan to the Personnel Steering Committee and the Secretary of the Finance and Administration Cabinet for review and approval in order to expend any eligible funds. KRS 18A.445(3) requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to implement the provisions of KRS 18A.445. The proposed regulation establishes the procedure for developing a financial plan by those state agencies implementing a personnel pilot program pursuant to KRS 18A.400, et seq. This regulation also establishes the process by which this plan will be reviewed and approved by the Personnel Steering Committee and the Secretary of the Finance and Administration Cabinet.

(d) The benefits to be expected from the administrative regulation are: This administrative regulation will notify state agencies of the manner in which the financial plans required by KRS 18A.445 are to be developed and submitted to the Personnel Steering Committee and the Secretary of the Finance and Administration Cabinet for

review and approval.

(e) This administrative regulation will be implemented by the Personnel Steering Committee by sending notice of the same to all state agencies who have expressed an interest in implementing a personnel pilot project and pursuant to KRS 18A.400, et seq.

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

Date: October 3, 1994
State Board of Embalmers & Funeral Directors

(1) **201 KAR 15:050**, Apprenticeship requirements.

(2) The State Board of Embalmers & Funeral Directors intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, at 9 a.m., in the Capitol Annex, 701 Capitol Avenue, Room 127, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William B. Pettus, Office of Attorney General, Civil and Environmental Law Division, P.O. Box 2000, Frankfort, Kentucky 40602-2000.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from William B. Pettus at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to violations is KRS 316.210(4).

(b) The administrative regulation that the State Board of Embalmers & Funeral Directors intends to promulgate will amend 201 KAR 15:050. It will clarify the requirements for persons serving an apprenticeship for embalmer and funeral director.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Sets forth apprenticeship requirements in order to be eligible to take the examination for licensure as either an embalmer or funeral director.

(d) The benefit expected from this administrative regulation is that persons will have a clearer understanding of the apprenticeship requirements.

Date: October 3, 1994
State Board of Embalmers & Funeral Directors

(1) **201 KAR 15:060**, License renewal.

(2) The State Board of Embalmers & Funeral Directors intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, at 9 a.m., in the Capitol Annex, 701 Capitol Avenue, Room 127, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William B. Pettus, Office of Attorney General, Civil and Environmental Law Division, P.O. Box 2000, Frankfort, Kentucky 40602-2000.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from William B. Pettus at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to license renewal is KRS 316.210(4).

(b) The administrative regulation that the State Board of Embalmers & Funeral Directors intends to promulgate will amend 201 KAR 15:060. It will clarify the procedures for renewing a license.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Sets forth the requirement, pursuant to KRS 316.130, that a funeral director's license and embalmer's licensee must be renewed annually.

(d) The benefit expected from this administrative regulation is that applicants for an embalmer's and funeral director's license will have clarification on the procedures governing the renewal of licenses.

Date: October 3, 1994
State Board of Embalmers & Funeral Directors

(1) **201 KAR 15:080**, Violations.

(2) The State Board of Embalmers & Funeral Directors intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, at 9 a.m., in the Capitol Annex, 701 Capitol Avenue, Room 127, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William B. Pettus, Office of Attorney General, Civil and Environmental Law Division, P.O. Box 2000, Frankfort, Kentucky 40602-2000.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from William B. Pettus at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to violations is KRS 316.210(4).

(b) The administrative regulation that the State Board of Embalmers & Funeral Directors intends to promulgate will amend 201 KAR 15:080. It will clarify the procedures for renewing a license.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Sets forth the procedure whereby complaints and/or charges of violation of KRS Chapter 316 and the rules and regulations governing the Kentucky Board of Embalmers and Funeral Directors shall be made.

(d) The benefit expected from this administrative regulation is that persons will have a clearer understanding of the complaint procedures.

TOURISM CABINET
Department of Fish and Wildlife Resources

Date: October 14, 1994
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:049** Seasons for furbearers and small game on specified areas.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 11:30 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and

2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to The Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, KY 40601.

(b) In a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing"; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 13A.350, 150.015, 150.021, 150.170, 150.175.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:049 as follows:

1. Establish grouse hunting seasons from December 1 through December 31 on the Pennyrile and Tradewater wildlife management areas.

2. Standardize the squirrel season opening date on all wildlife management areas. Opening dates under consideration are:

a. The same as the statewide squirrel season (the third Saturday in August), or

b. The Saturday preceding Labor Day.

3. Standardize the time when unleashed dogs are prohibited on wildlife management areas as March 1 until the opening of squirrel season. This prohibition on Central Kentucky, Lloyd and West Kentucky wildlife management areas would be April 1 until the opening of squirrel season.

4. Extend the experimental spring squirrel season (June 1-14) to the Pennyrile, Tradewater, Jones-Keeney, Kleber, Twin Eagle, Lloyd and West Kentucky wildlife management areas.

(c) The necessity and function of the proposed administrative regulation is to open wildlife areas to grouse hunting and to standardize season dates and requirements on wildlife management areas.

(d) The benefits expected from the administrative regulation are increased hunting opportunity and less confusing, complicated hunting requirements.

(e) This administrative regulation will be implemented by informing hunters through brochures and mass media releases, with enforcement by the Division of Law Enforcement.

Date: October 14, 1994
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:251** Hunting and trapping seasons and limits for furbearers and small game.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 11 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and,

2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to The Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, KY 40601.

(b) In a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing"; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 13A.350, 150.015, 150.021, 150.170, 150.175.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:251 as follows:

1. Change the opening date of the furbearer season. Options under consideration are:

a. A season opening at noon, the third Friday in October and closed during modern gun deer season,

b. A season opening at noon, November 1, with night hunting for raccoon and opossum allowed during modern gun deer season.

c. A raccoon and opossum hunting season opening at noon, November 1, with furbearer hunting and trapping opening on noon the day after the modern gun deer season.

2. Incorporate the provisions of, and repeal, 301 KAR 2:110.

3. Allow trappers to place water sets closer than ten (10) feet apart.

4. Repeal 301 KAR 2:010 and 301 KAR 2:020.

(c) The necessity and function of the proposed administrative regulation is to increase the opportunity to take furbearers, remove an unnecessary restriction on water sets, and eliminate superfluous administrative regulations.

(d) The benefits expected from the administrative regulation are more hunting and trapping opportunities and fewer repetitive and unneeded administrative regulations.

(e) This administrative regulation will be implemented by informing the public of its provisions in departmental brochures, news releases and television programming; and enforcement by the Division of Law Enforcement.

Date: October 14, 1994
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) **301 KAR 3:028** Applying for disability hunting and fishing license exemptions. The subject matter of the proposed administrative regulation is the procedures for applying for disability hunting and fishing license exemptions.

(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 10 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

(4)(a) The public hearing will be held if:

1. it is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and

2. a minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 30, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to The Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, KY 40601.

(b) On the request for public hearing, a person shall state:

1. "I agree to attend the public hearing"; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the department at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing disability licenses is KRS 150.170(1), (7) and (8).

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish procedures by which persons shall verify their classification as disabled by the Social Security Administration, the Veterans Administration or a State Worker's Compensation Board in order to be eligible for disability license exemptions.

(c) The necessity and function of the proposed administrative regulation is to require those persons exempt from purchasing sport hunting or fishing licenses because of disabilities to verify their exempt status, and to specify the procedure for verifying exemptions.

(d) The benefits expected from the administrative regulation are those associated with providing a standard procedure by which to apply for disability exemptions, and providing a standardized way for conservation officers and other law enforcement personnel to identify license-exempt hunters and fishermen.

(e) The administrative regulation will be implemented as follows: It will be provided to all who request information about applying for disability exemptions.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

Date: October 7, 1994
Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 50:038**, Air emissions fee. The subject matter of the amendments relates to the necessity of the Division for Air Quality to assess air emission fees, authorized by the Kentucky General Assembly, to fund the state permit program. This amended administrative regulation, upon adoption, will replace the emergency regulation, 401 KAR 50:038E which became effective upon filing with the Regulations Compiler on October 14, 1994.

(2) The Division for Air Quality intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the amended administrative regulation has been scheduled for November 30, 1994, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601, and phone number (502) 573-3382.

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division for Air Quality at the address listed above.

(7) Information relating to the amended administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation relating to the air emissions fee regulation is 40 CFR Part 70, 42 USC 7401-7671q, et seq., KRS 224.10-100, 224.10-230, 224.20-050, 224.20-100, and 224.20-130.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend 401 KAR 50:038, Title V emissions fee. It will provide for the assessment of fees necessary to fund the state permit program, including those program elements required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations promulgated by the U.S. EPA at 40 CFR Part 70.

(c) Over sixty percent of the budget for the Division for Air Quality will be funded by emissions fees. The 1994 Budget Bill provides that $12,099,900 of the division's biennial budget will be provided from emissions fees. The collection of those fees is authorized by amendments made to KRS Chapter 224 by House Bill 379 enacted

by the 1994 General Assembly, and the adoption of a regulation to collect an emissions fee is mandated in the Budget Bill. Absent the amendments to this regulation, the Division for Air Quality will be in violation of state law and will be unable to perform duties required by KRS Chapter 224 and by the Federal Clean Air Act.

(d) This amendment is necessary to provide the funds needed for the division to implement and conduct those programs deemed essential for the protection of the public health and the environment by the United States Congress and the Kentucky General Assembly.

(e) The administrative regulation will be implemented as follows: On or about July 1 of each year, the Division for Air Quality shall calculate and assess an annual air emissions fee based on actual emissions for each pollution source subject to this administrative regulation.

JUSTICE CABINET
Division of Charitable Gaming

Date: October 11, 1994
Justice Cabinet
Division of Charitable Gaming

(1) **500 KAR 11:015E** - The subject matter of this administrative regulation is the permanent licensure process, including annual and renewal license fees.

(2) The Division of Charitable Gaming intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for November 30, 1994, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690, (502) 564-5528.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division of Charitable Gaming at the address listed above.

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(2), (3), (9), 238.530(1), (2), 238.535(1), 238.555(1).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish the requirements and process for permanent licensure, including annual and renewal license fees.

(c) The Necessity and Function of this administrative regulation is as follows: The Division of Charitable Gaming is authorized to issue permanent licenses, set license fees, including renewal fees, and establish license years for all permanent licenses issued by the division. This administrative regulation establishes the above fees and procedures for permanent licensure.

(d) The benefits expected from the administrative regulation are: All licensees will apply in the same manner for permanent licensure on forms prescribed by the Division of Charitable Gaming. Licensees will be renewing on an annual basis. Fees will be established for each type of license issued.

(e) The administrative regulation will be implemented as follows: The Division of Charitable Gaming will issue permanent licenses to those licensees who meet the necessary qualifications and have not been heretofore licensed by the Division of Charitable Gaming and to those licensees who were issued temporary licenses and who meet permanent licensure requirements.

Date: October 11, 1994
Justice Cabinet
Division of Charitable Gaming

(1) **500 KAR 11:025E** - The subject matter of this administrative regulation is the method and time for filing of quarterly reports and remitting payment of the quarterly fees due.

(2) The Division of Charitable Gaming intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for November 30, 1994, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690, (502) 564-5528.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division of Charitable Gaming at the address listed above.

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(4), (9), 238.550, 238.570(1).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish the method and time for filing of quarterly reports and remittance of payment of quarterly fees.

(c) The Necessity and Function of this administrative regulation is as follows: All licensed charitable organizations are required to remit one-half of one percent of gross receipts derived from charitable gaming. Quarterly reports are required of all licensed charitable organizations. This administrative regulation will establish the method and time of filing the quarterly reports and remitting payment of the quarterly fees due.

(d) The benefits expected from the administrative regulation are: This regulation will implement a procedure by which the Division of Charitable Gaming can collect the fees due it under KRS 238.570(11) since the effective date of House Bill 206, March 16, 1994. The regulation prescribes methods by which uniform reporting requirements are met.

(e) The administrative regulation will be implemented as follows: The Division of charitable Gaming will process quarterly reports and fees due from licensed organizations on the gross receipts collected since the effective date of House Bill 206, March 16, 1994, through the calendar year quarter ending September 30, 1994. Thereafter, quarterly reports and fees shall be due within thirty (30) days from the end of each calendar year quarter.

DEPARTMENT OF CORRECTIONS

Date: October 12, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: Transportation of Inmates.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:020, as follows:

1. Transportation of Inmates (9.9) shall be amended to update procedures for transporting inmates among state institutions.

(c) The Necessity and Function of the proposed administrative regulation is: To provide consistent policies among all Department of Corrections entities and compliance with state and federal statutes.

(d) The benefits expected from the administrative regulation are: To provide consistent policies among all Department of Corrections entities and to most efficiently use departmental resources.

(e) The administrative regulation will be implemented as follows: By promulgating and enforcing the components of the various policies to provide consistent policy for the department.

Date: October 12, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:040**, Kentucky State Penitentiary: Arts and Crafts Program Policy; Menu Preparation and Planning Policy; Food Service General Sanitation, Safety, and Protection Standards and Requirements Policy; Searches and Preservation of Evidence Policy; Therapeutic Diets Policy; Food Service Inspections Policy; Inmate Correspondence Policy; Inmate Packages; Property Room, Clothing Storage, and Property Inventory Control Policy.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:040, as follows:

1. Arts and Crafts Program (22-04-01) shall be added to establish rules for arts and crafts projects.

2. Menu Preparation and Planning (11-02-01) shall be deleted to avoid duplication of previously filed regulations.

3. Food Service General Sanitation, Safety, and Protection Standards and Requirements (11-05-01) shall be deleted to avoid

duplication of previously filed regulations.

4. Searches and Preservation of Evidence (09-08-01) shall be amended to comply with actual practice.

5. Therapeutic Diets (11-03-01) shall be amended to comply with actual practice.

6. Food Service Inspections (11-06-01) shall be amended to comply with actual practice.

7. Inmate Correspondence (16-02-01) shall be amended to comply with actual practice.

8. Inmate Packages (16-04-01) shall be amended to limit number of allowable packages received by inmates.

9. Property Room, Clothing Storage and Property Inventory Control (17-01-04) shall be amended to comply with actual practices.

(c) The Necessity and Function of the proposed administrative regulation is: To update operating procedures at Kentucky State Penitentiary to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(d) The benefits expected from administrative regulation are: To comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in policy changes.

Date: October 12, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:080**, Kentucky Department of Corrections Manuals: Classification

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:080, as follows:

1. Classification Manual shall be amended to maintain consistency among the various Corrections classification policies.

(c) The Necessity and Function of the proposed administrative regulation is: To update operating procedures at Western Kentucky Correctional Complex to comply with American Correctional Association Standards and Department of Corrections Policies and Procedures.

(d) The benefits expected from administrative regulation are: To comply with American Correctional Association Standards and Department of Corrections Policies and Procedures.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in policy changes.

Date: October 12, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:130**, Western Kentucky Correctional Complex: Offender Records and Information Access, Inmate Clothing, Use of Pharmaceutical Products, Meritorious Good Time, Restoration of Forfeited Good Time.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:130, as follows:

1. Offender Records/Information Access (06-00-01) shall be amended to implement a new system for maintaining records of an inmate's movement or status within the institution as well as changing the frequency for preparing parole eligibility lists.

2. Inmate Clothing (12-01-01) shall be amended to conform with third edition American Correctional Association Standards as well as a change to reflect the discontinuance of a centralized laundry facility and replacement with units in each living unit.

3. Use of Pharmaceutical Products (13-02-01) shall be amended to reflect LRC filing requirements; deletion of some over the counter medications maintained in the medical unit; and changes maximum

length of stop order time periods.

4. Meritorious Good Time (15-03-01) shall be deleted to eliminate duplication of this policy as it is already addressed in CPP 15.3.

5. Restoration of Forfeited Good Time (15-05-01) shall be deleted to eliminate duplication of this policy as it is already addressed in CPP 15-05-01.

(c) The Necessity and Function of the proposed administrative regulation is: To update operating procedures at Western Kentucky Correctional Complex to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(d) The benefits expected from administrative regulation are: To comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in policy changes.

TRANSPORTATION CABINET

Date: October 14, 1994
Transportation Cabinet

(1) **601 KAR 1:005** relating to the federal motor carrier safety regulations.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation updating the federal regulations governing the safe operation of commercial motor vehicles in Kentucky. In addition, the section on exemptions will be amended to insure that all public agencies are aware that drug and alcohol testing is now required for their operators of commercial motor vehicles.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 3 p.m. local prevailing time, at 501 High Street, Room 1003, Frankfort, Kentucky 40602.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the safety of commercial motor vehicles and their operators is KRS 138.665, 281.600, 281.726, 281.730, 281.750, and Title 49 CFR Parts 40, 382-383, 390-397.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. Further, these safety requirements are imposed by US DOT on commercial vehicles operating in interstate commerce and most commercial vehicles operating in intrastate commerce. By promulgating these federal regulations in a state administrative regulation, the Transportation Cabinet's motor vehicle enforcement officers can enforce the federal regulations as required by federal mandate.

(d) The benefits expected are increased safety on the public highways of Kentucky and uniformity with the federal government and other states' motor carrier safety requirements.

Date: October 14, 1994
Transportation Cabinet

(1) **601 KAR 9:210** relating to official license plates.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing how the Kentucky seal on all official license plates issued by the Transportation Cabinet can be altered, changed or replaced by public agencies which use official license plates.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 8 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to official license plates is KRS 186.005.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Commonwealth of Kentucky has begun issuing new and replacing worn-out official license plates which are reflective and graphic. Many local communities and agencies have requested the ability to place a decal over the state seal to more clearly identify the local agency which is using these state official license plates. This proposed administrative regulation will establish under what circumstances a local agency will be allowed to place a decal over the state seal, the process for application for being allowed to do this and any provisions of oversight of the program.

(d) The benefits expected from administrative regulation are: The benefits expected will be the public awareness and the uniformity of the program throughout the state.

Date: October 15, 1994

Transportation Cabinet

(1) **603 KAR 5:230, 601 KAR 5:310, 601 KAR 35:020 and 601 KAR 35:070** relating to the extended weight coal and coal by-products haul road system.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations governing the road segments to be included on the extended weight coal and coal by-products haul road system, the weight limits of the bridges on the system, cooperative maintenance agreements allowing extended weights on otherwise ineligible roads, the removal of road segments such as Kentucky 205 in Wolfe and Breathitt Counties from the system for safety reasons, and coal transportation reporting requirements.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 1 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the extended weight coal and coal by-products haul system is KRS 177.977, 177.9771 and 189.230.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend existing administrative regulations and possibly include a new administrative regulation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the "extended weight coal or coal by-products haul road system". KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the weight limits prescribed in KRS 177.9771 on a bridge which may be damaged or destroyed to the point of catastrophic failure if gross vehicle weights exceeds certain limits. This administrative regulation identifies the extended weight coal or coal by-product haul road system and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the extended weight coal or coal by-products haul road system and establishes procedures to be followed by local governing bodies requesting this consideration. This proposed amendment to the administrative regulation specifically addresses the resolutions received by the Transportation Cabinet during the preceding year, the continuation of the resolutions received prior to the preceding year, and the amount of coal transported over public roads in Kentucky during calendar year 1993. As a result of this proposed change, there will be many roads added to and deleted from the extended weight coal haul road system. HB 558 passed by the 1994 General Assembly set forth additional times under which cooperative agreements could be entered into in order to include roads otherwise ineligible in the extended weight coal haul road system. The cooperative agreement process will also be discussed at the public hearing. KRS 177.9771 refers to both coal and coal by-products. Persons are allowed by this statute to submit reports of transportation of coal by-products in order to have road segments added to the extended weight coal haul road system. The way with which this should be dealt will be included in an administrative regulation.

(d) The benefits expected from this proposed amended administrative regulation are the annual update of the extended weight coal haul road system as required by KRS 177.9771 and improved highway safety where the cabinet is responding to local resolutions.

STATE BOARD FOR ELEMENTARY AND SECONDARY EDUCATION

Date: October 5, 1994

State Board for Elementary and Secondary Education

(1) **702 KAR 3:020**, Bond issue approval.

(2) The State Board for Elementary and Secondary Education intends to promulgate an amendment to the administrative regulation listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to bond issue approval is KRS 156.070, 156.160, 160.160, 162.160, 162.170 and 162.180.

(b) The administrative regulation that the Department of Education intends to amend is 702 KAR 3:020. It provides procedures for the approval of bond and bond anticipation note issues by school districts.

(c) The Necessity and Function of the proposed amendment is to eliminate the requirement for a report of the terms and conditions of all school bond sales to the State Board for Elementary and Secondary Education; to eliminate the payment intercept provision now in statute (KRS 160.160 as amended by HB 308 of the 1994 General

Assembly); and to make minor changes to conform to the Kentucky Education Reform Act.

(d) The benefits expected from the amendment to the administrative regulation are to reduce the review items submitted to the State Board of Elementary and Secondary Education and eliminate redundant language.

Date: September 1, 1994
State Board for Elementary and Secondary Education

(1) Administrative Regulation Number and Title: **702 KAR 3:035**, Annual professional development plan.

(2) The State Board for Elementary and Secondary Education intends to promulgate an amendment to an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the revision of an administrative regulation relating to professional development is KRS 156.070, 156.095, 156.0951, 158.070.

(b) The administrative regulation that the Department of Education intends to revise will remove outdated provisions and further integrate the ideals of the Kentucky Education Reform Act into the professional development planning process.

(c) The Necessity and Function of the proposed administrative regulation revision is as follows: KRS 156.0951 requires the State Board for Elementary and Secondary Education to adopt rules and administrative regulations relating to the formation of professional development consortia by school districts of less than 20,000 students until July 1, 1995. References to consortia in the current regulation must be modified as this requirement expires. This regulation incorporates by reference the document "Professional Development Planning Process," dated January 1993. This reference is obsolete and needs to be revised.

(d) The benefits expected from the revision to the administrative regulation are: An enhancement of the Kentucky Department of Education's ability to provide the local school district with more appropriate practices of professional development; make the regulation consistent with the July 1, 1995, sunset provision of KRS 156.0951; enable the local school district to plan, implement and monitor its own professional development activities; and negate the need to revise the regulation annually.

Date: October 14, 1994
State Board for Elementary and Secondary Education

(1) Regulation Number and Title: **703 KAR 3:060**, Procedures for determining rewards and sanctions.

(2) The State Board for Elementary and Secondary Education intends to promulgate an amendment to the administrative regulation listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 10 a.m., in State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if :

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Kevin Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to determining rewards and sanctions is KRS 158.645, 158.6451, 158.6453, 158.6455.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to promulgate will amend 703 KAR 3:060, as follows: Clarify definitions established in Section 1 to comply with statutory changes and to define components needed to establish 1992-94 baseline accountability indexes for the 1994-96 accountability decisions. Clarify grade levels at which accountability components are to be administered consistent with statutory changes and legislative resolutions. Establish Section 9 to establish maximum reward level as required by statutory changes. Establish Section 10 to define the voting staff in schools earning rewards.

(c) The Necessity and Function of the proposed administrative regulation is: To comply with statutory changes and to establish means for certified staff in schools earning rewards to make decisions regarding reward allocation.

(d) The benefits expected from administrative regulation are: The Department of Education will be able to calculate rewards to be sent to schools and establish a framework for decision making.

(e) The administrative regulation will be implemented as follows: The content of this regulation will be communicated to all districts for distribution to appropriate schools.

LABOR CABINET
Department of Workers' Claims

Date: October 14, 1994
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation

is workers' compensation alternative dispute resolution systems, **803 KAR 25:150**.

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1994, at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Attn: Valerie L. Salven, General Counsel.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Workers' Claims at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to workers' compensation alternative dispute resolution systems is a new section of KRS Chapter 342 contained in House Bill 928 passed by the Regular Session of the 1994 General Assembly.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will establish the mechanism by which the commissioner may recognize as valid and binding a collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative that provides for an alternative dispute resolution system to supplement, modify, or replace the provisions of KRS Chapter 342 that relate to the resolution of disputes; that provides for the use of an agreed list of providers of medical treatment; that provides for the use of a limited list of physicians to conduct independent medical examinations; that contains a light duty, modified job, or return-to-work program; that provides for vocational rehabilitation or retraining; and contains a 24-hour health care coverage plan for medical benefits.

(c) The necessity and function of the proposed administrative regulation is as follows: House Bill 928 requires the commissioner to promulgate administrative regulations that recognize as valid and binding the kind of collective bargaining agreements described in subsection (b), above.

(d) The benefits expected from administrative regulation are the prompt resolution of disputes concerning workers' compensation benefits, the prompt and efficient provision of quality medical treatment; and provision for light duty, vocational rehabilitation, and 24-hour health care coverage.

(e) The administrative regulation will be implemented as follows: The purpose of the public hearing is to solicit comments and suggestions about what the proposed regulation should contain. It is anticipated that the standards contained in the regulation will be used by employers and bargaining representatives in preparing collective bargaining agreements containing the elements that are required by statute. Pursuant to the regulation, the agreement will then be reviewed and approved or disapproved by the commissioner.

Date: October 14, 1994
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is charges by medical providers for testimony and reports in workers' compensation claims, **803 KAR 25:160**.

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1994 at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Attn: Valerie L. Salven, General Counsel.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Workers' Claims at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a claim by an insured employee against the employer is found in an amendment to KRS 342.035, subsection (4), made in House Bill 928 passed by the Regular Session of the 1994 General Assembly.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will establish, for the first time, a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony and reports furnished in the litigation of a workers' compensation claim.

(c) The Necessity and Function of the proposed administrative regulation is as follows: House Bill 928 requires the commissioner to promulgate a regulation on the subject of medical testimony and report fees not later than December 1, 1994.

(d) The benefits expected from administrative regulation are: Greater uniformity of charges for medical testimony and the preparation of medical reports, with the overall result that costs for these items are reduced.

(e) The administrative regulation will be implemented as follows:

Comments received at the public hearing on this notice will be considered along with suggestions made by a committee of physicians and attorneys concerning the content of a fee schedule for medical testimony and reports.

Date: October 14, 1994
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is the filing of claims information with Department of Workers' Claims, **803 KAR 25:170**.

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1994 at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Attn: Valerie L. Salven, General Counsel.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Workers' Claims at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the filing of detailed claims information with the Department of Workers' Claims is a new section of KRS Chapter 342 created in House Bill 928 of the 1994 General Assembly.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will specify the claims information to be filed by each insurance company writing workers' compensation insurance policies in the Commonwealth, every group of self-insurers, and each employer carrying its own risk. It shall also specify the format and manner in which this information shall be filed.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation is being promulgated to comply with the legislative mandate contained in House Bill 928 of the 1994 General Assembly, in a new section of KRS Chapter 342.

(d) The benefits expected from administrative regulation are: The regulation will provide information to the Department of Workers' Claims, legislators, insurers, employers, employees, and others that will permit the nature and sources of costs of the provision of workers' compensation benefits, insurance and self-insurance in Kentucky to be determined.

(e) The administrative regulation will be implemented as follows: House Bill 928 provides that the commissioner shall promulgate administrative regulations requiring the filing of detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC).

Date: October 14, 1994
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is compliance by insurers with workers' compensation fee schedules. **803 KAR 25:175**.

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1994 at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Attn: Valerie L. Salven, General Counsel.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Workers' Claims at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation requiring insurance carriers, group self-insurers, and self-insured employers to certify to the commissioner the program or plan they have adopted to ensure compliance with workers' compensation fee schedules is contained in an amendment made to KRS 342.035, subsection (5)(a), made by House Bill 928 passed by the Regular Session of the 1994 General Assembly.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will establish the mechanism by which insurance carriers, group self-insurers, and self-insured employers will certify to the commissioner the methods they will use to assure compliance with applicable fee schedules, and the content of the certification to be made to the commissioner.

(c) The Necessity and Function of the proposed administrative regulation is as follows: House Bill 928 requires the commissioner to promulgate administrative regulations by December 31, 1994, to require each insurance carrier, group self-insurer and self-insured employer to certify to the commissioner the program or plan they have adopted to ensure compliance with the fee schedules.

(d) The benefits expected from administrative regulation are:

Prompt payment of appropriate medical charges, and consistent application of the workers' compensation fee schedules.

(e) The administrative regulation will be implemented as follows: Insurance carriers, group self-insurers, self-insured employers, and others who are interested in the process by which these entities shall certify compliance with the workers' compensation fee schedules are encouraged to attend the public hearing and offer comments and suggestions concerning the information that should be submitted to the commissioner to show that a program or plan has been adopted that ensures compliance with the workers' compensation fee schedules.

Date: October 14, 1994
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is workers' compensation parameters for clinical practice. **803 KAR 25:180.**

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1994, at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Attn: Valerie L. Salven, General Counsel.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Workers' Claims at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to clinical practice parameters is an amendment to KRS 342.035, subsection (8)(a), made by House Bill 928 passed by the Regular Session of the 1994 General Assembly.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will specify practice parameters or guidelines for clinical practice for use by medical providers under the Workers' Compensation Act.

(c) The Necessity and Function of the proposed administrative regulation is as follows: House Bill 928 requires the commissioner to develop or adopt practice parameters or guidelines for clinical practice for use by medical providers under the Kentucky Workers' Compensation Act.

(d) The benefits expected from administrative regulation are: KRS 342.035(8)(b) provides that any provider of medical services under the Workers' Compensation Act who has followed the practice parameters or guidelines developed or adopted pursuant to KRS 342.035(8)(a) "shall be presumed to have met the appropriate legal standard of care in medical malpractice cases regardless of any unanticipated complication that may thereafter develop or be discovered," and practice parameters should expedite utilization review and lower workers' compensation costs through curtailment of some unnecessary medical services.

(e) The administrative regulation will be implemented as follows: KRS 342.035(8)(a) provides that the commissioner may adopt any parameters for clinical practice as developed and updated by the Federal Agency for Healthcare Policy Research, or the commissioner may adopt other parameters for clinical practice which are developed by qualified bodies, as determined by the commissioner, with periodic updating based on data collected during the application of the parameters. The commissioner will review any parameters suggested in response to this notice of intent before deciding which parameters are most appropriate to propose in an administrative regulation.

Date: October 14, 1994
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is workers' compensation utilization review, **803 KAR 25:190.**

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 29, 1994 at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to November 29, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Attn: Valerie L. Salven, General Counsel.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Workers' Claims at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to utilization review of workers' compensation medical bills is contained in an amendment to KRS 342.035 made by House Bill 928 of the 1994 General Assembly at Section 5(c).

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. It will provide standards for medical provider utilization activities conducted by an insurance carrier, group self-insurer, or self-insured employer pursuant to the Workers' Compensation Act.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation is being

promulgated to comply with the legislative mandate contained in House Bill 928 of the 1994 General Assembly, in an amendment to KRS 342.035.

(d) The benefits expected from administrative regulation are: The uniform and expeditious review of medical bills in workers' compensation claims.

(e) The administrative regulation will be implemented as follows: Comments and suggestions concerning the content of the proposed administrative regulation concerning utilization review are invited from insurance carriers, group self-insurers, self-insured employers, the providers of medical services, employees, and others interested in this process. A Cabinet for Human Resources administrative regulation setting forth standards for utilization review, 906 KAR 1:080, will be considered in the drafting of the Department of Workers' Claims administrative regulation on this subject.

DEPARATMENT OF INSURANCE

Date: October 11, 1994
Public Protection and Regulation Cabinet
Department of Insurance

(1) The subject matter of the proposed administrative regulation, **806 KAR 39:080**, is the reporting requirements of insurers regarding the payments made by the insurers for personal injuries incurred by their covered motorists as a result of an accident using a motor vehicle.

(2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602. Attention: Sharron S. Burton.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to reporting requirements for insurers who pay personal injury claims due to motor vehicle accidents of their covered motorists is KRS 304.2-110(1) and 304.39-350.

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will establish the reporting requirements for insurers of motor vehicles. The insurers will be required to report data regarding payments made for personal injuries incurred by their covered motorists as a result of an accident using a motor vehicle. The required data shall be reported to the Commissioner of Insurance.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Pursuant to KRS 304.39-350, the Commissioner of Insurance is required to report to the Legislative Research Commission the total amount of payments made by insurers of motor vehicles for personal injuries incurred by their covered motorists as a result of an accident using a motor vehicle. In order to compile this information for the Legislative Research Commission, it is essential that the commissioner require the insurers of motor vehicles to report this information to the Department of Insurance.

(d) The benefits expected from administrative regulation are: The data received from the insurers will enable the Commissioner of Insurance to report accurately and substantively to the Legislative Research Commission as is required by statute.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish reporting requirements and guidelines for insurers of motor vehicles. A data reporting form will be incorporated into the administrative regulation. The form will require statistical information necessary to enable the Commissioner of Insurance to carry out the required statutory duties. The information sought will include the number of injury accidents versus the number of noninjury accidents, the number of victims suffering injury, the primary type of injury suffered, whether or not the injury victim was wearing a seat belt, and the total cost for victims wearing seat belts versus the total cost for those not wearing seat belts. In addition, the time limitations within which the reports must be filed with the Department of Insurance will be specified by the proposed administrative regulation. A total of two reports will be required to be filed. The first report must be filed by July 31, 1995, covering a period from July 15, 1994, through July 14, 1995. The second report must be filed by July 31, 1996, covering a period from July 15, 1995, through July 15, 1996.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction

Date: October 12, 1994
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 8:010**; Master heating, ventilation, and air-conditioning (HVAC) contractor licensing requirements.

(2) The Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Wednesday, November 30, 1994 at 10 a.m., local time, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five (5) persons or an administrative body or an association having at least five (5) members; and

2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least twenty (20) days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.654.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the requirements for licensing HVAC master contractors as set forth in KRS 198B.658 and 662.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 198B.658 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations to coordinate and administer the HVAC Act requiring persons engaged in the business of heating, ventilation and air conditioning (HVAC) contracting to be licensed effective July 1, 1995. This administrative regulation will set forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing HVAC contractors.

(d) The benefits expected from this administrative regulation are: that the public will be better protected by the licensing of qualified HVAC contractors.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction. Applications will be sent to all interested persons, plumbing inspectors throughout the state will place notices, inform suppliers, etc. that applications are available. Qualified persons will be able to complete the application between April and July so that licenses will be issued by July 1, 1995.

Date: October 12, 1994
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 8:020**; Journeyman heating, ventilation, and air-conditioning (HVAC) mechanic licensing requirements.

(2) The Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Wednesday, November 30, 1994, at 10 a.m., local time, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five (5) persons or an administrative body or an association having at least five (5) members; and

2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least twenty (20) days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.654.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the requirements for licensing HVAC Journeyman Mechanics as set forth in KRS 198B.658(2) and 662.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the business of heating, ventilation and air conditioning (HVAC) installation and repair to be licensed effective July 1, 1995. This administrative regulation will set forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing journeyman HVAC mechanics.

(d) The benefits expected from this administrative regulation are: This administrative regulation will establish a cohesive program for qualifying journeyman and providing for appropriate supervision by master contractors and for apprentices. The public will be protected by having a state agency to assist in oversight of code complying installations.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction. Applications will be sent to all interested persons; plumbing inspectors throughout the state will place notices and inform suppliers, etc. that applications are available. Qualified persons will be able to complete the application between April and July so that licenses will be issued by July 1, 1995.

Date: October 12, 1994
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 8:030**; Apprentice heating, ventilation, and air-conditioning (HVAC) mechanic registration and certification requirements.

(2) The Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Wednesday, November 30, 1994, at 10 a.m., local time, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five (5) persons or an administrative body or an association having at least five (5) members; and

2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least twenty (20) days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.654.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the requirements for registering and certifying HVAC apprentice mechanics as set forth in KRS 198B.658(3) and 662.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons holding themselves out as HVAC apprentices to be registered effective July 1, 1995. This administrative regulation will set forth the requirements for registration and certification of Apprentice mechanics which registration shall be used to satisfy the experience requirements necessary before an apprentice is eligible to be licensed by examination.

(d) The benefits expected from this administrative regulation are: Statewide apprentice registration will assist the industry in providing proof of experience. Public protection in qualify work shall result from verified experience.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction. Applications will be sent to all interested persons; plumbing inspectors throughout the state will place notices and inform suppliers, etc. that applications are available. Qualified persons will be able to complete the application between April and July so that licenses will be issued by July 1, 1995.

CABINET FOR HUMAN RESOURCES

Date: October 13, 1994
Department for Health Services

(1) **902 KAR 14:030** License procedures and fee schedule for ambulance service providers.

(2) Department for Health Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main St., Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

(1) It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

(2) A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for public hearing, a person shall state:

(1) "I agree to attend the public hearing."; or

(2) "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Commissioner's Office, Department for Health Services, 275 E. Main St., Frankfort, Kentucky 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to license procedures and fee schedule for ambulance service providers is KRS 211.952, 216B.042, 216B.105, and 216B.410.

(b) The administrative regulation that the Department for Health Services intends to promulgate will transfer responsibility for licensing ambulance service providers from the CHR Office of Inspector General to the Department for Health Services. Licensing procedures and fee schedules will be essentially unchanged from those in place at the present time.

(c) The Necessity and Function of the proposed administrative regulation is as follows: HB 646 enacted by the 1994 Kentucky General Assembly directs the transfer of ambulance licensing, regulation and inspection activities from the Inspector General to the Department for Health Services.

(d) The benefits expected from administrative regulation are: Compliance with Kentucky statutes and reduction of fragmentation of authority and responsibility over emergency medical services provider and personnel.

Date: October 13, 1994
Department for Health Services

(1) **902 KAR 14:040** Ground ambulance service providers and patient emergency medical services.

(2) Department for Health Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main St., Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

(1) It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

(2) A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for public hearing, a person shall state:

(1) "I agree to attend the public hearing."; or

(2) "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file

a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Commissioner's Office, Department for Health Services, 275 E. Main St., Frankfort, Kentucky 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to ground ambulance service providers is KRS 211.952, 216B.042, 216B.105, and 216B.410.

(b) The administrative regulation that the Department for Health Services intends to promulgate will transfer responsibility for licensing ground ambulance service providers from the CHR Office of Inspector General to the Department for Health Services. Licensing procedures and fee schedules will be essentially unchanged from those in place at the present time.

(c) The Necessity and Function of the proposed administrative regulation is as follows: HB 646 enacted by the 1994 Kentucky General Assembly directs the transfer of ambulance licensing, regulation and inspection activities from the Inspector General to the Department for Health Services.

(d) The benefits expected from administrative regulation are: Compliance with Kentucky statutes and reduction of fragmentation of authority and responsibility over emergency medical services provider and personnel.

Date: October 13, 1994
Department for Health Services

(1) **902 KAR 14:050** Air ambulance service providers.

(2) Department for Health Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main St., Frankfort, Kentucky

(4)(a) The public hearing will be held if:

(1) It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

(2) A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for public hearing, a person shall state:

(1) "I agree to attend the public hearing."; or

(2) "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Commissioner's Office, Department for Health Services, 275 E. Main St., Frankfort, Kentucky 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to air ambulance service providers is KRS 211.952, 216B.042, 216B.105, and 216B.410.

(b) The administrative regulation that the Department for Health Services intends to promulgate will transfer responsibility for licensing air ambulance service providers from the CHR Office of Inspector General to the Department for Health Services. Licensing procedures and fee schedules will be essentially unchanged from those in place at the present time.

(c) The Necessity and Function of the proposed administrative regulation is as follows: HB 646 enacted by the 1994 Kentucky General Assembly directs the transfer of ambulance licensing, regulation and inspection activities from the Inspector General to the Department for Health Services.

(d) The benefits expected from administrative regulation are: Compliance with Kentucky statutes and reduction of fragmentation of authority and responsibility over emergency medical services provider and personnel.

Date: September 28, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:001**. Definitions.

(2) The Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, 502-564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Cabinet for Human Resources, 3 West, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons

requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions is KRS 194.050, 205.710 - 205.800, 405.520.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:001, Definitions. It will clarify and define terminology relating to Child Support Enforcement Program activities.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Cabinet for Human Resources is required to administer the Child Support Enforcement Program (CSEP). KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation amendment sets the definitions of terms used by the cabinet in administrative regulation pertaining to the CSEP and newly identified terms resulting from the Omnibus Reconciliation Act of 1993 and the 1994 Kentucky statutory amendments.

(d) The benefits expected from administrative regulation are: This administrative regulation amendment will clarify the intent of federal mandates and state statutory requirements and language contained within.

Date: September 28, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:020**. Child Support Enforcement Program: confidentiality and cooperative agreements.

(2) The Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, 502-564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Cabinet for Human Resources, 3 West, 275 East Main St., Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to confidentiality and cooperative agreements is KRS 194.050, 205.710 - 205.800, 405.520.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:020, Child Support Enforcement Program: confidentiality and cooperative agreements. It will amend the existing regulation to include audit criteria as a contract requirement.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with the KRS 205.710 to KRS 205.800. The cabinet shall make efforts to establish paternity and secure support from parents of children receiving public assistance as a result of desertion, abandonment, birth out of wedlock, and for other children upon application. KRS 205.795 and 405.520 empowers the secretary to adopt administrative regulations pertaining to the administration of the CSEP. This amendment to 904 KAR 2:020 will provide additional information regarding cooperative agreements with legal representatives providing services on behalf of the CSEP.

(d) The benefits expected from administrative regulation are: This administrative regulation will provide clarification of the role of the contracting official and will identify audit criteria as an additional contractual requirement for the participation of contracting officials.

Date: September 29, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:380**. Child Support Enforcement Program application process.

(2) The Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, 502-564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Cabinet for Human Resources, 3 West, 275 East Main St., Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the application process for child support enforcement services is KRS 194.050, 205.710 - 205.800, 405.520.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:380. Child Support Enforcement Program application process. It will provide additional information about expanded child support enforcement services.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.520 to 205.800. KRS 205.795 and 405.520 provide that the Secretary shall develop administrative regulations to operate the CSEP in accordance with federal law and regulations. This regulation specifies the process by which an individual may apply for child support services, the scope of services available, and will provide directions for application of additional services and service parameters as provided by the Omnibus Reconciliation Act of 1993 and 1994 Kentucky statutory revisions.

(d) The benefits expected from administrative regulation are: The amendment will provide information about expanded available service parameters. These expanded services are the collection and distribution of medical support payments, collection of maintenance if included in the same order as the child support, application for health insurance for children of parents who do not enroll the children in a health insurance plan when ordered by the courts, and paternity establishment for noncustodial parents when the request is for paternity establishment only.

Date: September 28, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:390**. Child Support Enforcement Program paternity establishment.

(2) The Department for Human Resources intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, 502-564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Cabinet for Human Resources, 3 West, 275 East Main St., Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Child Support Enforcement Program paternity establishment is KRS 194.050, 205.710 - 205.800, 405.520.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:390, Child Support Enforcement Program paternity establishment. It will provide for additional requirements of legal entities involved with the establishment of paternity.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. The agency shall establish paternity when necessary to secure support for a child. This administrative regulations specifies the requirement of the agency in the establishment of paternity.

(d) The benefits expected from administrative regulation are: The amendment will provide additional information and direction to legal entities for establishment of paternity and delineates information enacted into KRS 205.730, 405.991, 406.021, and 407.410 by the 1994 General Assembly regular session.

Date: September 28, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:400**. Establishment, review and modification of child support and medical support orders.

(2) The Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, 502-564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an

administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Cabinet for Human Resources, 3 West, 275 East Main St., Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the establishment, review, and modification of child support and medical support orders is KRS 194.050, 205.710 - 205.800, 405.520.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:400, Establishment, review and modification of child support and medical support orders. By incorporating the Kentucky Child Support Guideline Worksheet, detailed direction for the establishment, review, and modification of child support orders and medical support orders will be provided.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with the provisions of KRS 205.710 to 205.800. This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders.

(d) The benefits expected from administrative regulation are: This regulation will provide additional information concerning federal mandates and state requirements concerning the establishment, review, and modification of child support orders by incorporating the Kentucky Child Support Guideline Worksheet. This form will be provided to child support enforcement officials and clients requesting services.

Date: October 3, 1994
Cabinet for Human Resources
Department for Social Insurance

(1) **904 KAR 3:041.** Food stamp employment and training program.

(2) The Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, 502-564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, by writing to the Cabinet for Human Resources, 275 East Main Street, 3rd Floor West, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the food stamp employment and training program is KRS 194.050 and 7 CFR 273.7.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:041, Food stamp employment and training program. The amendment will add an age factor to the priority status criteria listed in Section 3(2). The criteria will now consist of an individual under age 30 who has no high school diploma or GED, an individual under age 30 who has no employment in the last 12 months and an individual who is a veteran, regardless of age.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Food and Nutrition Service (FNS) has provided states with guidance in regards to the operation and expected outcomes of the ET Program. They are now encouraging states to increase targeting particular groups to be served by the program. These groups are usually the individuals who have the greatest barriers to employment through either lack of education of lack of experience. In an effort to reach these individuals and to offer the opportunity to become more self-sufficient, states are using a priority criteria to serve those individuals first. Currently, Kentucky's employment and training program first serves those who do not have a high school diploma or GED and those who have not worked in the last 12 months and veterans. In an effort to prioritize an even smaller group and provide more intense services, we are promulgating this amendment to add age limits.

(d) The benefits expected from the administrative regulation amendment are: More intensive services, such as education and assessment, to a smaller work registrant population which will hopefully lead to more individuals becoming employed.

Date: September 30, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:009**, Physicians' services.

(2) Cabinet for Human Resources, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will

be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, 502-564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Program Development and Budget, CHR Building, Third Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to physicians' services is KRS 194.050 and 42 CFR 440.50.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:009, Physicians' Services. The incorporated by reference physician manual's reimbursement section has been revised to correspond with the October 15, 1994 reimbursement methodology change provided for in the companion regulation 907 KAR 1:010, Payments for Physicians' services.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to physicians' services for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy.

(d) The benefits expected from administrative regulation are: This is a companion regulation to 907 KAR 1:010 (which is being amended to revise the reimbursement methodology for covered physicians' services); this regulation must be revised to maintain conformity of agency policy.

Date: September 30, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:010**, Payments to physicians' services.

(2) Cabinet for Human Resources, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, 502-564-7900.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Program Development and Budget, CHR Building, Third Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for physicians' services is KRS 194.050, 42 CFR 440.50, 42 CFR 447 Subpart B, 42 USC 1396 a-b, and 42 USC 1396s.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:010, Payments for Physicians' Services. It will revise the physicians' services reimbursement methodology effective October 15, 1994. The fixed upper limit per procedure for physicians' services shall be established by using a Kentucky Medicaid Fee Schedule developed from a resource-based relative value scale (RBRVS) based on the Harvard 1992 RBRVS study. Historically, Medicaid rates were based on physicians' usual and customary changes which were believed not to reflect accurately the true value of the procedure performed in many cases. According to Cambridge Health Economics Group a Harvard research team conducted a study which "demonstrated that both objective and subjective factors of services can be rated and measured. Through this process it is possible to develop a rational system for defining which services and procedures require more or less time and effort and thereby establish a scale of relativity among them." This resulted in the development of a resource-based relative value scale (RBRVS). The cabinet believes the use of an RBRVS system will result in more equitable payments for all physicians participating in the Medicaid Program.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for establishing payments for physician services by the Medicaid Program.

(d) The benefits expected from administrative regulation are: To reduce the Medicaid Program's expenditures by approximately $50 million annually.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:010.** Definitions for nonmedical alcohol treatment and education center programs (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditori-

um, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:010. It will revise the definitions of terms applicable to alcohol and other drug treatment and education center programs based on requirements in KRS Chapter 222.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To define terms applicable to regulations adopted by the Cabinet for Human Resources regarding facility standards for nonmedical alcohol treatment and education center programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:020.** Licensing procedures (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:020. It will revise the standards for determining what types of facilities must have a nonmedical alcohol and other drug treatment and education center license based on requirements in KRS Chapter 222.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse on the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:030.** Organization and administration (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an adminis-

trative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:030. It will revise the standards to assure that agencies offering nonmedical alcohol and other drug treatment and education center programs have a governing authority, organization structure, and minimum policies and procedures for administering such programs based on requirements in KRS Chapter 222.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and to assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:040.** Personnel policies (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:040. It will revise the standards to assure that agencies offering nonmedical alcohol and other drug treatment and education programs have minimum policies and procedures governing personnel policies based on requirements in KRS Chapter 222.

(c) The Necessity and Function of the proposed administrative regulation is as follows:

To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs. (d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:050.** Quality assurance (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:050. It will revise the standards to assure that agencies offering nonmedical alcohol and other drug treatment and education programs have minimum policies and procedures for reviewing quality of client care and assuring staff competency based on requirements in KRS Chapter 222.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:060.** Client's rights (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:060. It will revise the standards, based on requirements in KRS Chapter 222, to assure that agencies offering nonmedical alcohol and other drug treatment and education center programs have minimum policies and procedures which protect an alcohol client's basic rights while enrolled in the program(s).

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:070.** Physical plant (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:070. It will revise the standards, based on requirements in KRS Chapter 222, to assure that the site, size, and design of property and buildings utilized by nonmedical alcohol and other drug treatment and education center programs shall be adequate for the immediate and projected program.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:080.** General program operations (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:080. It will revise the standards, based on the requirements in KRS Chapter 222, to assure that any agency offering the following nonmedical alcohol and other drug treatment and education center programs - detoxification, residential treatment, residential transitional, outpatient and day/night intensive outpatient treatment - have minimum policies and procedures governing clinical practices.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:090.** Detoxification (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:090. It will revise the standards, based on the requirements in KRS Chapter 222, to assure that an agency offering a nonmedical alcohol and other drug treatment and education center detoxification program has minimum policies and procedures governing its program operation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:100.** Residential treatment (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:100. It will revise the standards, based on the requirements in KRS Chapter 222, to assure that an agency operating a nonmedical alcohol and other drug treatment and education center residential program has minimum policies and procedures governing its program operation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:110.** Residential transitional treatment (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:110. It will revise the standards, based on the requirements in KRS Chapter 222, to assure that an agency operating a nonmedical alcohol and other drug treatment and education center residential transitional treatment program has minimum policies and procedures governing its program operation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:120.** Outpatient treatment (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:120. It will revise the standards, based on the requirements in KRS Chapter 222, to assure that an agency operating a nonmedical alcohol treatment and education center outpatient treatment program has minimum policies and procedures governing its program operation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:130.** Intensive outpatient treatment (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:130. It will revise the standards, based on the requirements in KRS Chapter 222, to assure that an agency operating a nonmedical alcohol and other drug treatment and education center day/night intensive outpatient treatment program has minimum policies and procedures governing its operation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug rehabilitation programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:140.** Education (NATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:140. It will revise the standards, based on requirements in KRS Chapter 222, to assure that an agency offering a nonmedical alcohol and other drug treatment and education center education program has minimum policies and procedures governing its operation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and approval of facilities offering alcohol and other drug education programs.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:150.** Definitions for drug abuse treatment and education (DATE) centers.

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The nonredundant drug abuse definitions contained in this regulation will be added to 908 KAR 1:010. This action modifies the regulation to deal with alcohol and other drug programs authorized by KRS Chapter 222 as amended by the 1994 General Assembly in House Bill 555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:160.** Licensing procedures (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) This regulation is being repealed because 908 KAR 1:020 contains equivalent languages that addresses licensing procedures. This action modifies the regulation to deal with alcohol and other drug programs authorized by KRS Chapter 222 as amended by the 1994 General Assembly in House Bill 555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:170.** Organization and administration (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will

be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) This regulation is being repealed because 908 KAR 1:030 contains equivalent language that addresses licensing procedures. This action modifies the regulation to deal with alcohol and other drug programs authorized by KRS Chapter 222 as amended by the 1994 General Assembly in House Bill 555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:180.** Personnel policies (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) This regulation is being repealed because 908 KAR 1:040 contains equivalent language that addresses personnel policies. This action modifies the regulation to deal with alcohol and other drug programs authorized by KRS Chapter 222 as amended by the 1994 General Assembly in House Bill 555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:190.** Quality assurance (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) This regulation is being repealed because 908 KAR 1:050 contains equivalent language that addresses quality assurance. This action modifies the regulation to deal with alcohol and other drug programs authorized by KRS Chapter 222 as amended by the 1994 General Assembly in House Bill 555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:200.** Client's rights (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) This regulation is being repealed because 908 KAR 1:060 contains equivalent language that addresses client's rights. This action modifies the regulation to deal with alcohol and other drug programs authorized by KRS Chapter 222 as amended by the 1994 General Assembly in House Bill 555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:210.** Physical plant (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration

and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) This regulation is being repealed because 908 KAR 1:070 contains equivalent language that addresses physical plant. This action modifies the regulation to deal with alcohol and other drug programs authorized by the 1994 General Assembly in House Bill 555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:220.** General program operations (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) This regulation is being repealed because 908 KAR 1:080 contains equivalent language that addresses general program operations. This action modifies the regulation to deal with alcohol and other drug programs authorized by the 1994 General Assembly in House Bill 555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:230.** Residential rehabilitation centers (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) This regulation is being repealed because 908 KAR 1:090, 908 KAR 1:100, and 908 KAR 1:110 contain equivalent language that address residential treatment. This action modifies the regulation to deal with alcohol and other drug programs authorized by the 1994 General Assembly in House Bill 555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:240.** Nonresidential day care centers (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) This regulation is being repealed because 908 KAR 1:120 and 908 KAR 1:130 contain equivalent language that addresses outpatient treatment. This action modifies the regulation to deal with alcohol and other drug programs authorized by the 1994 General Assembly in House Bill 555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:250.** Education information centers (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to repeal the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) This regulation is being repealed because 908 KAR 1:140 contains equivalent language that addresses education programs. This action modifies the regulation to deal with alcohol and other drug programs authorized by the 1994 General Assembly in House Bill

555.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is repealed.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single nonmedical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse in the Commonwealth and assure the provision of prevention, intervention, and treatment services for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:260.** Communication center (DATE).

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:260. It will revise the standards for primary substance abuse prevention programs based on requirements in KRS Chapter 222.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish licensure standards to assure that an agency offering substance abuse prevention services has minimum policies and procedures governing the operations of the primary prevention program.

(d) The benefits expected from the administrative regulation are: Two licensure processes were merged into a single non medical alcohol and other drug center license to enhance coordination of matters affecting alcohol and other drug abuse on the Commonwealth and assure the provision of prevention, intervention and treatment for both juveniles and adults.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:300.** Chemical dependency program evaluation.

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:300. It will revise the standards for gathering information on clients discharged from publicly funded chemical dependency treatment programs.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish rules governing the gathering of information on clients discharged from publicly funded chemical dependency treatment programs and the format of reports of such

information to the cabinet in order to assess treatment effectiveness.

(d) The benefits expected from the administrative regulations are: The burden of contacting clients after discharge from publicly funded chemical dependency treatment will be shifted from provider agencies to a research institution. Improvements in research design, data collection, data analysis and presentation of results are expected.

Date: September 9, 1994
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:310.** Administrative procedures for DUI facilities and programs.

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1994, at 9 a.m., in the Department for Health Services' Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky..

(4)(a) The public hearing will be held if:

1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to November 30, 1994, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing." or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the nonmedical alcohol and other drug treatment and education center programs is KRS 194.050 and Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:310. It will revise the standards for licensing and operating assessment, education and treatment programs for offenders of the driving under the influence law.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To establish standards for the licensing and operation of assessment, education and treatment facilities and programs for offenders receiving services under the driving under the influence law.

(d) The benefits expected from the administrative regulations are: To insure the protection of the public and to improve the delivery of services.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
200 KAR 21:010E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation 200 KAR 21:010E, should be enacted on an emergency basis in order to implement the provisions of House Bill 299, codified as KRS 45A.840 to 45A.879, which establishes selection committees in the Office of Financial Management and Economic Analysis in the Finance and Administration Cabinet for the purpose of selecting underwriters and bond counsel to provide services to state bond issuing agencies. KRS 45A.879 requires the Office of Financial Management and Economic Analysis to promulgate administrative regulations to implement the provisions of KRS 45A.840, et seq. Therefore, in order to implement regulations governing the selection process as quickly and efficiently as possible, it is necessary to promulgate this administrative regulation on an emergency basis. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
W. PATRICK MULLOY II, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:010E. Procedure for prequalification of underwriters and bond counsel for state bond issues.

RELATES TO: KRS 45A.853
STATUTORY AUTHORITY: KRS 45A.853, 45A.879
EFFECTIVE: September 29, 1994
NECESSITY AND FUNCTION: KRS 45A.853 provides that a firm shall not be considered for providing underwriting or bond counsel services to the Commonwealth unless the Office of Financial Management and Economic Analysis has prequalified the firm. KRS 45A.879 authorizes the Office of Financial Management and Economic Analysis to promulgate administrative regulations to carry out these requirements. This administrative regulation establishes the procedure for prequalifying underwriting and bond counsel firms.

Section 1. General Requirements for Prequalification of Underwriters and Bond Counsel. (1) The Office of Financial Management and Economic Analysis shall determine annually in consultation with each bond issuing agency, the need for issuing requests for proposals for underwriting and bond counsel services for bond issuing agencies for the following fiscal year.

(2) Based on the determination of need by the Office of Financial Management and Economic Analysis, the office shall draft requests for qualifications for underwriting and bond counsel services for the bond issuing agencies which need those services.

(3) All request for qualifications shall include at a minimum the following:

(a) A description of the bond issuing agency(s) for which the request for qualifications is being issued;

(b) A requirement that the firm disclose any information which would impair the firms' ability to provide the level and type of services needed by the bond issuing agency;

(d) A requirement that the firm certify, pursuant to a sworn statement, that the firm has complied with campaign finance laws established pursuant to KRS 121.015 to 121.056;

(e) A requirement that the firm has complied with and is not prohibited by the Executive Branch Code of Ethics, KRS 11A.001 to 11A.990, from entering into a contract with the Commonwealth of Kentucky;

(f) A requirement that the firm comply with KRS 45A.485; and

(g) A statement that the firm is not prohibited by KRS 45A.863 from entering into a contract with the Commonwealth of Kentucky.

(h) A statement that the Commonwealth shall not be liable for any costs associated with a firm's preparation and submission of a response to a request for qualifications.

(i) A description of the process by which responses to the Request for Qualifications shall be evaluated by the Office of Financial Management and Economic Analysis.

Section 2. Request for Qualifications for Underwriter Services. (1) In addition to the requirements set forth in Section 1 of this administrative regulation, a request for qualifications for underwriter services may, depending on the nature of the underwriting services required, request the following information:

(a) A description of the history and organization of the firm and its municipal finance department;

(b) If applicable, a summary of the relevant financial advisory experience of the firm;

(c) The audited financial statements for the previous two (2) fiscal years of the firm;

(d) A list of the relevant underwriter experience of the firm on negotiated municipal bond transactions of issuers of similar type as that of the state bond issuing agencies;

(e) A list of experience and qualifications of the firm representatives who would work on issues of the bond issuing agency;

(f) If applicable, a list of the relevant comanaging underwriter experience of the firm on negotiated municipal bond transactions;

(g) If applicable, identification of the lead banker or contact person at the firm and description of his/her experience and qualifications;

(h) Identification of the person in the firm who would perform cash flow and debt structuring analysis and a description of his/her experience and qualifications; and

(i) Specific references for the firm and the lead or principal contact person.

(2) If a request for qualifications is for Kentucky comanaging underwriters, the request for qualifications may require the firm to state:

(a) The authority of the firm's office(s) located in the Commonwealth to commit capital to an underwriting independently of some other office of the firm and the dollar limit, if any;

(b) The emphasis the firm's office(s) located in the Commonwealth places on selling the Commonwealth's bonds to retail buyers located in the Commonwealth;

(c) The underwriter in the office of the firm located in the Commonwealth and a description of his or her experience and qualifications; and

(d) Specific references for the firm and the underwriter in the office(s) located in the Commonwealth.

Section 3. Request for Qualifications for Bond Counsel Services. In addition to the requirements set forth in Section 1 of this administrative regulation, a request for qualifications for bond counsel services may request the following information:

(1) A description of the history and organization of the firm and its municipal finance and tax law department;

(2) A statement of the relevant bond counsel experience of the firm in applicable areas of finance as required by the bond issuing agency(s) for which the request for qualifications is being issued;

(3) A statement of the experience and qualifications of the firm's personnel who would work on bond issues of the bond issuing agency(s);

(4) Proof that the firm is listed as a "municipal bond attorney" in the most recently published edition of "The Bond Buyer's Municipal Marketplace";

(5) A statement of professional liability insurance coverage showing the limits of the coverage;

(6) A certification as to whether the firm's principal place of business is located in Kentucky as defined by KRS 45A.873(3); and

(7) A statement of specific references for the firm and personnel of the firm who would work on the bond issues of the bond issuing agency(s).

Section 4. Advertisement and Mailing of Requests for Qualifications. (1) The Office of Financial Management and Economic Analysis shall advertise all requests for qualifications in a financial newspaper or publication with national circulation.

(2) Requests for qualifications shall be mailed to all firms which have been prequalified by the Office of Financial Management and Economic Analysis the prior year and to any firm which has requested a request for qualifications from the Office of Financial Management and Economic Analysis in writing. It shall be the responsibility of each firm to keep all mailing information current.

(3) Interested firms shall file a written response to the request for qualifications prior to the deadline for filing a written response established in the request for qualifications. A firm which fails to meet the deadline shall be barred from the prequalification process for one (1) year.

Section 5. Certification of Prequalification. (1) Master lists of prequalified firms for providing underwriter and bond counsel services shall be certified and maintained by the Office of Financial Management and Economic Analysis.

(2) The prequalification process shall be conducted annually. A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.

(3) Only underwriter or bond counsel firms which have been newly incorporated or which have opened a new office in the Commonwealth since the last prequalification shall be eligible to apply to the Office of Financial Management and Economic Analysis for prequalification independently from the annual prequalification process.

W. PATRICK MULLOY II, Secretary
APPROVED BY AGENCY: September 26, 1994
FILED WITH LRC: September 29, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and number of entities affected: This regulation will affect all bond issuing agencies of the state which include:
- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)
- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- School Facilities Construction Commission (SFCC)
- State Property and Buildings Commission (SPBC)
- State Universities (8)
- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all underwriting firms and bond counsel firms which are interested in providing services to the bond issuing agencies of the state. There are approximately thirty (30) underwriting firms and fifteen (15) bond counsel firms which have expressed interest over time in providing services to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all firms in the nation which provide these services.

2. Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Firms interested in providing underwriting and bond counsel services to the Commonwealth and its agencies will be required to submit a statement of qualifications to the Office of Financial Management and Economic Analysis on an annual basis. The estimated cost of preparing and submitting such qualifications is $200 per firm per year. There should not be any effect upon competition.

2. Second and subsequent years: Annual costs should not change. The estimated cost of preparing and submitting such qualifications is $200 per firm per year. There should not be any effect upon competition.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The Office of Financial Management and Economic Analysis will be required to conduct the prequalification process on an annual basis. Additional annual costs of preparing and evaluating the requests for qualifications (RFQ) are estimated to be $9,440. This estimate reflects the staff time of 5 OFMEA personnel for 2 working weeks at an average salary of $46,500 per year plus the cost of advertising the RFQ. While these individuals are already salaried employees of the agency, this process will necessitate that they not perform other required duties to complete the prequalification process.

2. Continuing costs or savings: The Office of Financial Management and Economic Analysis will be required to conduct the prequalification process on an annual basis. Additional annual costs of preparing and evaluating the RFQ are estimated to be $9,440. This estimate reflects the staff time of 5 OFMEA personnel for 2 working weeks at an average salary of $46,500 per year plus the cost of advertising the RFQ. While these individuals are already salaried employees of the agency, this process will necessitate that they not perform other required duties to complete the prequalification process.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b. Reporting and paperwork requirements: The process implemented by the regulation will require some additional paperwork, but the most significant paper impact will be the storage of the volume of responses received on an annual basis to the RFQ.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed. OFMEA has been conducting Requests for Proposals for over 10 years and is very familiar with the process of evaluating the qualifications of firms proposing to provide underwriting and bond counsel services to the Commonwealth. The prequalification method of requesting qualifications in writing was deemed to be appropriate and prudent.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate 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.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects underwriting and bond counsel firms which are interested in providing underwriting and bond counsel services to bond issuing agencies of the Commonwealth of Kentucky.

STATEMENT OF EMERGENCY
200 KAR 21:020E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation 200 KAR 21:020E, should be enacted on an emergency basis in order to implement the provisions of House Bill 299, codified as KRS 45A.840 to 45A.879, which establishes selection committees in the Office of Financial Management and Economic Analysis in the Finance and Administration Cabinet for the purpose of selecting underwriters and bond counsel to provide services to state bond issuing agencies. KRS 45A.879 requires the Office of Financial Management and Economic Analysis to promulgate administrative regulations to implement the provisions of KRS 45A.840, et seq. Therefore, in order to implement regulations governing the selection process as quickly and efficiently as possible, it is necessary to promulgate this administrative regulation on an emergency basis. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
W. PATRICK MULLOY II, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:020E. Evaluation factors for bond counsel, managing underwriter(s), and financial advisors.

RELATES TO: KRS 45A.853
STATUTORY AUTHORITY: KRS 45A.853, 45A.879
EFFECTIVE: September 29, 1994
NECESSITY AND FUNCTION: KRS 45A.853 provides that the Office of Financial Management and Economic Analysis shall consult with the bond issuing agency to arrive at a request for proposals for bond counsel and underwriter for a bond issuance. KRS 45A.853, further provides that the evaluation factors and the weight of those factors shall be included in the request for proposals. This administrative regulation establishes some of evaluation factors which may be included in a request for proposals for bond counsel, managing underwriters and financial advisers.

Section 1. Evaluation Factors for Bond Counsel, Managing Underwriters and Financial Advisors. The Office of Financial Management and Economic Analysis, after consulting with the bond issuing agency, shall develop a request for proposals for bond counsel, managing underwriter and/or financial advisor, if such services are needed for the bond issuance. The request for proposals shall include the relative weight of the evaluation factors. The total points for all evaluation factors shall not exceed 100 points. The evaluation factors may include, but not be limited to the following:

(1) For requests for proposals for bond counsel services:

(a) Relevant experience of the firm.

(b) Experience and availability of the individual firm members proposed to work on the bond issuance.

(c) Proposed fee.

(2) For requests for proposals for managing underwriter services:

(a) Relevant experience of the firm.

(b) Experience and availability of the individual firm members proposed to work on the bond issuance.

(c) Proposal of alternative and recommended financing structure(s).

(d) Proposal of a marketing plan and distribution capabilities.

(e) Proposed fee structure.

(3) For requests for proposals for financial advisor services:

(a) Relevant experience of the firm.

(b) Experience and availability of individual firm members proposed to work on the bond issuance.

(c) Proposed fee.

(d) Proposal of alternative and recommended financing structure(s).

(e) Proposal of a marketing plan for proposed transaction(s).

W. PATRICK MULLOY II, Secretary
APPROVED BY AGENCY: September 26, 1994
FILED WITH LRC: September 29, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and number of entities affected: This regulation will affect all bond issuing agencies of the state which include:

- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)

- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- School Facilities Construction Commission (SFCC)
- State Property and Buildings Commission (SPBC)
- State Universities (8)
- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all underwriting firms and bond counsel firms which are interested in providing services to the bond issuing agencies of the state. There are approximately 30 underwriting firms and 15 bond counsel firms which have expressed interest over time in providing services to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all firms in the nation which provide these services.

2. Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Firms interested in providing underwriting and bond counsel services to the Commonwealth and its agencies will be required to submit a response to requests for proposals which will include the evaluation factors in this regulation. The Office of Financial Management and Economic Analysis has been conducting this process for over 10 years. There is no additional cost to the offerors as a result of this administrative regulation. There should not be any effect upon competition.

2. Second and subsequent years: Annual costs should not change. There should not be any effect upon competition.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The Office of Financial Management and Economic Analysis has been conducting request for proposals processes for over 10 years. There will be no impact to costs or savings as a result of this regulation.

2. Continuing costs or savings: The Office of Financial Management and Economic Analysis has been conducting Request for Proposals processes for over five years. There will be no impact to costs or savings as a result of this regulation.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b. Reporting and paperwork requirements: The Office of Financial Management and Economic Analysis has been conducting request for proposals processes for over five years. There will be no impact to reporting and paperwork requirements as a result of this regulation.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternative were rejected: No alternative methods were assessed. OFMEA has been conducting requests for proposals for over ten years and is very familiar with the process of evaluating the qualifications of firms proposing to provide underwriting and bond counsel services to the Commonwealth. Each request for proposals is somewhat different and may or may not need to include all of the listed evaluation factors. Additionally, there is no way to anticipate what additional evaluation criteria may need to be requested for a given set of circumstances.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate 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.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects underwriting and bond counsel firms which are interested in providing underwriting and bond counsel services to bond issuing agencies of the Commonwealth of Kentucky.

STATEMENT OF EMERGENCY
200 KAR 21:030E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation 200 KAR 21:030E, should be enacted on an emergency basis in order to implement the provisions of House Bill 299, codified as KRS 45A.840 to 45A.879, which establishes selection committees in the Office of Financial Management and Economic Analysis in the Finance and Administration Cabinet for the purpose of selecting underwriters and bond counsel to provide services to state bond issuing agencies. KRS 45A.879 requires the Office of Financial Management and Economic Analysis to promulgate administrative regulations to implement the provisions of KRS 45A.840, et seq. Therefore, in order to implement regulations governing the selection process as quickly and efficiently as possible, it is necessary to promulgate this administrative regulation on an emergency basis. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor

W. PATRICK MULLOY II, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:030E. Preference for Kentucky bond counsel firms for state bond issues.

RELATES TO: KRS 45A.873
STATUTORY AUTHORITY: KRS 45A.873, 45A.879
EFFECTIVE: September 29, 1994
NECESSITY AND FUNCTION: KRS 45A.873 requires that in competition for the Commonwealth's bond counsel business awarded pursuant to KRS 45A.840, et seq., a bond counsel firm with its principal place of business located in Kentucky shall receive a preference over a bond counsel firm with its principal place of business located outside Kentucky. KRS 45A.873, further provides the preference, if any, shall be equal to the preference that the out-of-state firm receives in its state of origin when that firm as an in-state firm competes against out-of-state firms for state bond counsel business. The Office of Financial Management and Economic Analysis is responsible for calculating this preference. This administrative regulation sets forth the manner in which the preference shall be calculated.

Section. 1. Calculation of Preference for Kentucky Bond Counsel. (1) The Office of Financial Management and Economic Analysis shall on an annual basis, in conjunction with the prequalification process mandated by KRS 45A.853, issue a letter to the state government debt management office or similar governmental agency, of every state from which firms requesting to be prequalified have their principal place of business, requesting that the agency provide the Office of Financial Management and Economic Analysis with a copy of that state's statute, regulation, or written policy, if any, regarding any preference given to in-state firms in competition for state bond counsel business.

(2) The Office of Financial Management and Economic Analysis shall accept only written responses to the request for information issued pursuant to subsection (1) of this section, and shall only utilize written evidence of statutes, regulation or written policies to calculate the preference, if any, due a firm. If a written response is not received within the time established by the Office of Financial Management and Economic Analysis, then the state's failure to respond shall be deemed as an indication that the state does not give any preference to in-state firms competing for state bond counsel business.

(3) The Office of Financial Management and Economic Analysis shall compile a list of all states responding to the request for information and resulting responses. This list shall be provided to the committee reviewing requests for qualification submitted pursuant to 200 KAR 21:010E.

W. PATRICK MULLOY II, Secretary
APPROVED BY AGENCY: September 26, 1994
FILED WITH LRC: September 29, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and number of entities affected: This regulation will affect all bond issuing agencies of the state which include:
- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)
- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- School Facilities Construction Commission (SFCC)
- State Property and Buildings Commission (SPBC)
- State Universities (8)
- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all bond counsel firms which are interested in providing services to the bond issuing agencies of the state. There are approximately 15 bond counsel firms which have expressed interest over time in providing services to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all firms in the nation which provide these services.

2. Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no additional cost to the offerors as a result of this administrative regulation. There is an impact upon competition for state bond counsel business, however, this impact is prescribed by statute, KRS 45A.873.

2. Second and subsequent years: Annual costs should not change. There is an impact upon competition for state bond counsel business, however, this impact is prescribed by statute, KRS 45A.873.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The Office of Financial Management and Economic Analysis will be required to annually survey the states from which firms requesting to be prequalified have their principal place of business. There will be no impact to costs or savings as a result of this regulation.

2. Continuing costs or savings: The Office of Financial Management and Economic Analysis will be required to annually survey the states from which firms requesting to be prequalified have their principal place of business. There will be no impact to costs or savings as a result of this regulation.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b. Reporting and paperwork requirements: The Office of Financial Management and Economic Analysis will be required to annually survey the states from which firms requesting to be prequalified have their principal place of business. There will be minimal impact to reporting and paperwork requirements as a result of this regulation.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternatives were rejected: OFMEA discussed requesting the offering bond counsel firms to provide verification of any statutes, regulations or policies in the firms' state of principal place of business which provides a preference for in-state firms in the competition for state bond counsel business. However, it was felt that as this information will be used in the evaluation process, OFMEA should independently determine if such statutes, regulations or policies exist. In addition, OFMEA discussed using verbal confirmation of such policies from other states. It was determined that only written verification of statute, regulation or written policy should be accepted to reduce the arbitrary nature of the process.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate 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.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects bond counsel firms which are interested in providing bond counsel services to bond issuing agencies of the Commonwealth of Kentucky.

STATEMENT OF EMERGENCY
200 KAR 21:040E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation 200 KAR 21:040E, should be enacted on an emergency basis in order to implement the provisions of House Bill 299, codified as KRS 45A.840 to 45A.879, which establishes selection committees in the Office of Financial Management and Economic Analysis in the Finance and Administration Cabinet for the purpose of selecting underwriters and bond counsel to provide services to state bond issuing agencies. KRS 45A.879 requires the Office of Financial Management and Economic Analysis to promulgate administrative regulations to implement the provisions of KRS 45A.840, et seq. Therefore, in order to implement regulations governing the selection process as quickly and efficiently as possible, it is necessary to promulgate this administrative regulation on an emergency basis. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
W. PATRICK MULLOY, II, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:040E. Selection of national comanaging underwriter(s).

RELATES TO: KRS 45A.850(4)
STATUTORY AUTHORITY: KRS 45A.850(4), 45A.879
EFFECTIVE: September 29, 1994
NECESSITY AND FUNCTION: KRS 45A.850(4) provides that national comanaging underwriters for bond issues of state bond issuing agencies shall be selected pursuant to an administrative regulation promulgated by the Office of Financial Management and Economic Analysis. This administrative regulation establishes the procedure for selecting national comanaging underwriters for bond issues of state bond issuing agencies.

Section 1. Definition. For purposes of this administrative regulation the term "national comanaging underwriter" shall mean a financial institution whose headquarters are located outside the Commonwealth of Kentucky and which has offices in multiple states which extra space assist in the structuring, underwriting and marketing of bonds issued by governmental agencies.

Section 2. Selection of National Comanaging Underwriters. (1) National comanaging underwriters shall be selected pursuant to the request for proposal process established by KRS 45A.853 and 45A.857 for underwriters.

(2) After an underwriter has been selected for a bond issuing agency or bond projects, a national comanaging underwriter may be selected based on the rankings of the selection committee. The national comanaging underwriter, if any, shall be the highest ranked firm, other than the underwriter selected, which has municipal bonds sales office(s) located in the Commonwealth.

(3) If the executive director of the Office of Financial Management and Economic Analysis recommends, pursuant to KRS 45A.850(4), that more than one (1) national comanaging underwriter should be utilized on a bond issuance, the additional national comanaging underwriter(s) shall be selected in the order of the ranking as determined by the selection committee for the respective bond issuing agency or bond project.

W. PATRICK MULLOY II, Secretary
APPROVED BY AGENCY: September 26, 1994
FILED WITH LRC: September 29, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and number of entities affected: This regulation will affect all bond issuing agencies of the state which issue bonds on a negotiated sale basis. These agencies include:

- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)
- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- State Property and Buildings Commission (SPBC)
- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all underwriting firms which are interested in providing comanaging underwriting services to the bond issuing agencies of the state. There are approximately 30 underwriting firms which have expressed interest over time in providing this service to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all firms

in the nation which provide these services.

2. Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no additional cost to the offerors as a result of this administrative regulation. There is an impact upon competition for national comanaging underwriting business on state bond issues. To be eligible to serve as a national comanaging underwriter on issues of state bond issuing agencies, a firm must have its national headquarters outside of the state and must have municipal bond sales offices in multiple states. To be selected as the first national comanaging underwriter on a bond issue of a state bond issuing agency, the firm must also have municipal bond sales office(s) in Kentucky.

2. Second and subsequent years: There is no additional cost to the offerors as a result of this administrative regulation. There is an impact upon competition for national comanaging underwriting business on state bond issues. To be eligible to serve as a national comanaging underwriter on issues of state bond issuing agencies, a firm must have its national headquarters outside of the state and must have municipal bond sales offices in multiple states. To be selected as the first national comanaging underwriter on a bond issue of a state bond issuing agency, the firm must also have municipal bond sales office(s) in Kentucky.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There will be no impact to costs or savings as a result of this regulation.

2. Continuing costs or savings: There will be no impact to costs or savings as a result of this regulation.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b. Reporting and paperwork requirements: There will be minimal reporting and paperwork requirements as a result of this regulation.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternatives were rejected: OFMEA considered a separate Request for Proposals process for the selection of national comanaging underwriters. This alternative was determined to be redundant and costly, both to the offering firms and to the Commonwealth. In addition, OFMEA considered selecting the second highest ranking firm in the selection process for managing underwriter, regardless of whether the firm has municipal bond sales offices in the Commonwealth. The purpose of the national comanaging underwriter is to assist in the marketing and distribution of the bonds being sold at the lowest interest rates possible. Due to the effect of receiving both federal and state tax exemption on interest earned on bonds issued by agencies of the state, bond buyers in the state can and do offer lower interest yields than do buyers outside the state. Therefore, it is in the Commonwealth's best interest to first include as national comanaging underwriters only firms which also sell municipal bonds in Kentucky. Most bond issues issued by the Commonwealth and its agencies are not large enough to warrant having more than one national comanaging underwriter. Issues large enough to warrant more than one national comanaging underwriter require significant marketing efforts outside the Commonwealth. This explains why the requirement of having municipal bond sales office(s) in the Commonwealth is not required for firms being selected as the second, third, etc., national comanaging underwriter.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate 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.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects underwriting firms which are interested in providing national comanaging underwriting services to bond issuing agencies of the Commonwealth of Kentucky.

STATEMENT OF EMERGENCY
200 KAR 21:050E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation 200 KAR 21:050E, should be enacted on an emergency basis in order to implement the provisions of House Bill 299, codified as KRS 45A.840 to 45A.879, which establishes selection committees in the Office of Financial Management and Economic Analysis in the Finance and Administration Cabinet for the purpose of selecting underwriters and bond counsel to provide services to state bond issuing agencies. KRS 45A.879 requires the Office of Financial Management and Economic Analysis to promulgate administrative regulations to implement the provisions of KRS 45A.840, et seq. Therefore, in order to implement regulations governing the selection process as quickly and efficiently as possible, it is necessary to promulgate this administrative regulation on an emergency basis. This emergency

administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
W. PATRICK MULLOY II, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:050E. Establishment of rates to reimburse underwriter's for counsel.

RELATES TO: KRS 45A.877
STATUTORY AUTHORITY: KRS 45A.877, 45A.879
EFFECTIVE: September 29, 1994
NECESSITY AND FUNCTION: KRS 45A.877 requires the Office of Financial Management and Economic Analysis to establish and maintain a schedule of rates at which underwriters will be reimbursed for fees and expenses of the counsel they retain for a state bond issuance. This administrative regulation establishes the rate schedule for underwriter's counsel.

Section 1. Rates to be Reimbursed for Counsel to Underwriters. When an underwriter is utilized on a state bond issuance, the Office of Financial Management and Economic Analysis shall approve an amount of fees to be paid to the underwriter for reimbursement of its cost of retaining legal counsel for legal services relating to the bond issuance. The amount approved for reimbursement by the Office of Financial Management and Economic Analysis shall be fifty-five (55) percent of the fee paid by the bond issuing agency to its bond counsel firm for the same bond issuance. The fee approved shall be inclusive of all expenses.

W. PATRICK MULLOY II, Secretary
APPROVED BY AGENCY: September 26, 1994
FILED WITH LRC: September 29, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and number of entities affected: This regulation will affect all bond issuing agencies of the state which include:
- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)
- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- School Facilities Construction Commission (SFCC)
- State Property and Buildings Commission (SPBC)
- State Universities (8)
- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all law firms which are interested in providing underwriter's counsel services to the underwriters selected to provide underwriting services to bond issuing agencies of the state. The Commonwealth does not maintain a list of firms which have expressed interest in performing this service. However, in general, most law firms which provide bond counsel services also provide underwriter's counsel services. There are approximately 15 bond counsel firms which have expressed interest over time in providing services to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all law firms in the nation which provide bond counsel and underwriter's counsel services.

2. Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no additional cost to the offerors as a result of this administrative regulation. There is no impact on competition. The Commonwealth expressly plays no role in the selection of counsel to the underwriter(s).

2. Second and subsequent years: There is no additional cost to the offerors as a result of this administrative regulation. There is no impact on competition. The Commonwealth expressly plays no role in the selection of counsel to the underwriter(s).

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: No fiscal impact to OFMEA or to the state bond issuing agencies. The rate set is equal to, on average, the rates which have been paid over the past three years.

2. Continuing costs or savings: No fiscal impact to OFMEA or to the state bond issuing agencies. The rate set is equal to, on average, the rates which have been paid over the past three years.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b. Reporting and paperwork requirements: There will be minimal impact to reporting and paperwork requirements as a result of this regulation.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternatives were rejected: KRS 45A.877 requires OFMEA to establish and maintain a schedule of rates at which underwriters will be reimbursed for fees and expenses of counsel they retain for a bond issuance. OFMEA evaluated several alternatives to the method put forth in the regulation. OFMEA attempted to determine the national average for fees paid to counsel to underwriters. However, there does not exist a database that OFMEA could find which includes this information. OFMEA considered establishing a sliding scale schedule of fees based upon total principal amount of bonds issued. This alternative was not used because it would be arbitrary and would not be flexible so as to change as the market for these services change. The

method used of 55 percent of the fee paid to the bond counsel on the same bond issuance was chosen as follows:

(1) It represents the approximate average relationship of fees paid to underwriter's counsel relative to fees paid to bond counsel on all bond issues of the state and its agencies over the past three years.

(2) It is not a fixed or flat fee but is a function of the bond counsel firm's fee which is established pursuant to a fee proposal in the Request for Proposals process for the selection of bond counsel. Therefore, the bond counsel fee should be reflective of the difficulty and scope of work and of the market for such services.

(3) OFMEA was unable to determine any other rate schedule which was both flexible to reflect changes in the market for services and based upon reliable data of similar fees paid in the past.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate 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.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects law firms which are selected by underwriters to serve as their counsel when such underwriters are selected by the Commonwealth to provide underwriting services to bond issuing agencies of the Commonwealth of Kentucky.

STATEMENT OF EMERGENCY
200 KAR 21:060E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation 200 KAR 21:060E, should be enacted on an emergency basis in order to implement the provisions of House Bill 299, codified as KRS 45A.840 to 45A.879, which establishes selection committees in the Office of Financial Management and Economic Analysis in the Finance and Administration Cabinet for the purpose of selecting underwriters and bond counsel to provide services to state bond issuing agencies. KRS 45A.879 requires the Office of Financial Management and Economic Analysis to promulgate administrative regulations to implement the provisions of KRS 45A.840, et seq. Therefore, in order to implement regulations governing the selection process as quickly and efficiently as possible, it is necessary to promulgate this administrative regulation on an emergency basis. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
W. PATRICK MULLOY II, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:060E. Procedure for resolving ties between underwriters and bond counsel rankings during selection process.

RELATES TO: KRS 45A.853, 45A.857
STATUTORY AUTHORITY: KRS 45A.879
EFFECTIVE: September 29, 1994
NECESSITY AND FUNCTION: KRS 45A.853 and 45A.857 establish a selection process for bond counsel underwriter and firms to provide services for state bond issuing agencies. This administrative regulation establishes a process for resolving tie rankings between underwriter and bond counsel firms who have submitted proposals.

Section 1. Tie Rankings Between Underwriter Firms. In the selection of underwriter firms for bond issues of state bond issuing agency(s), should the total rankings of selection committee members result in a tie between two (2) or more underwriter firms for the first, second, or third highest-ranking place, the selection committee chairperson shall break the tie by ranking the firm with the highest total score, resulting from the evaluation of the proposals one (1) ranking place ahead of the firm(s) with which it was tied. Based upon the comparison of total score points from the evaluation of the proposals, should there continue to be a tie, the selection committee, in executive session, shall vote to establish the rankings of the tied underwriter firms. Each voting member of the selection committee shall have one (1) vote.

Section 2. Tie Rankings Between Bond Counsel Firms. In the selection of bond counsel firms for bond issues of state bond issuing agencies, should the total rankings of selection committee members result in a tie between two (2) or more bond counsel firms for the first, second, or third highest ranking place, if applicable, as authorized by KRS 45A.873(2), the bond counsel firm with its principal place of business located in Kentucky shall be ranked one (1) place ahead of the firm(s) with its principal place of business located outside of Kentucky. Should the tie be between bond counsel firms which have their principal place of business located in Kentucky, or should the tie be between bond counsel firms which do not have their principal place of business located in Kentucky, the committee chairperson shall break the tie by ranking the firm with the highest total score points from the evaluation of the proposals one (1) ranking place ahead of the firm(s) with which it was tied. Based upon the comparison of total score points from the evaluation of the proposals, should there continue to be a tie, the selection committee, in executive session, shall vote to establish the rankings of the tied bond counsel firms. Each voting member of the selection committee shall have one (1) vote.

W. PATRICK MULLOY II, Secretary
APPROVED BY AGENCY: September 26, 1994
FILED WITH LRC: September 29, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and number of entities affected: This regulation will affect all bond issuing agencies of the state which include:
- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)
- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- School Facilities Construction Commission (SFCC)
- State Property and Buildings Commission (SPBC)
- State Universities (8)

- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all underwriting firms and bond counsel firms which are interested in providing services to the bond issuing agencies of the state. There are approximately 30 underwriting firms and 15 bond counsel firms which have expressed interest over time in providing services to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all firms in the nation which provide these services.

2. Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There should not be any effect on the compliance, reporting or paperwork requirements of the offerors. There should not be any effect on competition.

2. Second and subsequent years: There should not be any effect on the compliance, reporting or paperwork requirements of the offerors. There should not be any effect on competition.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There should be no fiscal impact to OFMEA or the state bond issuing agencies.

2. Continuing costs or savings: There should be no fiscal impact to OFMEA or the state bond issuing agencies.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b.Reporting and paperwork requirements: There will be minimal impact to reporting and paperwork requirements of OFMEA and the state bond issuing agencies.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, as this is an emergency regulation, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternatives were rejected: OFMEA considered using price as the sole determinant in the event of a tie. However, this would negate the value of the selection committee members' evaluation of the technical merit of the firm(s). In addition, specifically in the case of the selection of underwriters, the determination of fees is negotiated between the firm selected by the selection committee and the Executive Director of OFMEA. The fees proposed in the response to the Request for Proposals may or may not be realistic for a given financing as the firm(s), in certain cases, are being hired to provide services for a stated period of time. In addition, in the event of a tie on total points, each committee member is allowed one vote in the determination of the tie-breaker. Committee members may use the fee proposal as one component in their determination of how to vote.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate 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.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects underwriting and bond counsel firms which submit responses to Requests for Proposals to provide underwriting and bond counsel services to bond issuing agencies of the Commonwealth of Kentucky.

STATEMENT OF EMERGENCY
401 KAR 50:038E

The Natural Resources and Environmental Protection Cabinet, Division for Air Quality, is authorized by the 1994 General Assembly, House Bill 379, to assess a fee based on the emissions of stationary sources of air pollution to fund the operations of the Division for Air Quality. The proceeds of the fee will replace a portion of the funds provided the division from the general fund and to provide additional funds required to implement the federally mandated Title V permit program. To meet this requirement before general fund monies expire, the provisions established in this emergency administrative regulation must be in place immediately. The emergency administrative regulation specifies the total fees to be assessed by the division in the dollar amounts approved by the 1994 General Assembly. It clarifies that the cabinet will charge for the activities listed in this administrative regulation during the 1994-96 biennium. It also clarifies that there is a single air permitting program for the Commonwealth of Kentucky and that the state no longer has separate construction and operating permit programs. It is the intent of the Natural Resources and Environmental Protection Cabinet that this emergency administrative regulation shall be replaced by an amendment to the ordinary administrative regulation, 401 KAR 50:038, Title V emissions fee, in accordance with KRS Chapter 13A, so that the provisions of the emergency administrative regulation shall continue through the 1994-96 biennium. The emergency administrative regulation and the Notice of Intent to promulgate the amendment to the ordinary administrative regulation will be filed with the Regulations Compiler on October 14, 1994.

BRERETON C. JONES, Governor
PHILLIP J. SHEPHERD, Secretary

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 50:038E. Air [~~Title V~~] emissions fee.

RELATES TO: KRS 224.10-100, 224.10-230, 224.20-050[~~(10)~~], 224.20-100, 224.20-130, 40 CFR Part 70, 42 USC 7401-7671q, et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-230, 224.20-050[~~(10)~~], 224.20-100, 224.20-130, 40 CFR Part 70, 42 USC 7401-7671q, et seq.

EFFECTIVE: October 14, 1994

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the assessment of fees necessary to fund the state [~~operating~~] permit program, including those program elements required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations promulgated by the U.S. EPA at 40 CFR Part 70, as published in the Federal Register, 57 FR 32250, on July 21, 1992.

Section 1. Definitions. As used in this administrative regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Act," "Clean Air Act," or "CAA" means 42 USC 7401 through 7671q.

(2) "Actual emissions" means the amount of a pollutant actually emitted in the calendar year immediately preceding the fiscal year during which an emissions fee is assessed, as recorded by the Kentucky Emissions Inventory System (KyEIS).

(3) "Designated representative" means a responsible person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program.

(4) "Emissions fee" means the amount of money assessed by the cabinet to recover the cost of administering the [~~operating~~] permit program.

(5) "Fiscal year" means the period beginning July 1 and ending the following June 30.

(6) "Hazardous air pollutant" means a pollutant listed in 401 KAR 57:061.

(7) "Kentucky emissions inventory system" or "KyEIS" means a database used by the cabinet to record, among other information, emissions of air pollutants from Kentucky sources.

(8) "[~~Operating~~] Permit program" means the state [~~operating~~] permit program, including those program elements required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations promulgated by the U.S. EPA at 40 CFR Part 70, as published in the Federal Register, 57 FR 32250, on July 21, 1992. This includes but is not limited to the review of permit applications and exemptions; the issuance of permits to air pollution sources; inspections of air pollution sources; enforcement activities other than prosecutions in a court of law or administrative hearing; air quality and emissions monitoring, including quality assurance; the preparation of reports, plans, regulations, and statutes; responses to inquiries; preparing inventories and tracking emissions; the preparation and maintenance of records, including computerized data bases; air quality modeling, analyses, and demonstrations; and providing direct and indirect support through a small business technical assistance program. The [~~operating~~] permit program does not mean activities directly related to the control of asbestos emissions from renovations or demolitions, the Asbestos Hazard Emergency Response Act, or costs directly related to vehicle inspection and maintenance or other vehicle requirements.

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

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

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

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

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For affected sources, if requested by the source, the designated representative.

(10) "Subject emissions" means actual emissions, as recorded in the Kentucky emissions inventory system, of sulfur dioxide, oxides of nitrogen, PM_{10}, lead, volatile organic compounds, hazardous air pollutants listed in 401 KAR 57:061 for which a standard applies, or a pollutant subject to a standard contained in Section 111 of the Act, from an air pollution source subject to this administrative regulation, except that actual emissions in excess of 4,000 tons of a single pollutant from a source shall not be subject emissions. Pollutants subject only to 42 USC 7412r (Section 112(r) of the Act), and pollutants that are class I or class II substances under 42 USC 7671 through 7671q and which are not otherwise regulated shall not be subject emissions.

Section 2. Applicability. (1) This administrative regulation shall apply to each air pollution source which is a major source as defined in 401 KAR 50:035, Section 1(22) [~~(20)~~] or which is subject to 42 USC 7411, 7412, 7470 through 7492, or 7501 through 7515 (Section 111, Section 112, Part C, or Part D of the Act) required to have a permit issued by the cabinet and for which a final rule exempting the source from the permitting requirements of 40 CFR Part 70 has not been published by the U.S. EPA.

(2) This administrative regulation shall not apply to:

(a) Mobile sources;

(b) Sources located in an air pollution control district granted concurrent jurisdiction by the cabinet under KRS 224.20-130;

(c) An electric utility unit exempted by 42 USC 7651g, unless a substitute unit has been approved by the administrator of the U.S. EPA pursuant to 42 USC 7651c; or

(d) A substitute unit approved by the U.S. EPA pursuant to 42 USC 7651c, if the cabinet has been notified in writing at least thirty (30) days prior to the fee assessment established in Section 3(1) of this administrative regulation.

Section 3. Fee Assessment. (1) On or about July 1, 1994, and on or about July 1 of each succeeding year, the division for air quality shall calculate and assess an annual emissions fee based on subject emissions for each air pollution source subject to this administrative regulation and shall provide written notification to the source of the amount of fee due. If a pollutant qualifies as more than one (1) of the subject emissions listed in Section 1(10) of this administrative regulation, it shall be assessed as a single subject emission.

(2) Determining subject emissions. At least four (4) months but not more than twelve (12) months prior to assessing the emissions

fee, the cabinet shall provide each source subject to the emissions fee a written copy of the KyEIS containing the most recent information appropriate to that source. Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its subject emissions. The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information. Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the subject emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.

(3) Fee assessment. At least sixty (60) days prior to assessing the fee, the cabinet shall determine the subject emissions for each source, based on the information provided by the source and on other information available to the cabinet. The cabinet shall notify the source of its determination for subject emissions at least forty-five (45) days prior to assessing the fee. Assessment of the subject emissions shall be a final determination by the cabinet. If the source fails to notify the cabinet of an error in the determination of subject emissions within thirty (30) days after the date the determination is mailed by the cabinet, the source shall be assessed a fee based on the cabinet's determination. If the source notifies the cabinet in a timely manner that there is an error in the determination of its subject emissions, and the cabinet disagrees with the assessment by the source, the cabinet shall notify the source, in writing, specifying the reasons for rejecting the error notification.

(4) Computation of emissions fee. The cabinet shall compute the emissions fee as follows:

(a) For fiscal year 1995 the emissions fee shall be $5,505,200 [~~5,924,900~~], and for fiscal year 1996 the emissions fee shall be $6,594,700 [~~7,085,400~~]. The cost per ton of the subject emissions shall be the emissions fee, minus $150 times the number of sources subject to subsection (5)(b) of this section, divided by the total number of tons of subject emissions from all sources subject to this administrative regulation which emit twenty-five (25) tons or more of subject emissions.

(b) Except as provided in paragraph (c) of this subsection, the emissions fee for each succeeding fiscal year shall be $6,594,700 [~~7,085,400~~] adjusted annually using the method provided in 40 CFR 70.9(b)(2)(iv). The cost per ton of subject emissions shall be determined as prescribed in paragraph (a) of this subsection.

(c) Notwithstanding the provisions of paragraph (b) of this subsection the emissions fee for a fiscal year may be increased by an amount greater than that calculated pursuant to 40 CFR 70.9(b)(2)(iv), may be left unchanged from the previous fiscal year, or may be decreased from the previous fiscal year if the cabinet determines after public hearing and after approval by the U.S. EPA that the increase is necessary, or the same or lesser amount is adequate, to cover all reasonable costs of administering the [~~operating~~] permit program.

(5) Payment of fees.

(a) A source subject to this administrative regulation which emitted twenty-five (25) tons or more of subject emissions shall pay a portion of the emissions fee which shall be determined by multiplying the subject emissions from the source, expressed in tons to the nearest ton, by the cost per ton of subject emissions, and subtracting from that amount any portion of unexpended emissions fees which are carried forward from the previous year in an amount proportional to that paid by the source during the previous year. The source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the cabinet mails to the source the written notification of the amount of fee due[~~, except that a source shall not be required to pay a fee prior to approval of the state permit program by the U.S. EPA~~].

(b) A source subject to this administrative regulation which emitted less than twenty-five (25) tons of subject emissions shall pay an annual fee of $150. The source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the cabinet mails to the source the written notification of the amount of fee due[~~, except that a source shall not be required to pay a fee prior to approval of the state permit program by the U.S. EPA~~].

(6) Enforcement.

(a) Each day after the deadline for payment of the source's portion of the emissions fee during which the source fails to pay the fee shall be a separate violation of this administrative regulation.

(b) Failure to pay the fee within ninety (90) days after the date on which the cabinet notifies the source of the amount of fee due shall result in:

1. An increase in the fee of an additional fifty (50) percent of the original amount due, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of federal taxes); and

2. Suspension of the source's permit [~~to operate~~] until the fee is paid or until the cabinet has approved a schedule of payment.

Section 4. Use of Fees. All fees collected pursuant to this administrative regulation shall be deposited in a trust and agency account and shall be used solely for funding the [~~operating~~] permit program.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: October 11, 1994

FILED WITH LRC: October 14, 1994 at 9 a.m.

NOTICE OF INTENT PUBLIC HEARING SCHEDULED: A public hearing to receive comments on the Division's Notice of Intent to promulgate an administrative regulation will be conducted on November 30, 1994, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Contact person: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation shall affect sources required to have permits which emit sulfur dioxide, oxides of nitrogen, particulate matter (measured as PM_{10}), volatile organic compounds, hazardous air pollutants, or any combination of those pollutants. The Division for Air Quality anticipates that approximately 900 air pollution sources will be required to pay an emissions fee by this administrative regulation.

(2) Direct and indirect costs or savings on the: This administrative regulation will cause nearly the entire cost of issuing and enforcing permits required under federal regulations to be paid by the affected sources. Collection and use of emissions fees to pay those costs are mandated by Title V of the Clean Air Act Amendments of 1990. Final determination of the fee must await calculation of the 1995 and 1996 emissions from affected sources, and for the expenditure authorizations from the Kentucky General Assembly. However, the following preliminary estimates are offered:

(a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented: The administrative regulation will be implemented throughout Kentucky, and will cause sources of air pollution in the Commonwealth to pay additional fees. The total amount of fees paid by all sources will be $5,505,200 in 1994-95, $6,594,700 in 1995-96, and higher or lower amounts in future years as indicated by the Consumer Price Index and by changes in administrative costs of the Kentucky air quality program. The costs will be borne by industries providing goods and services both in Kentucky and elsewhere, including electric utility companies and large and small business. Since this cost formerly was borne entirely by Kentucky taxpayers, and since the use of a fee will cause some of the costs to be borne by residents of other states using goods and services generated by Kentucky industries, the proposed regulation may result in a very small decrease in the cost of living in Kentucky.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: The greatest cost this regulation will impose on a source of air pollution is expected to be $340,000 during the 1994-95, and a correspondingly higher amount during 1995-96 based upon the increase in total fees. Costs for future years may increase or decrease depending on the Consumer Price Index and upon changes in the administrative costs of the Kentucky air quality program. The least cost the regulation will impose on a source of air pollution is $150 per year.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Although the proposed regulation imposes higher fees than those previously assessed by the Division for Air Quality, it does not change the nature of those fees. Thus, paperwork requirements for sources subject to fees in previous years will not be affected by the proposed regulation. Some sources not previously subject to fee requirements but affected by the proposed regulation may be required to update their air pollution emission information provided to the cabinet more often (once each year rather than once each two or three years). The Division for Air Quality presently estimates that $5,505,200 will need to be collected for 1995.

2. Second and subsequent years: There shall be no additional compliance, reporting, or paperwork requirements during the second and succeeding years beyond those described for the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division for Air Quality does not anticipate any significant costs or savings from this administrative regulation.

2. Continuing costs or savings: The Division for Air Quality does not anticipate any significant costs or savings from this administrative regulation.

3. Additional factors increasing or decreasing costs: There are no known additional factors which will increase or decrease costs.

(b) Reporting and paperwork requirements: Because of its interim fee program, the Division for Air Quality already has established a mechanism for assessing emissions subject to the fee, a billing system, and an accounting system for the fee program. The Natural Resources and Environmental Protection Cabinet, including the Division for Air Quality, also use time coding to identify work directed toward specific projects or tasks. Some additional effort will be required to add and use time codes and auditing systems ensuring that no source of funding other than emissions fees is used to support the Title V permitting program, and that no emissions fees collected to pay Title V permitting program expenses are used for any other purpose. The Division for Air Quality does not anticipate that these additional efforts will cause a significant hardship.

(4) Assessment of anticipated effect on state and local revenues: Presently, the Division for Air Quality expects this administrative regulation to generate approximately $12,099,900 during the 1994-96 biennium. This money must be earmarked for permitting expenses, and state general fund money presently directed to those activities will become available for other purposes. During 1993-94, the Division for Air Quality is authorized to receive $5,381,800 from state general funds. The adoption of this administrative regulation will allow at least $3,127,400 of state general fund money to be redirected during the coming biennium. There is no anticipated effect on local government revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The costs of implementing and enforcing this administrative regulation will be paid from the fees which it generates.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Since the administrative regulation will be implemented throughout Kentucky, the economic impact is described under (6)(b).

(b) Kentucky: This administrative regulation does not increase the amount of funds allocated in Kentucky for the air quality program. Rather, this administrative regulation redirects the funding of costs for administering the Kentucky air quality program from the taxpayer to sources of air pollution by assessing a fee based upon the amount of pollution emitted by each air pollution source. This change in funding strategy is consistent with requirements of the federal Clean Air Act, and with the budget approved by the Kentucky General Assembly. Tiering is applied by basing the fee on the tons of emissions from each source. The regulation will increase the cost of doing business by up to $340,000 per year for the largest Kentucky sources, and by as little as $150 per year by the smallest sources. This administrative regulation is designed to comply with the requirement of the federal Clean Air Act that each state have an operating permit program funded by fees charged to air pollution sources. Thus, sources in other states also will be faced with similar fees.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Title V of the Clean Air Act Amendments of 1990 establishes the requirements for a federal operating permit program for air pollution sources. That program can be delegated to state and local agencies provided all requirements are met. One of the requirements is that the program must be supported by emissions fees. Failure by the Commonwealth of Kentucky to collect and use emissions fees to support the permit program would cause the U.S. EPA to reject Kentucky's request for delegation and to require air pollution sources in Kentucky to apply for and receive federal operating permits. Kentucky sources then would be required to pay an emissions fee established by and paid to the U.S. EPA. For those reasons, no alternative was considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation imposes no new requirements for safeguarding public health or the environment, but merely redirects the funding responsibility for the air quality program from the taxpayer to air pollution sources. Some benefit to public health and the environment might result indirectly from this administrative regulation if sources of air pollution elect to reduce their emissions of air pollutants to lower the fee they must pay. Generally, however, the fee per ton of emissions is substantially lower than the cost of most strategies for reducing emissions. There also will be some benefit to public health and the environment resulting from more accurate emission statements provided by sources subject to the fee.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. However, this administrative regulation is a required component of the operating permit program which must be implemented in accordance with Title V of the Clean Air Act Amendments of 1990. Failure to implement the fee program established by this administrative regulation would cause the Kentucky operating permit program to be disapproved by the U.S. EPA, and would obligate all sources subject to Title V to apply for

operating permits from the U.S. EPA.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation, or government policy currently existing which may be in conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? Yes. This administrative regulation charges a fixed amount for each ton of air pollution emitted. Therefore, the largest emitting sources must pay the largest fee. The smallest sources will pay a flat fee of $150 per year.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will require a local government to pay a fee appropriate to the emissions from any air pollution source subject to this administrative regulation operated by the local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the operation of boilers, indirect heat exchangers, and other sources of air pollution. If such sources are operated by a unit of local government, that local government could be affected by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact on the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): Local governments operating an air pollution source will be subject to a fee of approximately thirty-one dollars per ton of air pollution emitted.

Other Explanation: There is no additional explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is contained in 42 USC 7401-7671q (the Clean Air Act, or CAA), as amended by PL 101-459, November 15, 1990. 42 USC 7661-7661f (Title V of the Clean Air Act Amendments) contains the specific requirements for a federally enforceable operating permit program. The final rules establishing the requirements for an approvable state operating permit program were published in the Federal Register, July 21, 1992 (57 FR 32295).

2. State compliance standards. KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. In 1990, Congress amended the CAA to require that many sources of air pollution apply for and receive federal operating permits. According to the CAA, the permit program is to be supported in its entirety by fees collected from the sources. That is, the CAA forbids the use of other funds (e.g., general revenues) to support what has come to be called the Title V Operating Permit Program. The CAA also provides that states may be delegated the Title V Operating Permit Program by adopting rules consistent with its requirements, including the fee requirements. Absent such delegation to Kentucky, air pollution sources in the Commonwealth would be required to seek permits from, and pay fees to, the U.S. EPA.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The Natural Resources and Environmental Protection Cabinet applied for delegation of the Title V Operating Permit Program on November 15, 1993. The application included an assessment of the costs of conducting that program during each of its first two years. That assessment was provided both to the U.S. EPA and to the Kentucky General Assembly as part of the cabinet's 1995-1996 biennial budget request. The cost for each year will be divided by the total number of tons of emissions of air pollutants subject to the permit program to determine a cost per ton of emissions. Each source subject to the program then will be required to pay a fee equal to the total number of tons of pollution it emits multiplied by the cost per ton. These requirements, in the opinion of the division, are entirely consistent with those of the CAA. However, it is possible that the U.S. EPA might require changes in the permitting program after its review of the application for Title V approval. This administrative regulation will charge the proposed fees during this biennium regardless of the final decision by the U.S. EPA, and will cause the fees to be assessed during October, 1994, regardless of the timing of program approval. This is necessary to have a viable budget for the state air quality program, and is consistent with the authority provided by the 1994 General Assembly.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation creates the possibility that fees will be charged for activities submitted to the U.S. EPA as Title V activities, but subsequently disapproved by the U.S. EPA as Title V activities. This strategy was approved by the 1994 Kentucky General Assembly to prevent a situation where mandated activities, whether considered part of the Title V program or part of the federally mandated State Implementation Plan process, would be unfunded due to future decisions by the U.S. EPA.

STATEMENT OF EMERGENCY
500 KAR 11:015E

The purpose of this emergency administrative regulation is to prescribe procedures by which permanent licenses will be issued pursuant to KRS 238.525. It is necessary to promulgate this emergency administrative regulation, because House Bill 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. Under KRS 238.525(1), the licensing requirements become effective September 16, 1994, and all entities subject to the licensing requirements were to be licensed by this date. Although temporary licenses were issued, pursuant to KRS 238.525(4), to meet implementation deadlines, permanent licenses will be issued before an ordinary administrative regulation can be promulgated. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:015E. Permanent licensure.

RELATES TO: KRS 238.515(3), 238.525(3)

STATUTORY AUTHORITY: KRS 238.515(2), (3), (9), 238.530(1), (2), 238.535(11), 238.555(1)

EFFECTIVE: October 13, 1994

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to issue permanent licenses, set license fees, including

renewal fees, and establish license years for all permanent licenses issued by the division. This administrative regulation establishes the above fees and procedures for permanent licensure.

Section 1. Application for Licensure. (1) Unless complete application was made for temporary licensure under 500 KAR 11:010E, applicants for permanent licensure shall submit to the division a complete application on a form prescribed by the division at least sixty (60) days prior to engaging in the conduct to be licensed.

(2) Provided the applicant satisfactorily meets the requirements for licensure prescribed in KRS Chapter 238, the division shall issue a permanent license.

Section 2. Information Required on License. A permanent license issued by the Division of Charitable Gaming shall clearly state the:

(a) Name of the licensee;

(b) Address of the licensee;

(c) Date of issuance of the license;

(d) Expiration date of the license;

(e) Premises or location at which the charitable gaming will be conducted, if the license is for a charitable organization or a charitable gaming facility;

(f) Type of license issued; and

(g) Address of the Division of Charitable Gaming.

Section 3. Fees for Licensure. (1) The division shall collect fees for applications for permanent licensure and for renewal thereof.

(2)(a) The annual license fees for each license issued shall be as follows:

1. Manufacturer - $500.

2. Distributor - $250.

3. Charitable gaming facility - $2,500.

4. Charitable gaming organization with gross receipts less than $100,000 - $100.

5. Charitable gaming organization with gross receipts over $100,000, but not in excess of $250,000 - $200.

6. Charitable gaming organization with gross receipts in excess of $250,000 - $300.

(b) A processing fee of twenty-five (25) dollars shall accompany each application for licensure. The twenty-five (25) dollar processing fee shall be credited to any balance due on the license at the time it is issued.

(3) A permanent license shall not be issued until the annual license fee is paid in full.

(4) The permanent license shall be effective for one (1) year from the date of issuance.

Section 4. Renewals. (1) A licensee wishing to renew its license must make application to the division on a renewal application form prescribed by the division no later than sixty (60) days prior to the expiration date on the renewal applicant's current license.

(2) Annual fees for renewal licenses shall be the same as those set forth in Section 3(2) of this administrative regulation.

(3) Failure to timely renew as directed in subsection (1) of this section may result in issuance of a renewal license after the expiration date of the applicant's current license. No activities authorized by any license may continue after the expiration date on the license, and the licensee shall cease such activities until receipt of the renewal license.

Section 5. Incorporation by Reference. (1) The following application forms and materials are incorporated by reference:

(a) Form CG-T-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky (8/94)".

(b) Form CG-T-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment (8/94)".

(c) Form CG-T-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment (8/94)".

(d) Form CG-T-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky (8/94)".

(e) Form CG-T-Schedule A, "Application to Conduct Special Limited Charitable Game(s) (For Use With Form CG-T-1) (8/94)".

(f) Form CG-T-Schedule B, "Notice of Intent of Suborganization or Subordinate Organization of a Licensed Charitable Organization to Conduct Charitable Gaming (For Use With Form CG-T-1) (8/94)".

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690, 8 a.m. to 4:30 p.m., Monday through Friday.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: October 11, 1994

FILED WITH LRC: October 13, 1994 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson

(1) Type and number of entities affected: All applicants (manufacturers, distributors, charitable gaming facilities and charitable gaming organizations) seeking licensure with the Division (estimate approximately 1000 initially during start-up phase).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Any applicant (manufacturer, distributor, charitable gaming facility and charitable gaming organization) will incur initial cost of doing business of licensure processing fee $25 to be applied/credited towards permanent licensing fee. Permanent license fee structure is as follows: Manufacturer -$500; Distributor - $250; Charitable gaming facility - $2,500; Charitable gaming organization with gross receipts less than $100,000 - $100; Charitable gaming organization with gross receipts over $100,000, but not in excess of $250,000 - $200; Charitable gaming organization with gross receipts in excess of $250,000 - $300.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Extensive application forms will be required of each licensee.

2. Second and subsequent years: Renewal applications will be required in subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the license applications and licenses will be the only significant costs incurred by the Division.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the application forms themselves, it is anticipated that the division will establish various self-imposed reporting and paperwork requirements as to types and classes of applicants, locations (by county) of licensees, monies generated/received by categories of licensees, monies due from each licensee on receiving permanent license, and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: To the extent the processing

fees and license fees charged do not cover the cost of implementation, funds from the Charitable Gaming Regulatory Account (KRS 238.570(2)) will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to question #11.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? All applicants for licensure during start-up phase of division are charged the same processing fee of $25 despite the fact that permanent licensure fees will vary among groups/types of applicants.

STATEMENT OF EMERGENCY
500 KAR 11:025E

The purpose of this emergency administrative regulation is to prescribe procedures by which quarterly reports and quarterly fees on gross gaming receipts are to be remitted to the Division of Charitable Gaming pursuant to KRS 238.525. It is necessary to promulgate this emergency administrative regulation, because House Bill 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. Under KRS 238.525(1), the licensing requirements became effective September 16, 1994, and all licensed charitable organizations are to submit quarterly reports as to receipts and activities, and remit the fees due the Division of Charitable Gaming on gross gaming receipts quarterly. The fees and quarterly reports are currently due for the first extended initial start-up period and before an ordinary administrative regulation can be promulgated. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:025E. Quarterly reports.

RELATES TO: KRS 238.550, 238.570(1)

STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550, 238.570(1)

EFFECTIVE: October 13, 1994

NECESSITY AND FUNCTION: All licensed charitable organizations are required to remit one-half (1/2) of one (1) percent of gross receipts derived from charitable gaming. Quarterly reports are required of all licensed charitable organizations. This administrative regulation will establish the method and time of filing the quarterly reports and remitting payment of the quarterly fees due.

Section 1. Quarterly Reporting Period Defined. With the exception of the initial start-up quarterly reporting period, which shall cover the time period from March 16, 1994, through September 30, 1994, and which shall be due on or before November 15, 1994, a quarterly report shall be filed by each licensed charitable organization no later than thirty (30) days following the close of each calendar year quarter.

Section 2. Quarterly Reports. (1) Quarterly reports shall be submitted on forms prescribed by the division and shall be signed by an authorized officer of the licensed charitable organization and, in the event prepared by an individual other than an authorized officer, by the preparer.

(2) If a suborganization of the licensed charitable organization has conducted charitable gaming during the reporting period, the suborganization's earnings and activities must be reported by the licensed charitable organization, but on a form separate from that of the parent organization.

Section 3. Fees Due. The fees imposed by KRS 238.570(1) on gross gaming receipts of licensed charitable organizations shall be remitted by check or money order made payable to "Kentucky State Treasurer" at the time the quarterly reports are due.

Section 4. Incorporation by Reference. (1) The following reporting forms are incorporated by reference.

(a) Form CG-T-QR, "Quarterly Activity Report (10/94)".

(b) Attachment A, "Charitable Gaming Accounting Summary (10/94)".

(c) Attachment B, "Report of All Prizes Awarded Over $599 (10/94)".

(d) Attachment C, "Suborganization Activity Report (10/94)".

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690, 8 a.m. to 4:30 p.m., Monday through Friday.

PAUL F. ISAACS, Secretary
APPROVED BY AGENCY: October 11, 1994
FILED WITH LRC: October 13, 1994 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson

(1) Type and number of entities affected: All licensed charitable organizations (including suborganizations).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Implements statutory fee imposed on one-half of one percent of all gross gaming receipts of licensed organizations (including suborganizations).

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Quarterly reporting forms and attachments.

2. Second and subsequent years: See 2(c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the quarterly reporting forms and attachments will be the only significant cost incurred by the Division of Charitable Gaming.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the quarterly forms themselves, it is anticipated that the division will establish various self-imposed reporting and paperwork requirements as to monies (fees) generated/received by licensees (based on geographic location, types of organizations, types of gaming), and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)) will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to question #11.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. KRS 238.570(1) did not provide for tiering.

STATEMENT OF EMERGENCY
902 KAR 14:030E

Emergency administrative regulation 902 KAR 14:030E is necessary in order to act in a timely manner to comply with House Bill 646 to transfer responsibility for licensing, inspection and regulation of ambulance service providers to the Department for Health Services, Cabinet for Human Resources. A Notice of Intent to promulgate an ordinary administrative regulation to replace this emergency administrative regulation will be filed with the Regulations Compiler on or before October 14, 1994.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Health Systems Development

902 KAR 14:030E. License procedures and fee schedule for ambulance service providers.

RELATES TO: KRS 211.950 to 211.958, 216B.010 to 216B.130, 216B.990

STATUTORY AUTHORITY: KRS 211.952, 216B.042, 216B.105, 216B.410

EFFECTIVE: October 14, 1994

NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. KRS 211.952 transfers the responsibility for licensing ambulance service providers from the Division of Licensing and Regulation in the Office of Inspector General, to a single lead agency within the Department for Health Services, Cabinet for Human Resources. This administrative regulation provides requirements for obtaining and maintaining a license to operate an ambulance service and establishes the fee schedule for a license.

Section 1. Definitions. (1) "Ambulance service" means a provider defined in KRS 211.950(2), licensed to provide basic, advanced, or specialized levels of emergency and nonemergency medical care, and emergency and nonemergency transportation. This definition shall not include nonemergency health transportation providers which are licensed pursuant to KRS 216B.105.

(2) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

(3) "Volunteer service" means an ambulance service provider in which the ambulance attendants do not receive compensation for their work.

Section 2. Licenses. (1) A person shall not establish an ambulance service in Kentucky without first obtaining a certificate of need from the Kentucky Health Policy Board (referred to as the board) and shall not operate an ambulance service without first obtaining a license, Form EMSA-2, from the licensing agency. Form EMSA-2 (10/94) is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

(2) The license shall be conspicuously posted in a public area of the facility.

(3) A "Kentucky Application for Ambulance Service Licensing," Form EMSA-1 (10/94), incorporated by reference, shall be filed with the Department for Health Services, Emergency Medical Services Branch, 275 East Main Street, Frankfort, Kentucky 40621. Form EMSA-1, "Kentucky Application for Ambulance Service Licensing," may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

(4) An applicant for a license shall, as a condition precedent to licensing or relicensing, be in compliance with:

(a) 902 KAR 14:040 if the applicant is applying for a ground ambulance service provider license; or

(b) 902 KAR 14:050 if the applicant is applying for an air ambulance service provider license.

(5) The licensee shall, as a condition of licensing or relicensing, be in compliance with the reporting requirements established by the licensing agency and the board, unless otherwise exempted by statute:

(6) The licensee shall maintain and submit completed reports required by:

(a) KRS 216B.410;

(b) 902 KAR 14:040, Section 3(2)(a);

(c) 902 KAR 14:050, Section 6;

(d) The licensing agency; or

(e) The Kentucky Health Policy Board.

(7) A license shall expire one (1) year following the date of issuance, unless otherwise provided in the license certificate.

(8) A license may be renewed upon payment of the prescribed fee and compliance with the provisions for licensing.

(9) A license to operate shall be issued only for the person, service area, and premises, including the number of ambulances named in the application, and shall not be transferable.

(10) A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of an existing facility, capital stock, or voting rights of a corporation is purchased, transferred, leased, or

acquired by comparable arrangement by one (1) person from another.

(11) Upon filing a new application for a license due to change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee shall be charged for the remainder of the licensure period.

(12) There shall be full disclosure to the licensing agency of the changes, such as name and address, of:

(a) A person having direct or indirect ownership interest of ten (10) percent or more in the service;

(b) Officers and directors of the corporation, if a service is organized as a corporation; and

(c) Partners, if a service is organized as a partnership.

Section 3. Licensing Inspections. (1) Compliance with licensing regulations shall be ascertained through on-site inspections of the service provider by representatives of the licensing agency.

(2) Representatives of the licensing agency shall have access to the service during hours the service provider operates.

(3) A regulatory violation identified during the inspections shall be transmitted in writing to the service provider by the licensing agency.

(4)(a) The service provider shall submit a written plan for the elimination or correction of the regulatory violations to the licensing agency within ten (10) days of receipt of the statement of violation.

(b) The plan shall specify the date by which the violation shall be corrected.

(5)(a) Following a review of the plan, the licensing agency shall notify the service provider in writing of the acceptability of the plan. The licensing agency may conduct a follow-up visit to verify compliance with the plan.

(b) If a portion or all of the plan is unacceptable, the licensing agency shall specify the reasons for the unacceptability. The service provider shall modify or amend the plan and resubmit it to the licensing agency within ten (10) days after receipt of notice that the plan is unacceptable.

(6) Unannounced inspections may be conducted on complaint allegations, follow-up visits, and annual relicensure inspections. Inspections shall be conducted utilizing the procedures outlined under this section.

(7) The licensing agency may deny, revoke, modify, or suspend the license of an ambulance service provider which:

(a) Fails to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;

(b) Fails to eliminate or correct regulatory violations;

(c) Falsifies an application for licensing;

(d) Tampers with, alters, or changes a license issued by the licensing agency;

(e) Attempts to obtain or obtains a license by fraud, forgery, deception, misrepresentation, or subterfuge;

(f) Provides false or misleading advertising;

(g) Falsifies, or causes to be falsified, a patient record or emergency medical service ambulance run report;

(h) Provides an unauthorized level of service;

(i) Has a history of staff violations which have resulted in disciplinary action under 902 KAR 13:020 and 13:090;

(j) Fails to provide the licensing agency or its representative with true information upon request, or obstructs an investigation regarding alleged or confirmed violations of administrative regulations promulgated under:

1. KRS 211.950 to 211.958;
2. KRS 211.960 to 211.968;
3. KRS 211.990(5); and
4. KRS 216B; or

(k) Issues a check for a license on an invalid account or an account with insufficient funds to pay the fee specified in Section 4 of this administrative regulation.

(8) The licensing agency may issue an order directing an ambulance service provider to immediately cease and desist operating an ambulance or providing ambulance services if the licensing agency has reasonable cause to believe that the ambulance or service is unsafe or is being operated in an unsafe or unprofessional manner that is likely to cause harm or create imminent danger to the health and safety of the public.

(9) The licensing agency or the board may deny, revoke, modify, or suspend the license of an ambulance service provider if an owner of the service is convicted of obtaining a fee by:

(a) Fraud or misrepresentation; or

(b) Submitting fraudulent or misleading claims for reimbursement to individuals, private insurance companies, or governmental agencies;

(10) The licensing agency shall provide notice and an opportunity for an administrative hearing related to denial, revocation, modification, or suspension of a license in accordance with:

(a) Policies and administrative regulations of the board; and

(b) Provisions of KRS 216B.105.

Section 4. Fee Schedule. The annual licensing fee, including renewals, shall be as follows:

(1) Nonvolunteer ambulance service providers: eighty (80) dollars;

(2) Volunteer ambulance service providers: twenty (20) dollars;

(3) Air ambulance service providers: eighty (80) dollars.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: October 12, 1994
FILED WITH LRC: October 14, 1994 at noon

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 300 ground and air ambulance services.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. Since this is an emergency regulation, no public hearing has been held. However, it will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Since this is an emergency regulation, no public hearing has been held. However, it will have no effect on the cost of doing business in the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet. Regulatory activities currently carried out by the Office of the Inspector General will be transferred to the Department for Health Services as required by HB 646 as passed by the 1994 General Assembly. The department will assign necessary staff and funding within previously approved levels.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the

requirements of this regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This regulation will continue existing licensing fees for ground and air ambulances. This fee income and general funds will be utilized for implementation of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: Since this is an emergency regulation, no public hearing has been held to date. However, this regulation will not have create any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Regulation complies with the specific legislative mandate passed by the 1994 General Assembly to establish a single lead EMS agency. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services in Kentucky by reducing or eliminating overlapping authority for EMS personnel and providers at the state level.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments: The purpose of this emergency regulation is to comply with HB 646 passed by the 1994 General Assembly.

(11) TIERING: Is tiering applied? Tiering was not applied because the regulation applies to all ambulance services in Kentucky regardless of location; all Kentuckians, whether urban or rural, are equally served and protected by this regulation of ambulance providers.

STATEMENT OF EMERGENCY
902 KAR 14:040E

Emergency administrative regulation 902 KAR 14:040E is necessary in order to act in a timely manner to comply with House Bill 646 to transfer responsibility for licensing, inspection and regulation of ambulance service providers to the Department for Health Services, Cabinet for Human Resources. A Notice of Intent to promulgate an ordinary administrative regulation to replace this emergency administrative regulation will be filed with the Regulations Compiler on or before October 14, 1994.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Health Systems Development

902 KAR 14:040E. Ground ambulance service providers and patient emergency medical services.

RELATES TO: KRS 211.950 to 211.958, 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 211.952, 216B.042

EFFECTIVE: October 14, 1994

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services in Kentucky. This administrative regulation provides for the minimum licensing requirements for ground ambulance service providers. KRS 211.952 requires the cabinet to establish a single lead agency within the Department for Health Services to license, inspect, and regulate ambulance providers.

Section 1. Definitions. (1) "Advanced life support (ALS) service provider" means a provider which:

(a) Is licensed by the cabinet; and

(b) Meets the requirements established in Section 8 of this administrative regulation.

(2) "Ambulance" means a vehicle as defined in KRS 211.950(1) utilized for providing individuals with basic, advanced, or specialized levels of emergency medical care. This definition shall not include nonemergency health transportation vehicles which are licensed pursuant to KRS 216B.105.

(3) "Ambulance service provider" means a provider as defined in KRS 211.950(1) licensed by the cabinet to supply basic, advanced, or specialized levels of:

(a) Emergency medical care;

(b) Emergency transportation; or

(c) Nonemergency transportation. This definition shall not include nonemergency health transportation providers which are licensed pursuant to KRS 216B.105.

(4) "Back-up ambulance" means an ambulance which complies with the requirements of Section 4(3) of this administrative regulation, and is licensed by the cabinet to provide emergency care and transportation if:

(a) One (1) of the licensed primary ambulances is not in service; and

(b) All of the primary ambulances are on runs and extreme circumstances dictate its use.

(5) "Basic life support (BLS) service provider" means a provider which meets the requirements established in Section 2 through 7 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency or scheduled basis to persons who:

(a) Are sick, injured, or otherwise incapacitated; and

(b) May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well-being.

(6) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(7) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association; the National Safety Council; or the basic life support for the professional rescuer course of the American Red Cross, either of which as a minimum shall include one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(8) "Dispatch center" means the location where:

(a) Incoming calls are initially received requesting an ambulance; and

(b) Contact is made with the ambulance service provider for

direction to the patient scene.

(9) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 13:100.

(10) "Emergency medical technician - first responder" means a person certified pursuant to 902 KAR 13:110.

(11) "Employee" means ambulance service personnel who may be paid or volunteer, full time or part time.

(12) "Interfacility care" means emergency or nonemergency health care provided to a patient during ambulance transportation between two (2) health care facilities.

(13) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

(14) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 9:136.

(15) "Prehospital care" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(16) "Primary ambulance" means an ambulance licensed by the cabinet to be utilized by an ambulance service for the provision of:

(a) Emergency care and transportation; or

(b) Nonemergency runs.

(17) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(18) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin (e.g., needles, glass ampules, etc.).

(19) "Specialized emergency care and ambulance transportation" means an ambulance service that meets the minimal essential requirements as established in Section 9 of this administrative regulation for the provision of mobile emergency medical health care or emergency medical transportation that:

(a) May be unavailable to the general public; and

(b) Has specialized or limited functions which may require exceptional consideration of:

1. Equipment requirements;
2. Personnel requirements; or
3. Hours of operation.

Section 2. Licensing Requirements. (1) The following licensing requirements shall apply to ambulance service providers:

(a) A person shall not provide, advertise, or profess to engage in the provision of basic, advanced life support, or specialized emergency medical care and transportation that originates in Kentucky without having first obtained a certificate of need and a license from the cabinet.

(b) An ambulance service provider shall comply with local, state, and federal statutes and regulations.

(c) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

1. Identity and location of the base station;

2. Number and location of substations, if any, to be operated by the licensee;

3. Designation of the geographic area to be served by the licensee, allowing for a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area for all emergency calls. The ambulance service shall not be precluded from providing mutual aid in circumstances such as disaster assistance or nonemergency transfers from damaged or closed-down facilities outside the geographic service area. An ambulance service may respond to facilities outside of its geographic service area for the purposes of providing interfacility care to residents of its service area who are in facilities outside of its service area;

4. Designation of the levels of care which the ambulance service shall be authorized to provide (e.g., basic, advanced, specialized, etc.); and

5. Designation of the number of primary and back-up ambulances to be operated by the ambulance service.

(d) Upon application for initial licensing or renewal of the license, the applicant or licensee shall specify the number of ambulances to be operated and, as a minimum, provide the licensing agency with the ambulance serial and license tag numbers.

(e) The licensee shall:

1. Notify the licensing agency of any change in the number, type, or use of the ambulances to be operated; and

2. Meet the following requirements:

a. An ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that it meets the requirements of this administrative regulation. If the ambulance represents an expansion of service (e.g., an increase in the number of ambulances), the licensing agency shall verify that a certificate of need has been granted prior to the inspection. The addition of back-up vehicles shall not be considered an expansion of service. An ambulance service shall be permitted one (1) back-up ambulance for every two (2) or fewer primary ambulances upon notification to the licensing agency; and

b. The licensing agency shall be notified, on the next licensing agency business day, following disposition of any prior approved ambulance operated by the ambulance service (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance service).

(f) The licensing agency procedures shall not preclude the ambulance service from utilizing a replacement ambulance on a temporary basis if a previously approved primary or back-up ambulance is out of service for maintenance. The following requirements shall apply:

1. The licensing agency shall be immediately notified (or on the next business day) by phone of the ambulance service's need to operate a temporary replacement unit. Within five (5) days, the ambulance service shall send the licensure agency:

a. Written notice of the make, model, license number, and vehicle identification number; and

b. Assurances that the temporary unit will be staffed and equipped in accordance with requirements of this administrative regulation;

2. If the ambulance service plans to utilize the replacement for more than thirty (30) days, the ambulance service shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

3. The licensing agency shall be notified if the replaced unit is back in service.

(g) The licensing agency shall maintain identifying records on all ambulances according to established procedures.

(2) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(3)(f);

(b) A vehicle serving as an ambulance during a major catastrophe;

(c) An ambulance operated by the United States government; and

(d) An ambulance from an out-of-state licensed ambulance service making a nonemergency run originating from a Kentucky facility for the purpose of returning a patient who is not a Kentucky resident to his state of residence.

Section 3. Management Requirements. An ambulance service provider shall:

(1) Establish lines of authority to include the designation of:

(a) An administrator responsible for assuring compliance with this administrative regulation during the daily operation of the ambulance service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(2) Maintain adequate records and reports at the ambulance service base station to be made available for review as deemed necessary by the cabinet, including:

(a) A complete Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report," as required by KRS 216B.410 and guidelines established by the cabinet. Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report," (2/91) is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.

1. The run report form shall be:

a. Maintained in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

b. Completed for all runs that originate in Kentucky.

2. The original, or a microfilm or similar copy procedure, may be utilized.

3. The third copy of the run form, or an electronic equivalent, shall be forwarded to the cabinet within thirty (30) days following the end of the month in which the run occurred.

(b) Personnel files on each ambulance driver and attendant.

1. Personnel files shall be maintained for:

a. A minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

b. Five (5) years following the demise of the employee.

2. Individual ambulance driver and attendant personnel files shall, as a minimum, contain evidence of training, experience, current credentials, and health records to include:

a. Written evidence of a preemployment health assessment having been conducted by a physician; and

b. Health records which at a minimum meet the requirements of KRS 216B.410(3).

(3) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the ambulance service in order to assess their effectiveness. The policies and procedures shall be developed to include the minimum areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Ambulance service mutual aid agreements and agreements with other providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, ambulance, equipment, and its staff if called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for quality assessment of patient care and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

1. Ambulance response;

2. Transport limitations; and

3. Patient destination.

Section 4. Operating Requirements. (1) An ambulance service provider shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week, basis. This provision may be met through a call system or by a written mutual aid agreement with another licensed ambulance service.

(2) If a licensed ambulance service provider also makes nonemergency runs, a minimum of one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the licensee's geographic service area. The licensee may enter into a written mutual aid agreement with another licensed ambulance service as a means to meet this requirement if the licensee's only remaining ambulance is called upon for an emergency response within or outside its geographic service area.

(3) Ambulances used in the provision of ambulance services shall:

(a) Be designed to provide for the medical care and transportation of patients;

(b) Comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances" (GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification. "Federal Specifications for Ambulances", KKK-A-1822 C (1/90), General Services Administration, Federal Supply Service, Washington, D.C. 20406, is incorporated by reference, and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday; and

(c) Comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(4)(a) The ambulance service provider shall require that a certification decal or sticker be supplied by the manufacturer of newly purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(b) The ambulance service provider shall require, for units that are later modified, the conversion company supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(5) In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

(b) The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

(c) The name of the ambulance service provider shall appear on the exterior surface of the ambulance.

(6)(a) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(b) Documentation shall be maintained by the ambulance service to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(7) The interior of the ambulance and its equipment shall be cleaned after each use, unless precluded by emergency conditions.

(8) A communications system shall be developed, coordinated, and maintained by each ambulance service provider. The communication system shall meet the following requirements:

(a) If a local or regional dispatch center or 911 arrangement exists for all or part of an ambulance service provider's service area, the ambulance service provider shall have a signed affiliation agreement with the dispatch center for dispatching emergency calls;

(b) Ambulances shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of

contacting the ambulance dispatch center and the receiving hospital;

(c) A minimum of one (1) portable communication device per ambulance, on the ambulance radio frequency, shall be provided for personnel if away from the ambulance;

(d) An ambulance service shall have an acceptable plan to assure that all calls are routinely answered, and runs are dispatched in an expedient manner in accordance with subsection (1) of this section; and

(e) An ambulance service shall provide orientation to all drivers and attendants related to communication protocols that have been established by the ambulance service.

(9)(a) In accordance with an ambulance service provider's policies and procedures concerning patient destination and ambulance response and transport limitations, a patient shall be transported to:

1. The hospital emergency room of the patient's choice; or

2. The hospital emergency room chosen by the patient's physician.

(b) Nothing in this subsection shall preclude ambulance service personnel from transporting a patient to:

1. A hospital emergency room other than the one chosen by the patient or his doctor, or an appropriate emergency medical facility chosen by the attendant, if the attendant determines that it shall be necessary in order to save the patient's life or limb.

2. A hospital emergency room or emergency medical facility other than the one chosen by the patient or his physician if the ambulance service is operating under an approved local or regional diversion plan or medical triage protocols developed in conjunction with a consortium of physicians, hospitals, and ambulance service providers, and which has been approved by the Kentucky Emergency Medical Services Council under KRS 211.952.

(c) The Kentucky emergency medical service ambulance run report form shall require ambulance service personnel to state:

1. The name and city of the hospital to which the patient was transported; and

2. If the destination was chosen by the:

a. Patient;

b. Patient's physician; or

c. Medical service personnel. If the destination was chosen by the medical service personnel, the attendant shall document the medical necessity on the form's case narrative section.

Section 5. Basic Life Support Personnel. (1) Number of personnel.

(a) An ambulance service shall be staffed to provide, as a minimum, two (2) attendants for each run involving emergency care and transportation or nonemergency runs. One (1) attendant shall remain with the patient at all times during transport;

(b) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation; and

(c) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(2) Qualifications of personnel.

(a) As a minimum, the driver on each emergency care ambulance run shall:

1. Be at least eighteen (18) years of age, with current motor vehicle operator's license;

2. Have at least two (2) years of licensed driver/operator experience;

3. Complete a defensive driving training program that is developed by the ambulance service or in conjunction with another agency or organization.

a. As a minimum, the training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

b. Documentation shall be available to support training in at least the following areas:

(i) Review of KRS 189.910 through 189.950 regarding emergency vehicles.

(ii) Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

(iii) Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

4. Be capable of performing assigned duties.

(b) One (1) ambulance attendant on each prehospital emergency or nonemergency ambulance run shall be certified or licensed for one (1) of the following levels:

1. Emergency medical technician (EMT);

2. Paramedic;

3. Registered nurse; or

4. Physician.

(c) The second ambulance attendant, who may also be the driver, as a minimum shall have certification or licensing for one (1) of the following levels:

1. EMT - first responder;

2. EMT;

3. Paramedic;

4. Registered nurse; or

5. Physician.

(d) Personnel who on occasion may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

1. Serve as drivers only in a three (3) person crew; and

2. Do not render any type of first aid or medical treatment; or

3. Serve as attendants only.

(e) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports shall be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

Section 6. Equipment and Supplies. An ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain, in full operational order, the following minimum equipment and supplies:

(1) Suction, ventilation, and blood pressure equipment.

(a) Suction apparatus (fixed and portable);

(b) Hand operated bag-mask ventilation unit with adult and child size masks (capable of use with oxygen);

(c) Hand operated infant bag-mask ventilation unit with infant size masks (capable of use with oxygen);

(d) Oropharyngeal airways (adult, child, and infant sizes); and

(e) Adult, obese adult, and pediatric sphygmomanometer cuffs and stethoscope (permanently mounted sphygmomanometer shall not satisfy this requirement).

(2) Oxygen equipment.

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier attachment for use on the fixed oxygen tank;

(d) Adaptor and tubing;

(e) Transparent masks (adult and child); and

(f) Nasal cannulas.

(3) Bandages and tape.

(a) Minimum of two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) Minimum of twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) Minimum of ten (10) soft roller self-adhering bandages, various sizes;

(d) Minimum of four (4) rolls of adhesive tape, minimum of two (2)

sizes;

(e) Minimum of ten (10) triangular bandages with large safety pins; and

(f) Minimum of two (2) sterile burn sheets.

(4) Miscellaneous supplies.

(a) Eye protector pads and shields;

(b) Minimum of one (1) roll of aluminum foil, or an occlusive substitute approved by the licensing agency;

(c) Shears for bandages;

(d) Flashlight;

(e) Minimum of one (1) thermometer;

(f) Minimum of two (2) sterile obstetrical kits;

(g) A poison kit to contain at least one (1) bottle of syrup of ipecac (with current expiration date) and one (1) bottle of activated charcoal (if in suspension, shall have current expiration date); and

(h) Sterile irrigation fluids if stocked on the ambulance shall be obtained and maintained according to local, state, and federal statutes and regulations.

(5) Splints and immobilization devices.

(a) Lower extremity traction splint, or equivalent as approved by the cabinet, for use in EMT training;

(b) Splints for arm, leg, and foot (e.g., inflatable air splints, padded boards, or ladder splints);

(c) Immobilization devices.

1. Short-spine board or other acceptable extrication device, as determined by the cabinet; and

2. Long-spine board with cervical immobilization accessories and an orthopedic "scoop" stretcher or other full-body immobilization device as determined by the cabinet.

(d) Rigid, stiff cervical collars in large, medium, small adult, and pediatric sizes;

(e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.

(6) Safety supplies and equipment.

(a) Minimum of two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;

(b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;

(c) Minimum of one (1) pocket mask with oxygen inlet and isolation valve per patient attendant;

(d) Minimum of one (1) clean scrub gown (or substitute, such as disposable coveralls), disposable mask, and gloves per patient attendant;

(e) Minimum of one (1) particulate filter face mask per patient attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;

(f) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towelettes;

(g) Hospital type disinfectants;

(h) Plastic bags for disposal of waste materials;

(i) Puncture resistant containers for disposal of sharp objects, if sharps are carried;

(j) A minimum of two (2) clean blankets, sheets, and pillowcases;

(k) Tissues and an emesis container.

(7) Additional medical supplies and equipment desired for storage in the ambulance for authorized persons responding to the scene who are licensed or certified to provide medical skills that require training beyond the authorized EMT level may be considered for approval by the cabinet. For eligibility, the ambulance service provider shall include documentation to assure a system of accountability for the storage and handling of the additional medical supplies and equipment. The cabinet shall have the authority to deny approval of the arrangement if it is determined that the arrangement shall not be in the best interest of quality patient medical care or safety of the patient and personnel.

Section 7. Extrication Equipment. (1) For response to trauma scenes, an ambulance service shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance:

(a) Minimum of two (2) pairs of eye protection goggles;

(b) Minimum of two (2) pairs of heavy work gloves;

(c) Minimum of two (2) hard hats;

(d) Minimum of one (1) spring loaded window punch or acceptable substitute; and

(e) Minimum of six (6) flares.

(2)(a) For response to trauma scenes, an ambulance service provider shall, as a minimum, provide one (1) vehicle, which need not be an ambulance, equipped with the following fully operational, more extensive access and extrication equipment:

1. Minimum of two (2) fifty (50) foot long seven-sixteenths (7/16) or one-half (1/2) inch static or dynamic nylon ropes;

2. Minimum of one (1) pair of pliers, vise grip;

3. Minimum of one (1) wrench, with adjustable, stable open end;

4. Minimum of one (1) set of screw drivers, four (4) sizes, regular blade;

5. Minimum of one (1) set of screw drivers, four (4) sizes, Phillips type;

6. Minimum of one (1) double action tin snip;

7. Minimum of one (1) crow bar with pinch point;

8. Minimum of one (1) hacksaw with twelve (12) blades;

9. Minimum of one (1) hammer, three (3) pound size;

10. Minimum of one (1) fire axe;

11. Minimum of one (1) wrecking bar;

12. Minimum of one (1) bolt cutter, with a minimum of one and one-fourth (1 1/4) inch jaw opening;

13. Minimum of one (1) four (4) ton porta-power jack and spreader tool;

14. Minimum of one (1) shovel, short handle, with pointed blade;

15. Minimum of one (1) shovel, long handle, with pointed blade;

16. Minimum of one (1) come-along tool; and

17. Minimum of two (2) fire blankets.

(b) Ambulance services that have written agreements for this provision by rescue squads, fire departments, or an emergency service agency that meets the requirement established by the cabinet, shall not be required to provide the more extensive access and extrication equipment on the ambulance.

Section 8. Advanced Life Support (ALS) Ambulance Service Providers. An ALS ambulance service provider shall meet the requirements of Sections 1 through 7 of this administrative regulation. It shall also meet the following additional requirements:

(1) Evidence shall be on file to verify that the ALS written medical protocols have been reviewed by the Kentucky Board of Medical Licensure.

(2) Advanced life support services shall be provided on a twenty-four (24) hour, seven (7) days a week, basis. This provision may be met through a call system or by a written mutual aid agreement with another licensed ALS service provider.

(3) An ALS service provider shall have a written agreement with a physician medical director who shall:

(a) Assume responsibilities in accordance with 201 KAR 9:171, Sections 2(1) and (2);

(b) Provide medical consultation and supervision of the medical personnel employed by the ALS service provider in accordance with the written agreement between the ambulance service and the medical director;

(c) Grant authority for medical personnel employed by the ambulance service to perform skills and procedures according to standing orders delegating a practice of medicine as an extension of

the medical director's license;

(d) Exercise authority to limit, suspend, or terminate approval of ALS service provider medical personnel to perform skills and procedures under the license of the physician medical director;

(e) Approve or transfer authority for a supervising physician to temporarily act on behalf of the absent ALS service provider medical director;

(f) Participate in the continuing education of the ALS service provider medical personnel;

(g) Participate in the development and implementation of quality improvement plan for the ALS service provider;

(h) Meet the qualifications specified in 201 KAR 9:171, Section 2(6). Evidence shall be on file to verify that the qualification of the medical director have been reviewed by Kentucky Board of Medical Licensure to assure compliance with 201 KAR 9:171, Section 2(6); and

(i) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or shall be a physician who holds, or is in the process of completing, certification in Advanced Cardiac and Basic Trauma Life Support, or shall have on file, written approval from the Kentucky Board of Medical Licensure.

(4) At the point of patient contact and transportation, the ALS service provider shall:

(a) Carry on each vehicle, and maintain in full operational order, the supplies and equipment as provided for in protocols established in subsection (2) of this section, as required in 201 KAR 9:171, Section 7; and

(b) Stock and maintain drugs and medications as provided for in:

1. Protocols established in accordance with subsection (2) of this section; and

2. Local, state, and federal statutes and regulations;

(c) Store controlled drugs in a locked compartment or equivalent approved by the cabinet. An ambulance service which stores and utilizes controlled substances shall have protocols approved by the cabinet's drug control branch; and

(d) Carry and maintain in full operational order the minimum equipment and supplies required by Section 6 of this administrative regulation.

(e) Operate ambulances staffed according to the requirements of 201 KAR 9:171, Section 5.

(5) If tiered response emergency medical service vehicles are utilized by the ALS service provider, the vehicles shall:

(a) Be staffed by a minimum of one (1) person who has minimum training and current certification as a paramedic.

(b) Have available the minimum equipment and supplies required by Section 6 of this administrative regulation. This may be accomplished through the coordinated response of an ambulance from a separate ambulance service under the provisions of a written mutual aid agreement on file with both services.

Section 9. Specialized Ambulance Transportation Service. (1) A BLS which complies with Sections 1 through 7 of this administrative regulation, and an ALS which complies with Section 8 of this administrative regulation, may be allowed variances approved by the licensing agency. If an ALS or BLS ambulance service operates with approved variances, it may be licensed as a specialized ambulance transportation service.

(2) A specialized license shall specify the limitations of the ambulance service approved by the cabinet;

(3) In reference to Section 5(1) of this administrative regulation, a specialized ambulance service shall not be required to provide emergency care and ambulance transportation on a twenty-four (24) hour, seven (7) days a week, basis;

(4)(a) A BLS service shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6 and 7 of this administrative regulation, with certain variations as approved by the cabinet.

(b) An ALS service provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6, 7, and 8 of this administrative regulation, with certain variations as approved by the cabinet.

(c) A specialized ambulance service desiring variations in equipment, supplies, or personnel shall submit the requests in writing for consideration and approval by the cabinet.

Section 10. 902 KAR 20:117 is hereby repealed.

RICE C. LEACH, M.D., Commissioner
MASTEN CH ILDERS II, Secretary
APPROVED BY AGENCY: October 12, 1994
FILED WITH LRC: October 14, 1994 at noon

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 280 ground ambulance services.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. Since this is an emergency regulation, no public hearing has been held. However, it will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Since this is an emergency regulation, no public hearing has been held. However, it will have no effect on the cost of doing business in the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet. Regulatory activities currently carried out by the Office of the Inspector General will be transferred to the Department for Health Services as required by HB 646 as passed by the 1994 General Assembly. The department will assign necessary staff and funding within previously approved levels.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This regulation will continue existing licensing fees for ground ambulance services. This fee income and general funds will be utilized for implementation of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: Since this is an emergency regulation, no public hearing has been held to date. However, this regulation will not have create any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Regulation complies with the specific legislative mandate passed by the 1994 General Assembly to establish a single lead EMS agency. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services in Kentucky by reducing or eliminating overlapping authority for EMS personnel and providers at the state level.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments: The purpose of this emergency regulation is to comply with HB 646 passed by the 1994 General Assembly.

(11) TIERING: Is tiering applied? Tiering was not applied because the regulation applies to all ambulance services in Kentucky regardless of location; all Kentuckians, whether urban or rural, are equally served and protected by this regulation of ambulance providers.

STATEMENT OF EMERGENCY
902 KAR 14:050E

Emergency administrative regulation 902 KAR 14:050E is necessary in order to act in a timely manner to comply with House Bill 646 to transfer responsibility for licensing, inspection and regulation of ambulance service providers to the Department for Health Services, Cabinet for Human Resources. A Notice of Intent to promulgate an ordinary administrative regulation to replace this emergency administrative regulation will be filed with the Regulations Compiler on or before October 14, 1994.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Health Systems Development

902 KAR 14:050E. Air ambulance service providers.

RELATES TO: KRS 211.950 to 211.958, 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 211.952, 216B.042, 216B.105

EFFECTIVE: October 14, 1994

NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. KRS 211.952 transferred responsibility for licensing, inspecting, and regulating ambulance providers from the Division of Licensing and Regulations, Office of Inspector General, to a single lead agency under the supervision and direction of the Commissioner of Health. This administrative regulation sets forth the licensure and operation requirements for air ambulances providers.

Section 1. Definitions. (1) "FAA" means the Federal Aviation Administration.

(2) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

Section 2. Licensing. A person shall not provide air ambulance services without having first obtained a certificate of need from the Kentucky Health Policy Board (referred to as the board) and a license from the licensing agency.

(1) The license shall designate the Kentucky geographic area to be served.

(2) The licensee shall designate the number of aircraft to be operated and provide the licensing agency with identifying information such as:

(a) Type of aircraft;

(b) Serial number; and

(c) Aircraft identification.

(3) Additional aircraft shall not be operated until the licensing agency has been notified and has verified that the aircraft meets the requirements of this administrative regulation. The service provider shall not be precluded from utilizing a similarly equipped aircraft on a temporary basis without notifying the licensing agency if the primary aircraft is out of service for maintenance.

(4) The licensee shall inform the licensing agency of:

(a) Arrangements for securing aircraft for temporary use, if necessary, prior to initial licensure; and

(b) Changes which occur after initial licensure, such as change of service directors or location where aircraft shall be based.

Section 3. Standards for the Operation of an Air Ambulance Service. An air ambulance service shall comply with the following standards:

(1) The operator of the air ambulance service shall have a valid Air Taxi/Commercial Operators Certificate issued by the FAA.

(2) The air ambulance service shall be under the medical direction of a licensed physician who shall be qualified to provide emergency services for the patient being transported and whose responsibilities shall include:

(a) Advising the medical flight attendant of precautions to be taken prior to and during the flight;

(b) Developing staffing requirements for air ambulance transports based on the patient's condition;

(c) Assuring that adequate supplies and equipment shall be on board to care for the patient being transferred;

(d) Developing patient care protocols;

(e) Monitoring and evaluating the quality of patient care;

(f) Providing individual consultation to air ambulance personnel; and

(g) Developing a continuing education program for all medical flight attendants.

Section 4. Transportation Personnel. (1) If an air ambulance service is transporting a patient, the service shall be staffed by at least one (1) pilot with a valid commercial operator's certificate and one (1) medical flight attendant per patient.

(a) A medical flight attendant shall be:

1. A certified emergency medical technician;
2. A certified paramedic;
3. A registered nurse; or
4. A licensed physician.

(b) An attendant shall remain with the patient at all times during transport.

(2) If the air ambulance service transporting a patient is operating as an advanced life support unit, the service shall meet the staffing requirements of 201 KAR 9:171, Section 5.

Section 5. Equipment and Communication. (1) An air ambulance service shall provide emergency care equipment as required by 902

KAR 14:040, Section 6. The equipment shall be stored on board or in modular prepackaged form to be available for rapid loading and easy access aboard the aircraft at the time of response to a call.

(2) There shall be a means of securing the litter and attached patient.

(3)(a) The vehicle used by the service shall have radio capability to communicate:

1. Ground-to-air;
2. Air-to-air; and
3. Air-to-ground.

(b) The radio capability shall include two (2) way radio communication equipment:

1. Compatible with the statewide ambulance to hospital emergency radio communications system; and
2. Capable of communicating with:
a. Ground personnel to properly coordinate the landing;
b. Physicians directing patient management; and
c. Primary medical responders on the ground who may be caring for the patient.

(4) If the air ambulance service is operating as an advanced life support unit, the service shall also:

(a) Meet the requirements of:

1. 201 KAR 9:161, Section 3(6); and
2. 201 KAR 9:171, Section 7;

(b) Store controlled drugs in a locked compartment or equivalent approved by the cabinet. An air ambulance service which utilizes controlled substances shall have protocols approved by the cabinet's drug control branch.

(5) If the flight attendant referred to in Section 4(1)(a) of this administrative regulation is a registered nurse or physician, the flight attendant shall follow the medical director's protocols relating to:

(a) Authorized procedures and drugs in addition to those referred to in subsection (4)(a)1 of this section; and

(b) Equipment and supplies in addition to those referred to in subsection (4)(2)2 of this section.

Section 6. Records and Reports. (1) An air ambulance service provider shall keep accurate records and reports concerning the transportation of an emergency patient which shall be maintained at the headquarters of the licensee and shall be available for periodic review as deemed necessary by the licensing agency.

(2) The service provider shall provide a full record to the receiving facility of any treatment administered at the pick-up location or during transit. Required records and reports shall include:

(a) The "Kentucky Emergency Medical Service Ambulance Run Report", Form EHS-8A, as incorporated by reference in 902 KAR 14:040, or equivalent provider specific transport record acceptable to the licensing agency. The record shall be completed and forwarded to the Cabinet for Human Resources in accordance with submission dates established by the cabinet;

(b) Employee records including:

1. A resume of an employee's training and experience; and
2. Evidence of current certification.

Section 7. 902 KAR 20:155 is hereby repealed.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: October 12, 1994
FILED WITH LRC: October 14, 1994 at noon

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Thirteen currently licensed air ambulance services.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. Since this is an emergency regulation, no public hearing has been held. However, it will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Since this is an emergency regulation, no public hearing has been held. However, it will have no effect on the cost of doing business in the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this regulation.
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet. Regulatory activities currently carried out by the Office of the Inspector General will be transferred to the Department for Health Services as required by HB 646 as passed by the 1994 General Assembly. The department will assign necessary staff and funding within previously approved levels.
2. Continuing costs or savings: As above.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This regulation will continue existing licensing fees for air ambulance services. This fee income and general funds will be utilized for implementation of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: Since this is an emergency regulation, no public hearing has been held to date. However, this regulation will not have create any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Regulation complies with the specific legislative mandate passed by the 1994 General Assembly to establish a single lead EMS agency. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services in Kentucky by reducing or eliminating overlapping authority for EMS personnel and providers at the state level.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments: The purpose of this emergency regulation is to comply with HB 646 passed by the 1994 General Assembly.

(11) TIERING: Is tiering applied? Tiering was not applied because the regulation applies to all ambulance services in Kentucky regardless of location; all Kentuckians, whether urban or rural, are equally served and protected by this regulation of ambulance providers.

STATEMENT OF EMERGENCY
907 KAR 1:009E

This emergency administrative regulation is being amended to revise the incorporated by reference Physician Manual's reimbursement section to correspond with the reimbursement methodology changes in 907 KAR 1:010E, Payments for physicians' services which are effective October 15, 1994. This action must be taken on an emergency basis to comply with budget reductions mandated by House Bill 2 of the First Extraordinary Session of the General Assembly of 1994 and to maximize the conservation of scarce state resources. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on June 6, 1994 since this regulation revises the incorporated by reference Physician Manual's reimbursement section to correspond with the reimbursement methodology changes in 907 KAR 1:010E, Payments for physicians' services which are effective October 15, 1994. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

BRERETON JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:009E. Physicians' services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50
EFFECTIVE: September 30, 1994
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to physicians' services for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy.

Section 1. Physicians' Services. (1) Covered services shall include those furnished by physicians through direct physician- patient contact in the office, the patient's home, a hospital, nursing facility or elsewhere.

(2) For purposes of the Medicaid Program, oral surgeons shall be treated in the same manner as physicians with regard to coverage for services within their scope of licensed practice, and the term "physician" shall be construed to include oral surgeons unless the context in which it is used is to the contrary.

(3) Covered physicians' services and service limitations are shown in the Physician Manual.

Section 2. Physicians Manual. The Physician Manual specifies the conditions for participation, services covered, and limitations for the physicians' services component of the Medicaid Program. The Physician Manual, revised October 15, [~~dated June 1,~~] 1994, incorporated by reference in this administrative regulation may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. Additional Limitations. (1) A patient placed in "lock-in" status due to overutilization shall receive services only from his lock-in provider except in the case of emergency or referral.

(2) Laboratory procedures.

(a) Laboratory procedures performed in the physician's office shall be limited to those procedures listed on the agency's physician laboratory benefit schedule.

(b) The professional component of physician laboratory procedures performed by board certified pathologists in a hospital setting or an outpatient surgical clinic shall be covered if the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(3) The cost of preparations used in injections shall not be considered a covered benefit, except as specified in the Physician Manual.

(4) Telephone contacts with patients shall not be considered a covered benefit.

(5) Services performed or recipient contacts made exclusively by physician assistants, nurses, or other physician's employees shall not be covered under the physicians' services component.

MASTEN CHILDERS II, Commissioner/Secretary
APPROVED BY AGENCY: September 29, 1994
FILED WITH LRC: September 30, 1994 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency contact person: Masten Childers II

(1) Type and number of entities affected: All physicians participating in the Medicaid Program. (We note that advanced registered nurse practitioners, nurse anesthetists, and other laboratory and x-ray providers will be affected indirectly because their payment upper limits are calculated as a percentage of the physicians' fixed upper limit per procedure.)

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Reflected in companion regulation 907 KAR 1:010E, Payments for physicians' services, filed at the same time as this administrative regulation.

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

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Will be implemented statewide.

(b) Kentucky: Economic impact reflected in companion regulation, 907 KAR 1:010E, Payments for physicians' services.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) 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.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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.

STATEMENT OF EMERGENCY
907 KAR 1:010E

This emergency administrative regulation is being amended to revise the reimbursement methodology for covered physicians' services, effective October 15, 1994. The fixed upper limit per procedure for physicians' services will be established by using a Kentucky Medicaid Fee Schedule developed from a resource-based relative value scale (RBRVS) based on the Harvard 1992 RBRVS Study. The regulation is also being amended to reference the federal mandate for a pediatric vaccine distribution program by October 1, 1994. This action must be taken on an emergency basis to comply with Medicaid budget reduction mandates contained in House Bill 2 of the First Extraordinary Session of the General Assembly of 1994, and to maximize the conservation of scarce state resources. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the regulations compiler.

MASTEN CHILDERS II, Secretary
BRERETON JONES, Governor

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:010E. Payment for physicians' services.

RELATES TO: KRS 205.550

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50, 42 CFR 447 Subpart B, 42 USC 1396a- d, 1396s

EFFECTIVE: September 30, 1994

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a 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 establishing payments for physician services.

Section 1. Definitions. (1) "Resource-based relative value scale (RBRVS) unit" is a value based on current procedural terminology (CPT) codes established by the American Medical Association assigned to the service which takes into consideration the physicians' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide the service in an area relative to national average price.

(2) [~~For purposes of determination of payment,~~] "Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

Section 2. Reimbursement. Payment for covered physicians' services [~~rendered to eligible medical assistance recipients on or after July 1, 1991~~] shall be based on the physicians' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet using a Kentucky Medicaid Fee schedule developed from a resource-based relative value scale (RBRVS) based on the Harvard 1992 RBRVS Study. [~~at 100 percent of the median billed charge for outpatient services and seventy-five (75) percent of the median billed charge for inpatient services using 1989 calendar year billed charges.~~] If there is no RBRVS based fee [~~median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable,~~] the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general rate setting methodology. [~~array of fixed upper limits for the type of service.~~] Fixed upper limits not determined in accordance with the principle shown in this subsection of the administrative regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

(2) RBRVS units shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit. The dollar conversion factors shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia	$25.15
All Other Services	$25.80

Section 3. Reimbursement Exceptions. (1) Except as otherwise specified in this section of this administrative regulation, [~~Effective with regard to services provided on or after October 1, 1988,~~] physicians shall be allowed to secure drugs for specified immuniza-

tions identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs were used to provide immunizations to Medicaid recipients.

(2) Except as otherwise specified in this section of this administrative regulation, [~~Effective with regard to services provided on or after October 1, 1988,~~] physicians shall be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services shall reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs had been obtained through that agency upon receipt of appropriate notice that the drugs were used to provide immunizations to Medicaid recipients.

(3) Effective October 1, 1994, physicians shall be provided drugs for specified immunizations through the pediatric vaccine distribution program to be administered by the Department for Health Services in accordance with the terms, standards, and criteria described in 42 USC 1396a(a)(62) and 1396s.

(4) Payments for specified obstetrical services provided on or after July 1, 1991, shall be at the [~~lower of the~~] actual billed charge up to a maximum of [~~or at~~] $900.

[(4) For inpatient delivery-related anesthesia services provided on or after July 1, 1991, a physician shall be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees are:

Vaginal delivery	$200
Epidural single	$315
Epidural continuous	$335
Cesarean section	$320

(5) Payment for individuals eligible for coverage under Medicare, Part B is made in accordance with Sections 1 and 2 of this administrative regulation and subsections (1) through (4) and subsection (6) of this section within the individual's deductible and coinsurance liability.

(6) [~~For services provided on or after July 1, 1990,~~] Family practice physicians practicing in geographic areas with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed at the physicians' usual and customary actual billed charges up to 125 percent of the fixed upper limit per procedure established by the cabinet.

(7) For services provided on or after July 1, 1990, physician laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty- five (65) percent of the usual and customary actual billed charges.

(8) Procedures specified by Medicare and published annually in the Federal Register and which are commonly performed in the physician's office are subject to outpatient limits if provided at alternative sites and shall be paid adjusted rates to take into account the change in usual site of service.

Section 4. Implementation Date. The changes shown in this administrative regulation shall be applicable with regard to services provided on or after October 15, 1994.

MASTEN CHILDERS II, Commissioner\Secretary
APPROVED BY AGENCY: September 29, 1994
FILED WITH LRC: September 30, 1994 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II

(1) Type and number of entities affected: All physicians participating in the Medicaid Program. (We also note that advanced registered nurse practitioners, nurse anesthetists, and other laboratory and x-ray providers will be affected indirectly because their payment upper limits are calculated as a percentage of the physicians' fixed upper limit per procedure.)

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body

(a) Direct and indirect costs or savings:

1. First year: $50,000,000 (savings)
2. Continuing costs or savings: $50,000,000 (savings)
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Will be implemented statewide.

(b) Kentucky: Comments have not yet been received. However, we anticipate the following economic impact to occur: Physicians participating in the Medicaid Program will have reduced revenues of approximately $50 million annually from the Medicaid Program. The Medicaid Program will have decreased expenditures of approximately $50 million annually as a result of decreasing payments to physicians. The savings will result from a reduction in federal matching funds of approximately $34,817,329 annually and a savings of approximately $15,182,671 annually from state funds.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect would not result.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) 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.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTES: The following administrative regulations were amended by the Administrative Regulations Review Subcommittee and the promulgating agency on October 5, 1994 unless otherwise noted.

DEPARTMENT OF TREASURY
(As Amended)

20 KAR 1:020. Unclaimed property; definitions; location of owners.

RELATES TO: KRS [~~Chapter~~] 393.280(2)
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 1. [~~2.~~] The department shall make reasonable efforts to locate the owners of unclaimed property reported to the department such as [~~, 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.

COMPILER'S NOTE: The following administrative regulation, 20 KAR 1:030, was amended by the Administrative Regulation Review Subcommittee and the promulgating agency at its October 5, 1994 meeting. It was also amended at the Interim Joint Committee on State Government, and became effective, on October 12, 1994.

DEPARTMENT OF TREASURY
(As Amended)

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 August 1 [~~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 August [~~September~~] 1 and January 1 [~~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.

DEPARTMENT OF THE TREASURY
(As Amended)

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 or [~~(s)/~~]claimant[~~(s)~~] the state law on unclaimed properties and that any unclaimed properties due to the owner or [~~/~~]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.

DEPARTMENT OF THE TREASURY
(As Amended)

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 **shall** [~~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
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DEPARTMENT OF THE TREASURY
(As Amended)

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.

DEPARTMENT OF TREASURY
(As Amended)

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
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COMMONWEALTH OF KENTUCKY
Department of Law
(As Amended)

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 **KRS 367.803 has been repealed. [~~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
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COMPILER'S NOTE: The following administrative regulation, 40 KAR 2:070, was amended by the Administrative Regulation Review Subcommittee and the promulgating agency at its October 5, 1994 meeting. It was also amended at the Interim Joint Committee on State Government, and became effective, on October 12, 1994.

COMMONWEALTH OF KENTUCKY
Department of Law
(As Amended)

40 KAR 2:070. Procedure for registration of telephone solicitation merchants.

RELATES TO: KRS **367.46971, 367.46973, 367.46981 [~~Chapter 367 (SB 168, §§7, 8, 10)~~]**
STATUTORY AUTHORITY: KRS 15.180, **[~~Chapter 367 (SB 168, §11),~~]** 367.150(4)**, 367.46983**
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**.46971 [~~(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**.46971 [~~(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**.46971 [~~(SB 168, §7)~~]**.

Section 2. Registration Required. (1) **Registration for telephone solicitation and fees for registration shall be controlled by KRS 367.46971, 367.46973, and 367.46981. [~~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 **TS 1, 10/94 [~~OAG effective July 15, 1994~~]**, hereby adopted and incorporated by reference. **Copies of**

the form may be inspected, copied or obtained at the office of the Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40602, between the hours of 8:30 a.m. to 4:30 p.m.

(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 **pursuant to KRS 367.46981.** ~~[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. **KRS 367.46987 shall control the use of electronic equipment for telephone solicitation.** ~~[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
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COMMONWEALTH OF KENTUCKY
Department of Law
(As Amended)

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 **367.656** ~~[Chapter 367 (HB 474, §6)]~~
STATUTORY AUTHORITY: KRS 15.180, ~~[Chapter 367 (HB 474, §6),]~~ 367.150(4), **367.656**
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. **KRS 367.656 shall control the procedure for notifying a solicitor or consultant prior to revoking, or suspending a registration or refusing to renew a solicitor's or consultant's registration.** ~~[(1) Prior to rejecting, reveking, 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

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COMMONWEALTH OF KENTUCKY
Department of Law
(As Amended)

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 **367.656** **[~~Chapter 367 (HB 474, §5)~~]**

STATUTORY AUTHORITY: KRS 15.180, **[~~367.6 (HB 474, §5(2)),~~]** 367.150(4)**, 367.656**

NECESSITY AND FUNCTION: KRS 367.6**56** 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.**656**, 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 procedings shall be handled pursuant to KRS 13B.070(6) and 13B.110.** [~~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
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COMMONWEALTH OF KENTUCKY
Department of Law
(As Amended)

40 KAR 2:100. Notice of requested disclosure of percentage of gross revenue going to charitable organization.

RELATES TO: KRS 367.667(3), **367.668** [~~(HB 474, §9)~~]
STATUTORY AUTHORITY: KRS 15.180, [~~Chapter 367 (HB 474, §9(5)),~~] 367.150(4), **367.668**
NECESSITY AND FUNCTION: KRS **367.668** [~~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
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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) **A professional fund raiser or professional solicitor shall file a sworn statement with the Attorney General pursuant to KRS 367.655(2) unless the solicitor or fund raiser has previously filed an Internal Revenue Service Federal Form 990 pursuant to KRS 367.657.**

(2) The sworn statement required by KRS 367.657(2) shall contain the following information:

(a) The name of the charitable organization;

(b) A list of any other names the organization has used or been known by;

(c) The address of the organization's principle place of business including the:

1. Street number, city, state and zip code;

2. Telephone number; and

3. Fax number.

(d) A statement as to the business form which the organization uses;

(e) A statement indicating if the organization or any of its officers, directors, employers, fund raisers, fund-raising counsel or solicitors has:

1. Been enjoined by a government agency or court from soliciting;

2. Had its registration denied or revoked;

3. Been the subject of any proceeding regarding any solicitation or registration;

4. Entered into a voluntary agreement of compliance; or

5. Registered with any other state or agency.

(f) If the organization answered affirmatively to any of the questions in paragraphs (e)1 through 5 of this subsection the organization shall provide a list of all agencies and states where it is registered, including the:

1. Dates of registration;

2. Registration number;

3. Types of solicitation conducted in each state, including the dates of those solicitations; and

4. Any other names under which the organization was registered.

(g) List of other states where the organization is registered;

(h) A statement indicating if the organization has applied for tax exempt status or been granted IRS tax exempt status and the current standing of that status;

(i) A statement indicating if contributions to the organization are tax deductible;

(j) A statement indicating:

1. If tax exempt status has ever been denied, cancelled or modified;

2. The name of the agency that denied, cancelled or modified the tax exempt status; and

3. The date the tax exempt status was denied, cancelled or modified.

(k) A description of the purpose of the organization and use of the solicited funds;

(l) The names, addresses, telephone numbers and dates of all professional fund raisers, solicitors, fund-raising counsel, or commercial coventurers the organization contracts with or with which the organization engages services;

(m) The amount paid to professional fund raisers, solicitors, or fund-raising counsel during the previous year; and

(n) Any other information that may be required when filing an Internal Revenue Service Federal Form 990.

(3)(a) The information required by subsection (2) of this section shall be provided by the seller on "Notice of Intent to Solicit Form A-1" (July 1994 edition) which is incorporated by reference.

(b) Copies of the form may be inspected, copied, or obtained at the Office of 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.

[~~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
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40 KAR 2:120. Business opportunity [~~Disclosure document~~] forms.

RELATES TO: KRS **367.816** [~~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 provide forms which allow for the review of a prospective seller's offering of business opportunities for conformity with the business opportunity act and for the registration of the seller as such is needed. [~~To fulfill the requirement of an administrative form for the information set forth in KRS 367.805(4) (HB 469, §2).~~]

Section 1. (1) A seller of business opportunities shall register with the Attorney General pursuant to KRS 367.805 if the seller's proposed activity meets the definition of a business opportunity set out in KRS 367.801.

(2) The Attorney General shall make the business opportunity determination pursuant to subsection (1) of this section consistent with the following information which shall be provided by the seller in affidavit form:

(a) The name of the business opportunity;

(b) The complete address and telephone number of the principle office;

(c) The address and telephone number of the principal office in Kentucky;

(d) A list of trade names, assumed names and all trademarks by which the offeror or the prospective consumer or investor will be doing business;

(e) A list of all officers and directors and salesmen of the offeror along with thier home addresses, home telephone numbers and Social Security numbers;

(f) A description of the product or service to be offered;

(g) A description of any sales commission or other remuneration to be paid to anyone in connection with offers and sales of the business opportunities, including a list of persons and positions to receive commissions;

(h) A list of states in which the business opportunities have been or are being offered for sale;

(i) The proposed beginning date and length of time for offering this business opportunity in Kentucky;

(j) Information relating to the definition of a business opportunity found in KRS 367.801(5);

(k) A statement of whether the the registrant or any of its officers, directors, or sales representatives has been a defendant or is currently a defendant in any litigation or declares benkruptcy within the last seven (7) years.

(3)(a) The information required pursuant to subsection (2) of this section shall be supplied by the seller on a "Determination of Registration for Sale of Business Opportunity Form A-1" (July 1994 edition) which is incorporated by reference.

(b) Copies of the "Determination of Registration for Sale of Business Opportunity Form A-1" may be inspected, copied, or obtained at the Office of 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.

Section 2. (1) If the Attorney General determines that a seller of business opportunities must register pursuant to KRS 367.805, the seller shall complete a "Business Opportunity Annual Registration Statement Form A-2" which shall contain the following information in affidavit form:

(2)(a) The name of the business opportunity;

(b) The complete address and telephone number of the principle office;

(c) The address and telephone number of the principal office in Kentucky;

(d) A list of trade names, assumed names and all trademarks by which the offeror or the prospective consumer or investor will be doing business;

(e) A list of all officers and directors and salesmen of the offeror along with their home addresses, home telephone numbers and Social Security numbers;

(f) The length of time, the business opportunity has been offered for sale;

(g) A statement of whether the registrant or company or any of its officers, directors, or sales representatives have been involved in or is currently involved in any legal proceeding as set forth in KRS 367.805(1)(d);

(h) A statement of whether the the registrant or any of its officers, directors, or sales representatives has been a defendant or is currently a defendant in any litigation or declares benkruptcy within the last seven (7) years;

(i) A statement of whether the registrant or the company offering the business opportunity or its officers, directors, or sales representatives has been a party to any legal cause of action brought by a consumer/investor of the business opportunity within the last seven (7) years and, if so, the name and address of individual bringing such action;

(j) The names and addresses, and telephone numbers for people buying a business opportunity from offeror during the past two (2) years;

(k) The names and addresses of individuals requesting a return of money from the purchase of a business opportunity during the past three (3) years;

(l) A complete description of the training to be provided to the consumer-investor;

(m) A complete description of the actual services the offeror of the business opportunity will provide for the consumer-investsor.

(3)(a) The information required pursuant to subsection (1) of this section shall be supplied by the seller on a "Business Opportunity Annual Registration Statement Form A-2" (September 1994 edition) which is incorporated by reference.

(b) Copies of the "Business Opportunity Annual Registration Statement Form A-2" (September 1994 edition) may be inspected, copied, or obtained at the Office of 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. [~~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
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40 KAR 2:130. Hearings for [~~rejection,~~] revocation, suspension or refusal to renew registration for business opportunities.

RELATES TO: KRS 367.801, 367.805, 367.816, 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 administrative [~~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 circuit court within thirty (30) days after the order has been mailed to the party.** [~~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(6).~~]

BRENT L. CALDWELL, Deputy Attorney General
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COMPILER'S NOTE: The following administrative regulation was amended by the Administrative Regulation Review Subcommittee and the promulgating agency at its October 5, 1994 meeting. It was also amended at the Interim Joint Committee on State Government, and became effective, on October 12, 1994.

COMMONWEALTH OF KENTUCKY
Department of Law
(As Amended)

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 **administrative** [~~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 **business opportunity** [~~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 **business opportunity** [~~licensee or certificant~~] by the hearing officer:
(a) At the last known address of the **business opportunity** [~~licensee or certificant~~];
(b) By certified mail, return receipt requested.
(5)(a) The **business opportunity** [~~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 **business opportunity** [~~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.

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
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40 KAR 2:150. Cremation authorization forms.

RELATES TO: KRS **367.97501-367.97537** [~~Chapter 367 (SB 137)~~]
STATUTORY AUTHORITY: KRS 15.180, [~~Chapter 367 (SB 137),~~] 367.150(4), **367.97501-367.97537**
NECESSITY AND FUNCTION: To fulfill the requirement for a cremation authorization form identified in KRS **367.07501-367.97537** [~~367 (SB 137)~~].

Section 1. **Cremation Authorization Form. The "Cremation Authorization Form CR-1" required by KRS 367.97524 shall contain the following information:**
(1) The name of the crematory authority;
(2) The address, including the city, state and zip code;
(3) The telephone number of the crematory authority;
(4) The name of the deceased, the place and time of death;
(5) Whether or not the decedent's death was due to an infectious disease;
(6) The name of the authorizing agent, and the relationship of the authorizing agent to the decedent;
(7) Statements of requirements for cremation to be read and initialed by the authorizing agent;
(8) Instructions on disposition of the cremated remains;
(9) The date the body was received by the crematory authority, the date of cremation, the name of the person performing the cremation, and the signature of the person identifying the body for cremation;
(10) Signature of the authorizing agent granting consent to the cremation of the decedent.

Section 2. (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.

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40 KAR 2:160. Crematory annual report form.

RELATES TO: KRS **367.97504** [~~367 (SB 137)~~]
STATUTORY AUTHORITY: KRS 15.180, [~~Chapter 367 (SB 137),~~] 367.150(4), **367.97504**
NECESSITY AND FUNCTION: To fulfill the requirement for a crematory annual report form identified in KRS **367.97504** [~~Chapter 367 (SB 137)~~].

Section 1. **Crematory Annual Report Form. The "Crematory Annual Report Form CR-2" required by KRS 367.97504 shall contain the following information:**
(1) The name of the crematory authority;
(2) The address of the crematory authority;
(3) The number of cremations performed by the crematory authority during the preceding calendar year;
(4) A numerical breakdown of the disposition of the cremated remains in the preceding year, indicating the number:
(a) Scattered;
(b) Interred;
(c) Returned to the family or funeral home; or
(d) Other means of disposition. Such other means of disposition used shall be briefly described;

(5) A listing of the names and registration numbers of all crematory operators who worked for the crematory authority during the preceding year.

Section 2. (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
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(As Amended)

40 KAR 2:170. Preneed cremation authorization forms.

RELATES TO: KRS **367.97501-367.97537** [~~367 (SB 137)~~]
STATUTORY AUTHORITY: KRS 15.180, [~~Chapter 367 (SB 137),~~] 367.150(4), **367.97501-367.97537**
NECESSITY AND FUNCTION: To fulfill the requirement for a cremation authorization form identified in KRS **367.97501-367.97537** [~~Chapter 367 (SB 137)~~].

Section 1. **Preneed Cremation Authorization Form. The "Preneed Cremation Authorization Form CR-3" required by KRS 367.97527 shall contain the following information:**

(1) The name of the crematory authority;
(2) The address, including the city, state and zip code;
(3) The telephone number of the crematory authority;
(4) The name of the preneed authorizing agent;
(5) A statement explicitly authorizing the crematory authority to cremate the remains;
(6) Statements of the statutory requirements for cremation to be read and initialed by the authorizing agent;
(7) Instructions on the disposition of the cremated remains;
(8) The signature of the authorizing agent to authorize the cremation;
(9) The home address of the authorizing agent, including the city, state and zip code;
(10) The home telephone number of the authorizing agent.

Section 2. (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
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COMMONWEALTH OF KENTUCKY
Department of Law
(As Amended)

40 KAR 2:180. Statement of training for crematory operators forms.

RELATES TO: KRS **367.97501-367.97537** [~~367 (SB 137)~~]
STATUTORY AUTHORITY: KRS 15.180, [~~Chapter 367 (SB 137),~~] 367.150(4), **367.97501-367.97537**
NECESSITY AND FUNCTION: To fulfill the requirement for a statement of training for crematory operators identified in KRS **367.97501-367.97537** [~~Chapter 367 (SB 137)~~].

Section 1. **Statement of Supervision Form. The "Statement of Supervision for Registered Crematory Retort Operators Form CR-4" required by KRS 367.97514(6) shall contain the following information:**

(1) The name of the crematory retort operator who was supervised;
(2) The name of the employer crematory authority;
(3) The name of the supervising crematory operator;
(4) The signature of the crematory retort operator;
(5) The signature of the crematory operator who supervised the crematory retort operator;
(6) The registration number of the crematory operator.

Section 2. (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
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40 KAR 2:190. Crematory authority license application forms.

RELATES TO: KRS **367.97501-367.97537** [~~367 (SB 137)~~]
STATUTORY AUTHORITY: KRS 15.180, [~~Chapter 367 (SB 137),~~] 367.150(4), **367.97501-367.97537**
NECESSITY AND FUNCTION: To fulfill the requirement for a crematory authority license application form identified in KRS **367.97501-367.97537** [~~Chapter 367 (SB 137)~~].

Section 1. **Crematory Authority License Application Form. The "Crematory Authority License Application Form CR-5" required by KRS 367.97504 shall contain the following information:**

(1) A statement that such license must be obtained from the Attorney General at least thirty (30) days prior to the opening of the crematory authority to conduct cremations, and that all crematory authorities in the state must apply for said license within 180 days of the effective date of KRS 367.97501-367.97537;
(2) A statement directing that the registration fee accompany the application, and that the application should be filled out by a person with authority to bind the crematory authority;
(3) The date of the application;
(4) The name of the owner of the crematory authority;

(5) The name of the crematory authority, if different from the owner;
(6) The business telephone number;
(7) the physical address of the crematory authority, including the city, county, state and zip code;
(8) Mailing address of crematory authority, if different from the physical address;
(9) The form of organization of the crematory authority;
(10) The name, position, address, and Social Security number of all persons having an ownership interest in the crematory authority;
(11) The name, address, and account number, if applicable, of three (3) financial references. Suitable financial references include financial institutions and industry suppliers. Personal references are not acceptable.
(12) The name and address of the financial institution at which the crematory authority has its business bank account;
(13) The account number of the business bank account;
(14) A statement as to whether the crematory authority intends to solicit preneed funeral contracts. If yes, an application for a preneed funeral sales license must be attached;
(15) A statement that the information provided is true and accurate to the best of the applicant's knowledge;
(16) Notice to the crematory authority that it is requested to notify the Attorney General of any changes in the information requested on CR-5, and notice that the crematory license may be revoked if the crematory administrative regulations are violated;
(17) A dated and notarized signature of the person making the application on behalf of the crematory authority;

Section 2. (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
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COMPILER'S NOTE: The following administrative regulation, 40 KAR 2:200, was amended by the Administrative Regulation Review Subcommittee and the promulgating agency at its October 5, 1994 meeting. It was also amended at the Interim Joint Committee on State Government, and became effective, on October 12, 1994.

DEPARTMENT OF LAW
(As Amended)

40 KAR 2:200. Application for removal sale license [~~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. Application for Removal Sale License [~~Permit~~] Form. The "Application for Removal Sale Permit Form GOB-1" required by KRS 365.420(7) shall contain the following information:
(1) Identification of the county clerk from whom the license is sought;
(2) Instructions to the applicant on how the form is to be completed;
(3) The name and address of the owner of the goods to be sold. If the applicant is a partnership, corporation, firm, or association, then all partners or officers should be listed, with positions held indicated;
(4) The complete address of the applicant's principal office in Kentucky;
(5) The date and place of incorporation or organization;
(6) Whether controlling interest in the firm or business has been transferred within the twelve (12) months prior to the filing of the application, and if so, provide specific information as to the parties involved and the date of the transfer;
(7) The name and style in which the sale is to be conducted;
(8) The address of the premises at which the sale will be conducted;
(9) The date of the sale will begin and its projected duration;
(10) The name and address of the person who will be in charge and responsible for the conduct of the sale;
(11) The nature of the occupancy of the sales premises, and the effective date of termination of the occupancy;
(12) The condition or necessity which is the occasion for the sale;
(13) The name of the sale, and why the name is truthfully descriptive of the sale;
(14) If the application is for a license to conduct a removal sale, the location of the premises to which the business will be relocated;
(15) If the application is for a license to conduct a fire sale, the time, location, and cause of the damage must be specified;
(16) A statement as to whether the sale involves food or drugs damaged by fire or other casualty. If so, the approval of the Department for Human Resources shall be obtained before the application may be accepted;
(17) A full, detailed, and complete inventory of the goods that are to be sold on pages of the form provided for that purpose;
(18) The total value of the inventory at cost;
(19) The total value of the inventory at retail;
(20) A bond payable to the Commonwealth of Kentucky in the penal sum of $1,000, with a notarized statement of intent to comply with all laws related to the license;
(21) A notarized statement that the information provided is true and accurate;
(22) An itemized inventory, consisting of sufficient information concerning each item or class of item to allow clear identification. This information shall include, but not be limited to the quantity, make, brand name, manufacturer's number, the name and address of the seller or supplier of the goods, the date of purchase, the date of delivery of the goods, the model, if applicable, or any other information necessary to clearly identify the goods. A separate listing, in like manner, shall be made of any goods purchased within the ninety (90) day period immediately prior to the date of this application;
(23) A certification of the inventory by the authorized individual filing the application that the inventory provided is true and accurate. The statement shall be signed by the applicant and be notarized;
(24) A statement of requirements to be observed in conducting a fire, removal, or other sale pursuant to the license. This shall include:
(a) The posting of a duplicate of the license on the front door of the premises at which the sale will be held, in such a manner that it will be clearly visible from the outside;
(b) A posting of a copy of the inventory in a conspicuous place in the sales room;
(c) That all advertising relating to the sale shall prominently state the final date of the sale and the sale license number; and

(d) If the licensee is engaged in business at other locations, advertising for such other locations shall not represent or imply participation in or cooperation with the sale at the premises specified in the license. Advertising for the licensed sale at the premises specified in the license shall not represent or imply any participation in or cooperation with such sale at any other locations;

(25) A license for the sale, which shall include the name of the title of the county clerk, the number of the license, the name of the business conducting the sale, the type and style of the sale, the location at which the sale shall be held, the expiration date of the license, the date of issuance of the license, and the signature of the county clerk.

Section 2. (1) The "Application for License [~~Permit~~] to Conduct a Removal Sale Form GOB-1" [~~(July 1994 edition)~~] is incorporated by reference.

(2) Copies of the "Application For License [~~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
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DEPARTMENT OF LAW
(As Amended)

40 KAR 2:210. Application for conducting more than two (2) going-out-of-business sales in four (4) years form.

RELATES TO: KRS 365.447 [~~Chapter 365 (HB 787, §4)~~]
STATUTORY AUTHORITY: KRS 15.180, [~~Chapter 365 (HB 787, §4),~~] 367.150(4), 365.447
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 365.447 [~~Chapter 365 (HB 787, §4)~~].

Section 1. Application for Excess Permits Form. The "Application for Excess Permits Form GOB-2" required by KRS 365.447 shall contain the following information:

(1) The title of the county clerk;

(2) The number of going-out-of-business permits acquired by the applicant during past four (4) years;

(3) For each of the previous sales, the applicant shall provide the name of the store involved, the name(s) of the owner(s), and the date and address of the sale;

(4) The name and address of the owner(s) of the goods to be sold. If the owner is a partnership, corporation, firm, or association, list all partners and officers;

(5) The address of the principal office of the applicant in Kentucky;

(6) The date and place of incorporation or organization of the business;

(7) Whether the controlling interest in the firm or business has been transferred within the twelve (12) months prior to the filing of the application. If the answer is yes, then specify the parties to the transfer and the date of the transfer;

(8) The name and style in which the sale is to be conducted;

(9) The address of the premises where the sale will be conducted;

(10) The date the sale is to begin and the projected duration of the sale;

(11) The name and address of the person who will be in charge and responsible for the conduct of the sale;

(12) Nature of the occupancy (lease, etc.) of the premises where the sale is to be held, and the effective date of the termination of the occupancy;

(13) The condition or necessity which is the occasion of the sale;

(14) An explanation of the condition or necessity for the previous sales, and the legitimate business reason for obtaining the excess permits;

(15) The name of the sale, and the reason why the name is truthfully descriptive of the sale;

(16) The location to which the business will be relocated if the sale is a removal sale;

(17) The time, location, and cause of damage to the goods if the license is to conduct a fire sale;

(18) Whether the sale involves foods or drugs damaged by fire or other casualty. If it does, proof of approval by the Department for Human Resources must be provided before the application may be accepted;

(19) The total value of the inventory at cost, with inventory pages from Form GOB-1 attached;

(20) The total value of the inventory at retail from the attached GOB-1 inventory pages;

(21) A sworn and notarized statement from the authorized individual filing the application;

(22) A notice that the applicant will be charged the actual costs of the Attorney General's investigation. The minimum charge will be twenty-five (25) dollars, and the maximum charge will be $250.

Section 2. (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
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DEPARTMENT OF LAW
(As Amended)

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 365.447 [~~Chapter 365 (HB 787, §4)~~]
STATUTORY AUTHORITY: KRS 15.180, 365.447, [~~Chapter 365 (HB 787, §4),~~] 367.150(4)
NECESSITY AND FUNCTION: KRS 365.447 [~~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 365.447 [~~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
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DEPARTMENT OF LAW
(As Amended)

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 **365.447** **[~~Chapter 365 (HB 787, §4)~~]**
STATUTORY AUTHORITY: KRS 15.180, **365.447,** **[~~Chapter 365 (HB 787, §4),~~]** 367.150(4)
NECESSITY AND FUNCTION: KRS **365.447** **[~~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 **365.447** **[~~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 **365.447** [~~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 **13B.030-13B.040** [~~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
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GENERAL GOVERNMENT CABINET
Board of Respiratory Care
(As Amended)

201 KAR 29:070. Scope of practice.

RELATES TO: KRS 314A.100
STATUTORY AUTHORITY: KRS 314A.205(3)
NECESSITY AND FUNCTION: This administrative regulation clarifies the types of activities which are permissible by persons holding certification as a respiratory care practitioner.

Section 1. Definitions. "Agency or facility guidelines" [~~"Established institutional protocol"~~] shall mean a written set of guidelines for initiating, adjusting or discontinuing care which have been approved by the medical director.

[~~(1)~~] The "agency or facility guidelines" [~~"established institutional protocol"~~] shall also describe the specific training or education necessary to enable the respiratory care practitioner to competently perform each of these procedures.

[~~(2) "Agency or facility guidelines" shall not include the activities of another licensed profession if these activities are specifically protected by Kentucky law governing that profession.~~]

Section 2. **A respiratory care practitioner shall perform respiratory care procedures not specified by KRS 314A.100 in accordance with agency or facility guidelines.** [~~In addition to those procedures set forth specifically in KRS 314A.100[(1)], a respiratory care practitioner may perform other procedures not specifically prohibited by KRS 314A.100[(1)]. In the performance of these procedures the respiratory care practitioner shall practice in accordance with "agency or facility guidelines".~~] [~~"established institutional protocol."~~]

Section 3. (1) A respiratory care practitioner[~~s~~] shall [~~at all times~~] be responsible for practicing within **his** [~~their~~] level of competence. [~~Failure to do so or by engaging in those procedures specifically prohibited by KRS 314A.100(1) or by performing procedures not listed in the established institutional protocol shall constitute unprofessional conduct in the practice of respiratory care.~~]

(2) The following conduct by a respiratory care practitioner shall constitute unethical conduct in the practice of respiratory care:

(a) Failure to practice within their level of competence;

(b) Engaging in those procedures specifically prohibited by KRS 314A.100; **or**

(c) [~~Engaging in practices specifically protected by the statutes governing other licensed professions; or~~

[~~(d)~~] Performing procedures not listed in the agency or facility guidelines.

JAMES RAVENCRAFT, Chairman
APPROVED BY AGENCY: July 26, 1994
FILED WITH LRC: August 10, 1994 at 10 a.m.

COMPILER'S NOTE: The following administrative regulation, 301 KAR 3:022, was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources, and became effective on September 28, 1994.

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

301 KAR 3:022. License, tag and [~~,~~] permit[~~, and stamp~~] fees.

RELATES TO: KRS 150.175, 150.180, 150.195 [~~150.190, 150.200,~~] 150.225, 150.235, 150.240, 150.280, 150.290, 150.485, 150.525, 150.603, 150.520, 150.630, 150.660, 150.670, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175, 150.180, 150.195, [~~150.190],~~ 150.225, 150.240, 150.280, 150.485, 150.525, 150.603, 150.620, 150.660, 150.670
NECESSITY AND FUNCTION: The commissioner, with the concurrence of the Fish and Wildlife Resources Commission, finds it necessary to establish the fee schedule in this regulation to generate the necessary funds to finance programs to protect, manage, and conserve the fish and wildlife resources of the state so a permanent and continued supply will be maintained for the benefit of present and future generations. This amendment is necessary to reduce the commercial wildlife and fisheries pet and propagation permit fees, eliminate the fish transportation permit fee, add waterfowl stamp and pond stocking fees and eliminate the fishery pet permit fee.

Section 1. Licenses, tags, and permits [~~and stamps~~] listed in this section shall be valid from March 1 through the last day of February the following year.

(1) Sport fishing licenses:

(a) Statewide fishing license (resident): $12.50.

(b) Statewide fishing license (nonresident): $30.

(c) Joint statewide fishing license (resident): $22.50.

(d) Trout permit [~~stamp~~] (resident or nonresident): $5.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: $100.

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $500.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of 10 tags: $10.

(b) Commercial fishing gear tags (nonresident) block of 10 tags: $75.

(4) Hunting licenses:

(a) Statewide hunting license (resident): $12.50.

(b) Statewide hunting license (nonresident): $95.

(c) Statewide junior hunting license (resident or nonresident): $6.25.

(d) Statewide waterfowl permit (resident or nonresident) $7.50
(5) Combination hunting and fishing license (resident): $20.
(6) Trapping licenses:
(a) Trapping license (resident): $15.
(b) Trapping license (resident landowner/tenant): $7.50.
(c) Trapping license (nonresident): $115.
(7) Big game permits:
(a) Big game permit, deer (resident or nonresident): $21.
(b) Junior big game permit, deer (resident or nonresident): $12.50.
(c) Big game permit, turkey (resident or nonresident): $17.50.

Section 2. Licenses, tags and [,] permits, [~~and stamps~~] listed in this section shall be valid for the calendar year in which they are issued.
(1) Live fish and bait dealer's licenses:
(a) Live fish and bait dealer's license (resident): $30.
(b) Live fish and bait dealer's license (nonresident): $60.
(2) Commercial mussel licenses:
(a) Musseling license (resident): $300.
(b) Musseling license (nonresident): $1500.
(c) Mussel buyer's license (resident): $500.
(d) Mussel buyer's license (nonresident): $1500.
(3) Commercial taxidermist license: $100.
(4) Commercial guide licenses:
(a) Commercial guide license (resident): $100.
(b) Commercial guide license (nonresident): $250.
(5) Fur dealer's licenses:
(a) Fur processor's license (resident): $150.
(b) Fur buyer's license (resident): $50.
(c) Fur buyer's license (nonresident): $230.
(6) Nonresident hunting preserve license: $10.
(7) Shooting preserve permit: $100.
(8) Commercial fox hound training enclosure permit: $250.
(9) Collecting permits:
(a) Educational wildlife collecting permit: $10.
(b) Scientific wildlife collecting permit: $200.
(10) Food permits:
(a) Food permit for selling bobwhite quail from propagation farms only: $150.
(b) Retail food permit for propagated quail: $5.
(11) Pay lake license:
(a) First two (2) acres or less: $100.
(b) Per additional acre or part of acre: $20.
(12) Bird dog training device permit: $10.

Section 3. Licenses, tags and [,] permits [~~and stamps~~] listed in this section shall be valid for one (1) year from the date of issue:
[~~(1) Pet and propagation permits:~~]
(1) Commercial wildlife pet and propagation permit: $50 [~~100~~] [~~200~~].
[~~Fishery pet permit: $10.~~]
(2) Commercial fish propagation permit: $50 [~~100~~].
[~~(2) Fish transportation permit: $25.~~]

Section 4. Licenses, tags and [,] permits [~~and stamps~~] listed in this section shall be valid for three (3) years from the date of issue.
(1) Falconry permit: $45.
(2) Noncommercial wildlife pet and propagation permit: $75.

Section 5. Licenses, tags and [,] permits [~~and stamps~~] listed in this section shall be valid for the date or dates specified on each.
(1) Short-term nonresident licenses:
(a) Three (3) day fishing license: $12.50.
(b) Fifteen (15) day fishing license: $20.
(c) Five (5) day hunting license (not valid for big game): $27.50.
(d) Three (3) day fur bearer's license: $40.
(2) Wildlife transportation permit: $25.
(3) Special commercial fishing permit: $500.
(4) Commercial waterfowl shooting area permit: $100.
(5) Shoot to retrieve field trial permits:
(a) Per trial (maximum four (4) days): $50.
(b) Single day: $15.

Section 6. Licenses, tags and [,] permits [~~and stamps~~] listed in this section shall be valid on a per unit basis as specified.
(1) Bird bands (each): $.25.
(2) Ballard waterfowl hunt (per person, per day): $15.
(3) Horse stall rental (per space, per day): $2.
(4) Dog kennel rental (per dog, per day): $.50.
(5) Conservation education camp fee: $50.
(6) Pond stocking fee (per stocking): $25.

Section 7. Except for scientific or educational collecting permits as specified in 301 KAR 4:070 the licenses, tags and [,] permits [~~and stamps~~] authorized by this administrative regulation shall not be changed, altered, or defaced in any manner. All licenses, tags and [,] permits [~~and stamps~~] are nontransferable.

Section 8. These fees shall apply to all licenses, tags and [,] permits [~~and stamps~~] issued with an effective beginning date on or after January 1, 1995 [~~1993~~].

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: June 10, 1994
FILED WITH LRC: June 15, 1994 at 9 a.m.

COMPILER'S NOTE: The following administrative regulation, 401 KAR 50:035, was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources, and became effective on September 28, 1994.

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

401 KAR 50:035. Permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.10-120, 401 KAR Chapters 50 through 65, 40 CFR Parts 51, 52, 60, 70, 72, 73, 75, 76, 77, 78, 42 USC 7401-7671q, July 21, 1993 Federal Register (57 FR 32250)
STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120
NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation combines construction and operating permits into one (1) permit and provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as [~~otherwise~~] provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 50:010, unless the context clearly indicates otherwise.
(1) "Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 42 USC 7651 through 7651o and 40 CFR Parts 72, 73, 75, 76, 77, and 78. 40 CFR Parts 72, 73, 75, 76, 77,

and 78 are incorporated by reference in Section 11 of this administrative regulation.

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

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

(a) Corrects typographical errors;

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

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

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

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

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

(5) "Affected states" means those states:

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

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

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

(7) "Applicable requirement" means a federally enforceable requirement or a state-origin requirement or standard.

(8) "Classification date" means the date on which the U.S. EPA publishes a final rule granting full or interim [~~, partial, or conditional~~] approval to Kentucky's Permit Program submitted pursuant to 42 USC 7661 through 7661f (Title V of the Act).

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

(10) "Conditional major source" means a source that accepts a limit made federally enforceable as a permit condition [~~on a federally enforceable permit~~] which prevents it from being classified as a major source as defined in this administrative regulation, if the limit is not a federally enforceable requirement.

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

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

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

(14) [~~(12)~~] "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038, made effective November 29, 1993.

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

(16) [~~(14)~~] "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to November 29, 1993 [~~the effective date of this administrative regulation,~~] or source that is authorized by the cabinet to operate on or before the effective date of this administrative regulation.

(17) [~~(15)~~] "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision and is required by the U.S. EPA to be federally enforceable.

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

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

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

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

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

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

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

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

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

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

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

(19) [~~(17)~~] "Final permit" means:

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

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

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

(21) [~~(19)~~] "General permit" means a permit that meets the

requirements of Section 4(4) of this administrative regulation.

(22) [~~(20)~~] "Major source" means a stationary source, or a group of stationary sources, that are located on one (1) property or two (2) or more contiguous or adjacent properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping (i.e., all have the same two (2) digit code as described in the 1987 Standard Industrial Classification Manual, which is incorporated by reference in 401 KAR 51:017, Section 21) which emits a regulated air pollutant and which is described in paragraphs (a), (b), or (c) of this subsection.

(a) On or after the classification date, a stationary or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant listed in 401 KAR 57:061, made effective November 29, 1993, or twenty-five (25) tons per year or more of a combination of hazardous air pollutants listed in 401 KAR 57:061, or a lesser quantity established by the U.S. EPA and promulgated in an administrative regulation in 401 KAR Chapter 57. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources.

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

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plant;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or
27. All other stationary source categories subject to an administrative regulation in 401 KAR Chapters 59 and 61 which are promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or a national emission standard for hazardous air pollutants (NESHAP) in 401 KAR Chapter 57, promulgated pursuant to 42 USC 7412 (Section 112 of the Act).

(c) A major stationary source defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act) including:

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

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

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

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

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

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

(28) [~~(26)~~] "Regulated air pollutant" means the following:

(a) For sources subject to 40 CFR Part 70:

1. Nitrogen oxides;
2. [~~(b)~~] Volatile organic compounds;
3. [~~(c)~~] A pollutant for which a national [~~an~~] ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act) [~~in 401 KAR 53:010~~];
4. [~~(d)~~] A pollutant that is subject to a standard promulgated pursuant to 42 USC 7411 and 7412 (Sections 111 and 112 of the Act);
5. [~~(e)~~] A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 USC 7671 through 7671q (Title VI of the Act); and

(b) For state origin requirements:

1. A pollutant for which a state ambient air quality standard has been promulgated in 401 KAR 53:010; and
2. [~~(f) A pollutant listed in 401 KAR 57:061; and~~
~~(g)~~] A pollutant listed in [~~401 KAR 63:020,~~] 401 KAR 63:021, made effective November 11, 1986, or 401 KAR 63:022, made effective November 11, 1986.

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

(30) [~~(28)~~] "Responsible official" means one (1) of the following:

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

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

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

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

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

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

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

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

(34) [~~(32)~~] "State-origin permit" means a permit that contains only state-origin requirements, or that contains federally enforceable requirements but is not required by the U.S. EPA to be a federally enforceable permit. [~~permit conditions. If the permit contains one (1) or more federally enforceable permit conditions it is a federally enforceable permit.~~]

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

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

(37) "Synthetic minor source" means a source that accepts a limit made federally enforceable as a permit condition [~~on a federally enforceable permit~~] which prevents it from being classified as a major source as defined in either 401 KAR 51:017 or 401 KAR 51:052, if the limit is not a federally enforceable requirement.

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

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

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

(a) The source is a minor source pursuant to 40 CFR Part 70 and is not subject to an applicable requirement; or

(b) The source is a minor source that;

1. **Emits or has the potential to emit less than twenty-five (25) tons per year of a regulated air pollutant, except as provided in subparagraphs 2 and 3 of this paragraph,** [~~Has uncontrolled emissions of less than twenty five (25) tons per year and potential emissions of five (5) tons per year or less of a pollutant for which an ambient air quality standard is listed in 401 KAR 53:010,~~] or a lesser amount if specified in an applicable requirement; and

2. Has potential emissions of less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061 or a lesser amount specified in an applicable requirement; and

3. Is not subject to a requirement in 40 CFR Parts 60, 61, or 63; [60, 40 CFR Part 61, 401 KAR 63:020,] 401 KAR 63:021; [;], or 401 KAR 63:022; and

4. Is not required by the U.S. EPA to obtain a permit.

(2) The following activities and affected facilities shall be exempt from the requirement to obtain a permit pursuant to this administrative regulation. These exemptions shall not relieve a source from the requirements of any other applicable requirement. The cabinet may require the owner or operator to demonstrate compliance with all applicable requirements. [~~at a source shall be exempt from this administrative regulation if the activity is not the same or similar to the primary activity of the source.~~]

(a) an asbestos demolition or renovation operation subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042, made effective November 6, 1987; [~~Activities involving the routine maintenance and repair of a facility, including cleaning, painting, welding, sweeping, vacuuming, steam cleaning, washing, coating,or sandblasting.~~]

(b) An activity subject only to the provisions of 40 CFR Part 60, Subpart AAA; [~~Food preparation for on-site consumption.~~]

(c) An activity that emits only nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement; [~~Heating, ventilation, air conditioning, and refrigeration systems.~~]

(d) Open burning pursuant to 401 KAR 63:005, made effective March 1, 1984; [~~Clerical activities, including the use of office supplies and equipment.~~]

(e) Vehicles used for the transport of passengers or freight; and [~~Sewer line vents constructed to meet building codes or safety requirements.~~]

(f) Publicly owned roads.

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

(a) The activity shall be included in the permit application with a request that the activity be exempt from permitting; [~~An asbestos demolition or renovation operation which is subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042.~~]

(b) The activity shall not be subject to an applicable requirement; [~~An affected facility which is subject only to the provisions of 40 CFR Part 60, Subpart AAA.~~]

(c) The potential or actual emissions from the activity shall not cause the source to be subject to an applicable requirement to which the source would not otherwise be subject; [~~A vehicle used for the transport of passengers or freight.~~]

(d) The activity shall have a potential to emit of less five (5) tpy of any regulated air pollutant, not including a hazardous air pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act) or a toxic pollutant listed in 401 KAR 63:021 or 401 KAR 63:022. [~~An affected facility subject only to the provisions of 401 KAR 63:005.~~]

(e) The potential to emit of all activities exempted pursuant to this subsection shall be less than two (2) tpy of any hazardous air pollutant and less than five (5) tpy of any combination of hazardous air pollutants, or a lesser amount if specified by the U.S. EPA; [~~Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement.~~]

(f) The potential to emit of all activities exempted pursuant to this subsection shall be less than the significance level of any toxic air pollutant listed in 401 KAR 63:021 or 401 KAR 63:022. [~~Fire schools or fire training activities.~~]

(g) The activity shall not be the incineration of medical waste. [~~The installation of air pollution control equipment if none is required. The owner or operator shall notify the cabinet in writing prior to installing the equipment.~~]

(h) Alteration or modification of air pollution control equipment to

~~provide an equivalent or more efficient control of air pollution. The owner or operator shall notify the cabinet in writing for the cabinet's concurrence at least forty-five (45) days before installation of the control equipment.]~~

(4) The cabinet shall maintain an updated list of those activities submitted and approved pursuant to subsection (3) of this section and shall provide this list to any person upon request. ~~[If requested by a source, the following affected facilities may also be exempt from this administrative regulation. The cumulative emissions from the units exempted in this paragraph shall not exceed five (5) tons per year. The emissions from these units shall not be excluded from the permit application for a source if the emissions are necessary to determine compliance with an applicable requirement or to determine if a requirement is applicable.~~

~~(a) An incinerator with a charging rate of less than 500 pounds per hour, unless it is subject to 401 KAR 51:017, 401 KAR 51:052, Title 401 Chapter 57, 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.~~

~~(b) One (1) or more indirect heat exchangers, with a rated total heat input capacity of less than eight (8) million BTU per hour which use natural gas or liquid petroleum gas as a main fuel and which use only distillate fuel oil as a standby fuel, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.~~

~~(c) An individual addition of a natural gas or liquid petroleum gas-fired boiler having an individual rated heat input capacity of less than eight (8) million BTU per hour, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.~~

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

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

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

~~(5) Owners or operators of a source may petition the cabinet to exempt other activities or affected facilities, subject to approval by the cabinet and the U.S. EPA.]~~

(5) ~~[(6)]~~ The following de minimis changes shall be exempted from the requirement to obtain a permit or permit revision.

(a) ~~[Prior to the classification date,]~~ Affected facilities which are part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of a pollutant for which an ambient air quality standard has been promulgated in 401 KAR 53:010 ~~[50:010]~~ ~~[each of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides, and carbon monoxide]~~, if the increase does not subject the source to an applicable requirement ~~[administrative regulation]~~.

1. The owner or operator shall notify the cabinet in writing of the increases and construction projects thirty (30) days prior to commencing construction.

2. This exemption shall not apply to affected facilities which are subject to a regulation promulgated pursuant to 40 CFR Parts 60, 61, or 63; 401 KAR 63:021 or ~~[in 401 KAR Chapter 57; 40 CFR 60; 401 KAR 63:020,]~~ 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for the pollutants in 401 KAR 51:010; or to incinerators.

(b) After the issuance of a draft permit ~~[classification date]~~, the exemption in paragraph (a) of this subsection shall not apply to sources that are required to obtain a federally enforceable permit pursuant to 40 CFR Part 70.

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

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

~~(b)1. The source is subject only to the requirements of 401 KAR 53:010 and has uncontrolled emissions of less than twenty-five (25) tons per year and potential emissions of five (5) tons per year or less of a pollutant for which an ambient air quality standard is listed in 401 KAR 53:010, or less than the significant net emissions rate pursuant to 401 KAR 51:017, whichever is less; and~~

~~2. The source has potential emissions of less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061; and~~

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

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

~~(a) An asbestos demolition or renovation operation which is subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042.~~

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

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

~~(d) An affected facility subject only to the provisions of 401 KAR 63:005.~~

~~(e) A publicly owned road.~~

~~(f) The installation of air pollution control equipment where none is required. The owner or operator shall notify the cabinet in writing prior to installing the equipment.~~

~~(g) Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement.~~

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

~~(i) A direct fired source used for heating and ventilating.~~

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

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

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

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

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

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

Section 3. Permit Applications. (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this

section using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. The cabinet may provide methods for electronic transmission of the completed application.

(a) Timely applications.

1. Existing major sources.

a. Sources proposing to accept permit limitations to become synthetic minor or conditional major sources shall file a complete application to obtain a permit. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5 of this administrative regulation. [~~One third (1/3) of the existing major sources with the lowest score, as determined pursuant to Section 10 of this administrative regulation, shall file a complete application for a permit within twelve (12) months after the effective date of this administrative regulation. The cabinet shall notify these sources within fifteen (15) days after the effective date of this administrative regulation.~~]

b. All other existing major sources shall file a complete application for a permit within twelve (12) months after the classification date or within twelve (12) months after the source is required to obtain a federally enforceable permit pursuant to 40 CFR Part 70, whichever date is earlier. [~~date the U.S. EPA publishes a final rule approving the state permit program.~~]

[~~c.~~] The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(1)(b) [~~(2)~~] of this administrative regulation.

2. Existing minor sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. An existing minor source shall file a complete application for a permit within twelve (12) months after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit or within five (5) years after the classification date, whichever date is earlier. These applications shall be processed as federally enforceable permits pursuant to Section 5(1)(b) and (2)(b) [~~(2)~~] of this administrative regulation.

3. Existing minor sources required to have a state origin permit [~~subject to a state origin requirement~~]. An existing source that is [~~Sources which are~~] required to have a state-origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to an applicable requirement promulgated after the effective date of this administrative regulation, or by November 15, 2000, whichever date is earlier. The cabinet shall process these applications as state origin [~~enforceable~~] permits pursuant to Section 5(1)(c) [~~(3)~~] of this administrative regulation[~~, unless the source requests to have the permit processed as a federally enforceable permit~~].

4. An existing source that constructs, reconstructs an affected facility, alters, or modifies prior to the date the source receives a permit for the entire source, if a timely and complete application is filed, [~~is required to submit a complete application for the entire source~~] shall file an application using Form DEP 7007 to obtain a permit for the proposed change prior to commencing construction or modification. [~~A source constructing, reconstructing, or modifying after the effective date of this administrative regulation shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, or modification, except as provided in Section 6 of this administrative regulation.~~]

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

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

5. A source constructing, reconstructing, altering or modifying after November 29, 1993, shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, alteration, or modification, except as provided in subparagraph 4 of this paragraph and Section 6 of this administrative regulation. The cabinet shall process these applications pursuant to Section 5(3) of this administrative regulation.

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

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

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

(b) Complete application.

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

2. The cabinet shall promptly provide notice to the applicant if the application is complete. Unless the cabinet mails a request for additional information or a notice of incompleteness to the applicant within sixty (60) days of receipt of an application, the application shall be deemed complete.

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

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

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

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

(3) Standard application form and required information.

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

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

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

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

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

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

b. For minor sources required to obtain a permit, all applicable requirements for the emissions units that cause the source to be subject to 40 CFR Part 70 [~~79~~] [~~this administrative regulation~~] shall be identified in the permit application. The cabinet may identify the applicable requirements for other minor sources prior to determining completeness of the application pursuant to subsection (1)(b) of this section.

c. Fugitive emissions from a source subject to 40 CFR Part 70 shall be included [~~identified~~] in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(22) [~~(20)~~](b) of this administrative regulation.

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

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

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

5. Identification and description f air pollution control equipment and compliance monitoring devices or activities.

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

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

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

(e) The application shall identify the following air pollution control requirements, except as provided in paragraph (d)1b of this subsection:

1. Citation and description of all applicable requirements; and

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

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

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

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

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

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

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

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

2. A compliance schedule as follows:

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

b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

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

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

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

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

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

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

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

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

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

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

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

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

3. If the state implementation plan (SIP) allows the determination of an alternative emission limit that is equivalent to the limit contained

in the plan to be made in the permit issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination shall contain conditions to ensure that the resulting emissions limit has been demonstrated to be permanent, quantifiable, accountable, enforceable, and based on replicable procedures. The cabinet shall not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP or that are otherwise federally enforceable;

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

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

6. Fugitive emissions from a source subject to 40 CFR part 70 shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(22) [~~(20)~~](b) of this administrative regulation.

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

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

(c) Monitoring and related recordkeeping and reporting requirements.

1. Each permit shall contain the following monitoring requirements:

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

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

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

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

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

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

(ii) The dates analyses were performed;

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

(iv) The analytical techniques or methods used;

(v) The results of analyses; and

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

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

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

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

b. Prompt reporting of deviations from permit requirements, including those attributed to upset conditions, the probable cause of the deviations, and corrective actions or preventive measures taken. The cabinet shall define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements.

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

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

2. A limit shall not be placed on the number of allowances held by the source. However, a source shall not be allowed to use allowances in defense of noncompliance with an applicable requirement.

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

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

(f) Provisions stating the following:

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

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

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

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

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

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

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

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

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

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

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

(j) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted

facility, solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of other applicable requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The cabinet shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are not replicable procedures to enforce the emissions trades. The terms and conditions:

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

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

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

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

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

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

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

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

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

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

a. During normal office hours; and

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

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

a. During all hours of operation at the source;

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

c. During an emergency.

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

a. During all hours of operation at the source;

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

c. During an emergency.

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

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

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

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

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

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

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

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

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

b. The compliance status;

c. Whether compliance was continuous or intermittent;

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

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

4. A requirement that all compliance certifications be submitted to the U.S. EPA for sourcesrequired to obtain permits pursuant to 40 CFR Part 70, as well as to the cabinet; and

5. Additional requirements for monitoring and compliance certification, consistent with 42 USC 7414(a)(3) and 7504(b) (Sections 114(a)(3) and 504(b) of the Act) [~~if specified by the cabinet~~].

(f) A specific condition, for a constructing, reconstructing, altering, or modifying source, that the source shall not be allowed to commence operation until it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 5(4) of this administrative regulation, or the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet the applicable review requirements in Sections 7 through 9 of this administrative regulation.

(g) Other provisions required by the cabinet.

(4) General permits.

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

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

permit, the cabinet's denial of the general permit shall not constitute a final action and the permit application shall be processed pursuant to the requirements of Section 3 of this administrative regulation.

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

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

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

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

(6) Permit shield.

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

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

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

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

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

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

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

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

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

(7) Emergency provision.

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

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

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

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

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

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

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

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

Section 5. Permit Issuance and Renewal. [~~(1)~~] A person shall not construct, reconstruct, alter, modify, or operate a source without a permit issued pursuant to this administrative regulation. A permit application submitted by an existing source which is deemed complete prior to November 29, 1993, [~~the effective date of this administrative regulation~~] may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete.

(1) Processing applications from existing sources for permits covering the entire source.

(a) An existing major source proposing to accept permit limitations to become a synthetic minor or conditional major source. Applications received from sources submitted pursuant to Section 3(1)(a)1a of this administrative regulation shall be processed as follows:

1. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete pursuant to Section 3(1)(b) of this administrative regulation. The cabinet shall submit the draft permit to the U.S. EPA and provide notice of the draft permit:

a. For public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70; or

b. For public review pursuant to Section 7 if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

2. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public and affected state review requirements in Sections 7 and 8 of this administrative regulation is complete.

3. If a proposed permit is issued:

a. The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

b. The proposed permit shall be the final permit, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

4. [~~3.~~] Final permit. The cabinet shall issue or deny a final permit within nine (9) months after the application is deemed complete.

5. [~~4.~~] The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the final permit is issued or denied.

6. [~~5.~~] An existing source shall follow the applicable procedures in subparagraphs 1 through 4 of this paragraph unless the existing permit limits are deemed federally enforceable by the U.S. EPA.

(b) All other existing sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. Applications received from existing sources pursuant to Section 3(1)(a)1b and 2 of this administrative regulation shall be processed as follows:

1. Draft permit. The cabinet shall issue or deny a draft permit:

a. During the first two (2) years after the classification date for sixty (60) percent of the initial round of applications from existing sources that emit at least eighty (80) percent of the emissions in the KyEIS. [~~For one-fifth (1/5) of the initial round of applications from existing major sources each year for five (5) years after the classification date.~~]

b. Within sixty (60) days after the application is deemed complete for minor sources, permit renewals, and for sources that become subject to a requirement to obtain a federally enforceable permit after the classification date.

2. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

3. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

4. Final permit. The cabinet shall issue or deny a final permit:

a. For one-fifth (1/5) of the initial round of applications from existing major sources each year for five (5) years after the classification date.

b. Within eighteen (18) months after the application is deemed complete, for minor sources and for sources becoming subject to a requirement to obtain a federally enforceable permit after the classification date.

c. Within six (6) months after receiving a complete application, for permit renewals.

5. The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the final permit is issued or denied.

(c) Existing minor sources required to obtain a state origin permit. Applications received from sources submitted pursuant to Section 3(1)(a)3 shall be processed as follows:

1. The cabinet shall issue or deny a final permit within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

2. The source shall operate in compliance with the existing permit, authorization to operate, or order of the cabinet until a final permit is issued or denied.

(2) Processing applications from existing sources proposing to construct, reconstruct, alter, or modify an affected facility at the source, submitted pursuant to Section 3(1)(a)4 of this administrative regulation.

(a) Proposed changes that are subject to new source review for major sources or prevention of significant deterioration requirements.

1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 prior to the date the source submits [~~is required to submit~~] an application for a federally enforceable permit for the entire source shall be processed as follows:

a. Preliminary determination. The cabinet shall make a preliminary determination within sixty (60) days after the application is deemed complete if the change should be approved, approved with conditions or disapproved. The cabinet shall submit the preliminary determination to the U.S. EPA and shall provide notice for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

b. Final determination. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA, public, and affected state review is completed. The cabinet shall notify the applicant in writing of the final determination. If a permit is issued, the cabinet shall make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

c. The source shall construct and operate in compliance with the permit issued in subparagraph 1b of this paragraph until a final permit for the entire source is issued or denied, except that the owner or operator shall not construct a change that is subject to 40 CFR 51.166 and 401 KAR 51:017 until thirty (30) days after receiving notice of the final determination.

d. The permit issued pursuant to subparagraph 1b of this paragraph shall be incorporated into the application or [~~final~~] permit for the entire source as an administrative amendment.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 after the source submits [~~is required to submit~~] an application for a federally enforceable permit for the entire source shall be processed as follows:

a. The cabinet shall continue to process the application for the entire source independently from the application for the proposed change.

b. The application for the proposed change shall be processed pursuant subparagraph 1 of this paragraph.

(b) Sources proposing changes that are not subject to new source review for major sources or prevention of significant deterioration requirements.

1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility prior to the date the source submits [~~is required to submit~~] an application for a permit covering the entire source shall be processed as follows:

a. The cabinet shall issue or deny a state origin permit within sixty (60) days after the application is deemed complete. If the source proposes to except permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection (1)(a) of this section.

b. The source shall construct and operate in compliance with the permit issued pursuant to this subparagraph until a permit for the entire source is issued or denied.

c. A permit issued pursuant to this subparagraph shall be incorporated into the sources's application for a [~~federally enforceable~~] permit for the entire source.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility after the source submits [~~is required to submit~~] an application for a permit covering the entire source shall be processed as follows:

a. The cabinet shall continue to process the application for the entire source independent of the application for the proposed change.

b. Draft permit. The cabinet shall issue or deny a draft permit for the proposed change within sixty (60) days after the application for the change is deemed complete. The source shall construct in compliance with the draft permit. If the source proposes to accept permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection (1)(a) of this section.

c. The cabinet shall process a draft permit issued pursuant to subparagraph 2b of this paragraph and revise the permit for the entire source pursuant to the applicable provisions of Section 6 of this administrative regulation.

(3) Processing applications for the proposed construction of new sources, reconstruction of existing sources, and alteration or modification of sources with a permit for the entire source. Applications received after November 29, 1993, pursuant to Section 3(1)(a)5 of this administrative regulation shall be processed as follows:

(a) Applications for the proposed construction of new sources or reconstruction of existing sources shall be processed as follows:

1. Constructing or reconstructing sources that are subject to new source review for major sources or prevention of significant deterioration requirements or who propose to accept permit limitations which cause the source to be a synthetic minor source. Applications received for the proposed construction or reconstruction of a source that is subject to, or would otherwise be subject to, 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 source shall be processed as follows:

a. Preliminary determination/draft permit. The cabinet shall make a preliminary determination if the source should be approved, approved with conditions or disapproved, and issue or deny a draft permit within sixty (60) days after the application is deemed complete.

b. Public and affected state review. The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice for public review pursuant to Section 7 of this administrative regulation. The cabinet shall also provide the draft permit for affected state review pursuant to Section 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

c. Final determination/proposed permit. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA and public review is completed. The cabinet shall notify the applicant in writing of the final determination, issue or deny a proposed permit, and make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

d. If the source is a not required to obtain a permit pursuant to 40 CFR Part 70, the source shall construct and operate in compliance with the proposed permit. The proposed permit shall [~~not~~] be

submitted to the U.S. EPA and shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The source shall construct and operate in compliance with the proposed permit until a final permit for the entire source is issued or denied, except that the owner or operator of a source that is subject to 40 CFR 51.166 and 401 KAR 51:017 shall not construct until thirty (30) days after receiving notice of the final determination.

(ii) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation; and

(iii) The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

2. Applications received for the proposed construction or reconstruction of all other sources required to have a permit pursuant to 40 CFR Part 70 or who propose to accept permit limitations which cause the source to be a conditional major source, shall be processed as follows:

a. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete. The source shall construct and operate in compliance with the draft permit until a final permit is issued or denied.

b. Public, EPA, and affected state review.

(i) The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

(ii) The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice of the draft permit for public review pursuant to Section 7 of this administrative regulation, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

c. [~~d.~~] Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public, U.S. EPA, and affected state review required in Sections 7 and 8 of this administrative regulation is completed.

d. [~~c.~~] If the source is not required to have a permit pursuant to 40 CFR Part 70, the proposed permit shall [~~not~~] be submitted to the U.S. EPA and the proposed permit shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(ii) Final permit. The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

3. Processing applications for the proposed construction, reconstruction, alteration, or modification of sources required to have a state origin permit. The cabinet shall issue or deny a final permit or permit revision within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

(b) Applications for the proposed construction, reconstruction, alteration, or modification at a source after a permit for the entire source has been issued. The cabinet shall follow the applicable preconstruction review procedures of paragraph (a) of this subsection and the applicable permit revision procedures in Section 6 of this administrative regulation for sources who have been issued a permit for the entire source.

[~~(2) Federally enforceable permits. The cabinet shall use the procedures provided in this subsection to issue a permit if the source is a major source, a minor source subject to a federally enforceable requirement and required by the U.S. EPA to obtain a federally enforceable permit, or a minor source that is subject to a federally enforceable requirement and requests that the cabinet issue a federally enforceable permit.~~

~~(a) Draft permit.~~

~~1. The cabinet shall deny the permit or issue a draft permit within sixty (60) days after the application is deemed complete. A minor source shall construct and operate in compliance with the draft permit until a final permit is issued or denied, except as provided in paragraph (c)4 of this subsection.~~

~~2. Public and affected state review. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.~~

~~(b) Proposed permit.~~

~~1. The cabinet shall deny the permit or issue a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. A major source shall construct and operate in compliance with the proposed permit until the final permit is issued, except as provided in paragraphs (c)2 and 3 of this subsection.~~

~~2. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.~~

~~(c) Final permit.~~

~~1. The cabinet shall issue or deny a final permit within eighteen (18) months after receiving a complete application, except as provided in paragraphs 2 and 3 of this subsection.~~

~~2. A source subject to 401 KAR 51:017 shall construct and operate in compliance with a final permit, except as provided in subparagraph 3 of this paragraph. The cabinet shall issue or deny a final permit for these sources within twelve (12) months after receiving a complete application.~~

~~3. An existing source, including a source subject to 401 KAR 51:017, submitting an application pursuant to Section 3(1)(a)1 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet until the final permit is issued or denied. The cabinet shall make a final determination on at least one third (1/3) of these applications during each twelve (12) month period beginning twelve (12) months after the approval date of the state's permit program by the U.S. EPA, so that a final action shall be taken on all applications within thirty six (36) months after program approval.~~

~~4. An existing source submitting an application pursuant to Section 3(1)(a)2 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet, until the final permit is issued or denied.~~

~~(d) The cabinet may extend the time periods specified in paragraphs (a) and (b) of this subsection with the consent of the applicant, however the time periods specified in paragraph (c) of this subsection shall not be exceeded.~~

~~(3) State origin permits. If the source is not subject to a federally enforceable requirement or the source is a minor source not required by the U.S. EPA to have a federally enforceable permit, the cabinet shall use the procedures provided in this subsection to issue a permit.~~

~~(a) The cabinet shall deny or issue a final permit within sixty (60) days after receiving a complete application. The cabinet may extend this time period with the consent of the applicant.~~

~~(b) An existing source submitting an application pursuant to Section 3(1)(a)3 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet until a final permit is issued or denied.~~]

(4) Compliance demonstration. A source that is constructing, reconstructing, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055, except as provided in Section 6 of this administrative regulation.

(a) A source which is operating to demonstrate compliance shall not be considered to have commenced operation.

(b) If the source does not successfully demonstrate compliance, the permit shall be amended as necessary and the compliance schedule shall be revised or added, as appropriate, pursuant to Section 4(3)(f) of this administrative regulation.

(5) If an existing source submits a timely and complete application for a permit or permit revision, pursuant to Section 3 of this administrative regulation, the source's failure to have a permit or permit

revision shall not be a violation of this administrative regulation until the cabinet makes a final determination to approve or deny the permit or permit revision. The sources authority to operate shall cease to apply if, subsequent to the completeness determination made pursuant to Section 3(1)(b) of this administrative regulation, the applicant fails to submit by the deadline, specified in writing by the cabinet, additional information requested pursuant to Section 3(1)(b)3 of this administrative regulation.

(6) General requirements. For a source that is constructing, reconstructing, altering, or modifying, a permit shall become invalid if construction is not commenced within eighteen (18) months after the permit is issued, if construction begins but is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the scheduled completion date. The cabinet may extend these time periods upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. For a phased construction project, each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(7) Permit duration and renewal.

(a) Permit duration. A permit issued after the effective date of this administrative regulation shall remain in effect for a fixed term of five (5) years, except that permits for solid waste incineration units that combust municipal waste shall remain in effect for a period of twelve (12) years and shall be reviewed by the cabinet at least every five (5) years.

(b) Permit renewal.

1. Permit expiration shall terminate the source's right to operate unless a timely and complete renewal application has been submitted pursuant to Section 3(1)(a)6 of this administrative regulation.

2. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and for affected state and U.S. EPA review, that apply to initial permit issuance.

3. If a timely and complete application for a permit renewal is submitted pursuant to [~~consistent with~~] Section 3 of this administrative regulation, but the cabinet fails to issue or deny the renewal permit before the end of the term of the previous permit, all the terms and conditions of that permit, including any permit shield that is issued pursuant to Section 4(6) of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.

4. If the cabinet fails to act promptly on a federally enforceable permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 6. Permit Revisions and Reopenings. (1) Administrative permit amendment procedures. An administrative permit amendment may be made by the cabinet pursuant to the following:

(a) The cabinet shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on the request, and may incorporate the changes without providing notice to the public or affected states if it determines the permit revision has been made pursuant to this paragraph.

(b) For federally enforceable permits the cabinet shall submit a copy of the revised permit to the U.S. EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) The cabinet may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for the administrative permit amendment as defined in Section 1(3) of this administrative regulation, if the amendment meets the relevant requirements of Sections 4 through 9 of this administrative regulation for significant permit revisions.

(e) Administrative permit amendments for the acid rain portion of the permit shall be governed by regulations promulgated pursuant to 42 USC 7651 through 7651q (Title IV of the Act).

(2) Permit revisions. Except as provided in the acid rain program, the procedures for revising a permit shall be as follows:

(a) Minor permit revision procedures.

1. Minor permit revision procedures shall be used for permit revisions that:

a. Do not violate an applicable requirement;

b. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

c. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

d. Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement but which the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. These terms and conditions include:

(i) A federally enforceable emissions cap assumed to avoid classification as a modification in a provision of 42 USC 7401 through 7514a (Title I of the Act);and

(ii) An alternative emissions limit approved pursuant to 42 USC 7412(i)(5) (Section 112(i)(5) of the Act);

e. Are not modifications in a provision of 42 USC 7401 through 7514a (Title I of the Act) or of an administrative regulation promulgated in 401 KAR Chapters 50 through 63; and

f. Are not required to be processed as a significant permit revision.

2. Notwithstanding this paragraph and paragraph (b)1 of this subsection, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that these minor permit revision procedures are explicitly provided for in the SIP or in applicable requirements.

3. Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs;

b. The source's suggested draft permit;

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of minor permit revision procedures and a request that these procedures be used; and

d. For federally enforceable permits completed forms for the cabinet to use to notify affected states and the U.S. EPA, as required in Sections 8 and 9 of this administrative regulation.

4. U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete application for a federally enforceable permit revision [~~application~~], the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 8 and 9(2) of this administrative regulation, of the requested minor permit revision.

5. Timetable for issuance.

a. The cabinet shall not issue a final minor permit revision to a federally enforceable permit until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:

(i) [~~a.~~] Issue the minor permit revision as proposed;

(ii) [~~b.~~] Deny the minor permit revision application;

(iii) [~~c.~~] Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under

the significant permit revision procedures; or

(iv) [d.] Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this administrative regulation.

b. For state-origin permits, the cabinet shall, within ninety (90) days of receipt of an application for a minor permit revision:

(i) Issue the minor permit revision as proposed;

(ii) Deny the minor permit revision application; or

(iii) Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures.

6. The source's ability to make a change. The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change, and until the cabinet takes any of the actions specified in subparagraph 5a through c of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

(b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

1. Criteria. Group processing shall be used only for permit revisions that:

a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and

b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(22) [(20)] of this administrative regulation, or five (5) tons per year, whichever is least.

2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.

b. The source's suggested draft permit revision.

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.

d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1b of this paragraph.

e. Certification, for federally enforceable permits, pursuant to Section 3(4) of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.

f. For federally enforceable permits, completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.

3. U.S. EPA and affected state notification for federally enforceable permit revisions. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1b of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 8 and 9(2) of this administrative regulation.

4. Timetable for issuance for federally enforceable permits. Subsection (2)(a)5 of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection (2)(a)5a through d of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45)-day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.

5.The source's ability to make a change. Subsection (2)(a)6 of this section shall apply to permit revisions eligible for group processing.

6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.

(c) Significant permit revision procedures. These procedures shall become effective after the classification date for sources that have filed an application for a permit pursuant to 40 CFR Part 70 or that have permits issued pursuant to 40 CFR Part 70 [this administrative regulation, and shall apply to state origin permits only if the revision causes the source to be required to have a federally enforceable permit]. Revisions that do not cause the source to have a federally enforceable permit shall be processed as minor permit revisions pursuant to paragraphs (a) and (b) of this subsection.

1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or recordkeeping permit terms or conditions, shall [normally] be considered significant changes. The permittee may, however, make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.

2. Significant permit revisions shall meet all the requirements of this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.

(d) A permit revision shall not be required for a change at a permitted source if the change is neither addressed nor prohibited by the permit, unless the change would result in a change in method of operation or a change in emissions. A change may also be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes described in this paragraph if:

1. The changes are not modifications pursuant to any provision of 42 USC 7401-7515 (Title I of the Act) or subject to 42 USC 7651 through 7651o (Title IV of the Act);

2. The changes do not result in emissions which exceed the emissions allowed by [allowable under] the permit, whether expressed as a rate of emissions or in terms of total emissions;

3. For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include the following:

a. A brief description of the change within the permitted facility;

b. The date on which the change will occur;

c. Any change in emissions; and

d. Any permit term or condition that is no longer applicable as a result of the change.

4. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph.

5. The change shall be incorporated into the permit at renewal.

(3) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under the following circumstances:

1. Additional applicable requirements become applicable to a source with a remaining permit term of three (3) or more years. A reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. A reopening shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to Section 5(7)(b)3 of this administrative regulation.

2. Additional applicable requirements, including excess emissions requirements, become applicable to an affected source in the acid rain program. Upon approval by the U.S. EPA and the cabinet, excess emissions offset plans shall be incorporated into the permit;

3. The cabinet or the U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

4. For federally enforceable permits, the cabinet or the U.S. EPA determines that the permit shall be revised or revoked to assure compliance with the applicable requirements or, for state-origin permits, the cabinet makes a similar determination.

(b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.

(c) Reopenings in paragraph (a) of this subsection shall not be initiated before a notice of intent to reopen is provided to the source by the cabinet at least thirty (30) days in advance of the date that the permit is to be reopened, except that the cabinet may provide a shorter time period in the case of an emergency.

(4) Reopenings for cause by the U.S. EPA.

(a) If the U.S. EPA finds that cause exists to terminate, modify, or revoke and reissue a federally enforceable permit pursuant to subsection (3) of this section, the U.S. EPA shall notify the cabinet and the permittee of this finding in writing.

(b) The cabinet shall, within ninety (90) days after receipt of notification, forward to the U.S. EPA a proposed determination of termination, revision, or revocation and reissuance of the permit, as appropriate. The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it finds that a new or revised permit application is necessary or that the cabinet has required the permittee to submit additional information.

(c) The U.S. EPA shall review the proposed determination from the cabinet within ninety (90) days of receipt.

(d) The cabinet shall have ninety (90) days from receipt of an objection by the U.S. EPA to resolve the objection and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

(e) If the cabinet fails to submit a proposed determination pursuant to paragraph (b) of this subsection or fails to resolve an objection pursuant to paragraph (d) of this subsection, the U.S. EPA shall terminate, modify, or revoke and reissue the permit after the permittee is notified of the reasons for the action, in writing. The permittee shall be given thirty (30) days from the date of the notice to comment on the U.S. EPA's proposed action and to request a hearing. This notice may be given during the procedures in paragraphs (a) through (d) of this subsection.

Section 7. Procedures for Public Participation. These procedures shall apply only to federally enforceable permits and to state-origin permits that become federally enforceable as a result of the permit action to be taken.

(1) The cabinet shall provide public notice of the opportunity to comment for the following permit actions:

(a) Issuance of a draft permit;

(b) Intended denial of a permit application;

(c) Issuance of a draft significant permit revision;

(d) Issuance of a draft general permit;

(e) Issuance of a permit renewal;

(f) Scheduling of a public hearing pursuant to subsection (7) of this section.

(2) The cabinet shall provide public notice by prominent advertisement in the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

(3) A copy of the notice required in subsection (2) of this section shall be sent to the following persons:

(a) The applicant;

(b) For sources subject to 401 KAR 51:017, officials and agencies having authority over the locations where the source will be located, as follows:

1. The administrator of the U.S. EPA through the appropriate regional office;

2. Local air pollution control agencies;

3. The chief executive of the city and county;

4. Any comprehensive regional land use planning agency; and

5. Any federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source;

(c) Affected states; and

(d) Persons on a mailing list which is maintained and compiled by the cabinet. This mailing list shall include persons requesting to be on the list, and persons solicited from participants in past permit proceedings in the affected area. The cabinet may notify the public of the opportunity to be on the list through periodic publication in the public press and in such publications as state-founded newsletters, environmental bulletins, or state law journals. The cabinet may delete from the list persons who fail to respond to an inquiry of continued interest in receiving notice.

(4) Public notice and the notice for those on the mailing list shall include the following minimum information:

(a) Name and address of the Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Division for Air Quality;

(b) Name and address of the permit applicant and, if different, the name and address of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity involved in the permit action;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, such as:

1. Copies of the draft permit;

2. The application and relevant supporting material, including permit applications, compliance plans, permits, and monitoring and compliance certification reports, except for confidential information; and

3. All other materials available to the cabinet that are relevant to the permit decision;

(e) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of hearings scheduled for the permit; and

(f) A description of the emission change involved in any permit revision, and for sources subject to 401 KAR 51:017, the degree of increment consumption that is expected from the source or modification, if applicable.

(5) The cabinet shall make available for public inspection, in at least one (1) location in each region in which the source is located or

would be constructed, reconstructed, or modified, all nonproprietary information contained in the permit application, draft permit, and supporting materials. Public inspection of materials for temporary sources or general permits may be located at the discretion of the cabinet.

(6) Public comment.

(a) Except for permit revisions qualifying for administrative permit amendments and minor permit revision procedures, the cabinet shall provide a minimum of thirty (30) days for public comment on all permit proceedings, including initial permit issuance, draft permits, significant permit revisions, and permit renewals. The comment period shall begin on the date of publication of notice in the newspaper.

(b) The cabinet shall provide notice and opportunity for participation by affected states pursuant to Section 8 of this administrative regulation.

(c) A proposed permit shall not be issued until the public comment period has ended and the cabinet has prepared a response to the comments received. Public comments submitted in writing during the public comment period shall be considered by the cabinet in its decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. Comments may be submitted in alternate format to accommodate individuals with disabilities.

(7) Public hearings.

(a) The cabinet shall provide a public hearing if, on the basis of written requests received within the public comment period, the cabinet determines that material issues have been raised concerning the terms and conditions of a permit. A request shall not require the extension of the comment period associated with the notice.

(b) The cabinet may also elect to hold a public hearing if the cabinet determines that the permit action is of significant public interest. In these cases, public notice of the hearing may be combined with the public notice of the draft permit.

(c) The cabinet shall give notice of a public hearing at least thirty (30) days in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing shall contain the following information:

1. Reference to the dates of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of applicable rules and procedures for the hearing.

(d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts are also available, upon request, in large type or in braille.

(8) Public record. The cabinet shall keep a record of the commentors and of the issues raised during the public participation process. These records shall be made available to the public and to the U.S. EPA.

(9) Petition for EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 9(3)(f) of this administrative regulation.

(10) The following actions shall be exempt from this section:

(a) Permit revisions qualifying for minor permit revision procedures, including group processing;

(b) Administrative permit amendments[~~; and~~

~~(c) Fast track permit revisions pursuant to the acid rain program~~].

Section 8. Notice to Affected States. The provisions of this section shall apply only to federally enforceable permits, and to state-origin permits that will become federally enforceable as a result of the action to be taken.

(1) The cabinet shall give notice of draft permits to affected states on or before the time that the cabinet provides the draft permit or draft permit revision notice to the public pursuant to Section 7 of this administrative regulation, unless Section 6(2)(a) or (b) requires the timing of the notice to be different.

(2) Cabinet response. The cabinet, as part of the submittal of the proposed permit to the U.S. EPA (or for a minor permit revision, as soon as possible after the submittal), pursuant to Section 9 of this administrative regulation, shall notify the U.S. EPA and affected states in writing of refusal by the cabinet to accept a recommendation for the proposed permit that an affected state submitted during the public review period. The notice shall include the cabinet's reasons for not accepting the recommendation.

(3) The cabinet is not required to accept recommendations based on requirements that are not applicable to the proposed permit, or that are not based on requirements of this administrative regulation.

Section 9. U.S. EPA Review. (1) Prohibition on default issuance of permits.

(a) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal until the affected states and the U.S. EPA have had an opportunity to review the proposed permit action pursuant to this section and Section 8 of this administrative regulation; and

(b) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal if it has failed to take action on the application pursuant to subsection (3) of this section, unless the U.S. EPA has waived the review for the U.S. EPA and affected states.

(2) Transmission of information to the U.S. EPA.

(a) The cabinet shall provide to the U.S. EPA a copy of each federally enforceable permit application, permit revision application, proposed permit, and final permit. Information that is submitted with a claim of confidentiality shall be submitted pursuant to Section 3(1)(c) of this administrative regulation.

(b) On a case-by-case basis, and with U.S. EPA approval, the cabinet may submit, for a federally enforceable permit, a permit application summary form and a relevant portion of the permit application and compliance plan in place of the complete application and compliance plan. If possible, this information shall be provided in computer-readable format compatible with the U.S. EPA's national database management system.

(3) U.S. EPA objection.

(a) The U.S. EPA will object to the issuance of any proposed permit determined by the U.S. EPA not to meet applicable requirements. The U.S. EPA shall file an objection in writing within forty-five (45) days of receipt of the proposed permit and the necessary supporting information.

(b) The cabinet shall not issue a federally-enforceable permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.

(c) The U.S. EPA objection shall include a statement of the reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The U.S. EPA shall provide the permit applicant a copy of the objection.

(d) If the cabinet fails, within ninety (90) days after the date of a U.S. EPA objection, to revise and submit a proposed permit in response to the objection, the U.S. EPA shall issue or deny the permit pursuant to the requirements of 42 USC 7661 through 7661f, (Title V of the Act).

(e) If the U.S. EPA does not object, in writing, pursuant to this section, a person may petition the U.S. EPA within sixty (60) days after the expiration of the U.S. EPA's forty-five (45) day review period to make an objection. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period pursuant to Section 7 of this administrative regulation, unless the petitioner demonstrates that it was impracticable to raise the objections within the comment period, or unless the grounds for the objection arose after the comment period. If the U.S. EPA objects to the proposed permit as a result of a petition filed pursuant to this subsection, the cabinet shall not issue the permit until the U.S. EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to a U.S. EPA objection.

(f) If the cabinet has issued a permit prior to receipt of a U.S. EPA objection pursuant to this section, the U.S. EPA may modify, terminate, or revoke the permit pursuant to Sections 4 through 6 of this administrative regulation, and the cabinet shall thereafter issue a revised permit that satisfies the U.S. EPA objection. The source shall not be in violation of the requirement to have submitted a timely and complete application.

(4) Recordkeeping and sharing of information. The cabinet shall keep records of the information required in subsection (2) of this section for at least five (5) years. The cabinet shall submit, upon request from the U.S. EPA and in a form specified by the U.S. EPA, including computer-readable files to the extent practicable, information which may reasonably be required to determine if the permitting program complies with the requirements of 42 USC 7401 through 7661q, or 40 CFR Part 70. If the information has been submitted to the cabinet under a claim of confidentiality, the cabinet may require the source to submit this information to the U.S. EPA directly. If the cabinet is authorized by a source to submit information to the U.S. EPA under a claim of confidentiality, the cabinet shall submit the confidentiality claim to the U.S. EPA together with the information to which it applies.

Section 10. Emissions Statement Certification. The cabinet shall provide annually to each source subject to this administrative regulation a written copy of the KyEIS containing the most recent information appropriate to that source.

(1) [~~(a)~~] Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its **actual** [~~subject~~] emissions. Failure of the cabinet to notify a source pursuant to this subsection shall not relieve the source from the obligation to submit an emissions statement.

(2) [~~(b)~~] The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information.

(3) [~~(c)~~] Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the **actual** [~~subject~~] emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet. [~~For Section 3(1)(a)1 of this administrative regulation, one third (1/3) of the existing major sources with the lowest score shall be calculated using the following formula:~~

~~(1 + n)(1 + p/2) = Score~~

~~Where: "n" shall equal the number of emission units at the source as contained in the most recent version of the Kentucky Emissions Inventory System (KyEIS); and~~

~~"p" shall equal the sum of the number of pollutants, for which there is a national ambient air quality standard, emitted at each emission unit.~~]

Section 11. Materials Incorporated by Reference. (1) The following documents relating to affected sources subject to the acid rain program, are hereby incorporated by reference:

(a) 40 CFR Part 72, Permits Regulation, as published in the Federal Register, January 11, 1993 (58 FR 3650-3687), and as amended at 58 FR 15647-15650 (March 23, 1993).

(b) 40 CFR Part 73, Allowance System, as published in the Federal Register, January 11, 1993 (58 FR 3687-3701), and as amended at 58 FR 15650-15716 (March 23, 1993).

(c) 40 CFR Part 75, Continuous Emission Monitoring, as published in the Federal Register, January 11, 1993 (58 FR 3701-3757), and as amended at 58 FR 15716-15717 (March 23, 1993).

(d) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emissions Reduction Program, as published in the Federal Register, March 22, 1994 (59 FR 13564-13580).

(e) 40 CFR Part 77, Excess Emissions, as published in the Federal Register, January 11, 1993 (58 FR 3757-3760).

(f) [~~(e)~~] 40 CFR Part 78, Appeal Procedures for acid rain program, as published in the Federal Register, January 11, 1993 (58 FR 3760-3766).

(2) Copies of the documents incorporated by reference in subsection (1) of this section shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices of the Division for Air Quality:

(a) Division for Air Quality, 803 Schenkel Lane, [~~316 St. Clair Mall,~~] Frankfort, Kentucky, 40601, (502) 573 [~~564~~]-3382;

(b) Ashland Regional Office, P.O. Box 1507, 3700 Thirteenth [~~13th~~] Street, Ashland, Kentucky, 41105-1507, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, [~~311 West Second Street,~~] Owensboro, Kentucky, 42303, [~~42301~~], (502) 686-3304;

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: August 10, 1994
FILED WITH LRC: August 15, 1994 at 11 a.m.

COMPILER'S NOTE: The following administrative regulation, 405 KAR 7:080, was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources and became effective on September 28, 1994.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(As Amended)

405 KAR 7:080. Small operator assistance.

RELATES TO: KRS 350.465, 30 CFR Parts 730-733, 735, 795, 917, 30 USC 1253, 1255, 1257

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 730-733, 735, 795, 917, 30 USC 1253, 1255, 1257

EFFECTIVE: May 27, 1994

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations. This administrative regulation provides for cabinet assistance to eligible small operators,

under the federally- funded small operator assistance program. This administrative regulation sets forth the scope, objectives, and sources and use of funds for the small operator assistance program in Kentucky; establishes eligibility criteria; establishes procedures and forms for filing for assistance; establishes notification procedures; sets forth the services to be provided under the program and the regulatory requirements to be addressed by those services; authorizes allocation if available funds are insufficient to serve all eligible applicants; establishes minimum standards for qualified laboratories; and requires reimbursement of the cabinet in certain circumstances. [~~This regulation sets out the federal small coal operator assistance program and establishes procedures to provide assistance to eligible operators who request assistance. The regulation specifies the assistance to be given to small operators whose total actual and attributed production does not exceed 300,000 tons during any consecutive twelve (12) month period.~~]

Section 1. Scope. (1) This administrative regulation establishes [~~comprises~~] the small operator assistance program (Program) authorized at KRS 350.465(2)(f).

(2) Consistent with 30 USC 1257(c) and 30 CFR Part 795, this administrative regulation shall govern [~~and governs~~] the procedures and criteria under which the cabinet shall provide [~~for providing~~] assistance to eligible small [~~mine~~] operators in meeting the [~~who request assistance for:~~

~~(1) The determination of the probable hydrologic consequences of mining and reclamation under Title 405, Chapter 8; and~~

~~(2) The statement of physical and chemical analyses of test borings or core samples under Title 405, Chapter 8; and~~

~~(3) Any other~~] requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 [~~for which financial or other assistance may be available under this Program~~].

(3) This administrative regulation shall be construed to allow the fullest possible extent of services consistent with federal requirements and available funds.

Section 2. Objective. The objective of this regulation is to meet the intent of KRS 350.465(2)(f) by:

(1) Providing financial and other necessary assistance to eligible small operators; and

(2) Assuring that the cabinet shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the watershed(s) and particularly upon water availability.

Section 3. Source and Use of Funds [~~Authority~~]. The secretary shall provide financial and other assistance under KRS 350.465(2)(f) to the extent that state funds are made available and to the extent that funds are appropriated by the United States Congress specifically for implementation of 30 USC 1257(c) [~~Section 507(c) of PL 95-87~~] and made available to the Commonwealth. [~~Federal funds specifically authorized for this program to provide the services specified in Section 4 of this regulation shall not be used to cover administrative costs.~~]

Section 4. Program Services. To the extent possible with available funds the cabinet shall provide services in accordance with this section.

(1) [~~:~~] For eligible small operators who request assistance, the cabinet shall [~~:~~

~~(1)~~] select and pay a qualified laboratory to perform the following services in accordance with Section 8 of this administrative regulation:

(a) Determine for the operator the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area, including the engineering analyses and designs necessary for the determination; [~~in accordance with Section 8 of this regulation; and~~]

(b) Perform geologic drilling and prepare a statement of the results of test borings or core samplings; [~~in accordance with Section 8 of this regulation.~~]

(c) Collect cultural, historic, and archaeological resources information and prepare necessary reports and plans;

(d) Perform preblasting surveys;

(e) Collect site-specific resource information and prepare plans for the protection and enhancement of fish and wildlife and other environmental values; and

(f) Develop cross sections, maps and plans required for permit applications, in accordance with 30 USC 1257(c).

(2) For eligible small operators who request assistance, the cabinet may select and pay a qualified laboratory to collect and provide general hydrologic information on the basin or subbasin areas within which the anticipated mining will occur. The information provided shall be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

(3) The cabinet shall provide informational services to insure that eligible small operators are made aware of the assistance available under the program.

(4) The cabinet shall make training services available to eligible small operators and their representatives and other potentially affected persons concerning preparation of permit applications and compliance with regulatory requirements.

Section 5. Eligibility for Assistance. An applicant shall be [~~is~~] eligible for assistance if he [~~or she~~]:

(1) Intends to apply for a permit pursuant to KRS Chapter 350;

(2) Establishes that the probable total actual and attributed **annual** production of the applicant from all locations [~~during the twelve (12) months immediately following the date the permit is issued~~] [~~any consecutive twelve (12) month period either during the term of the permit or during the first five (5) years after issuance of the permit, whichever period is shorter,~~] will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:

(a) The pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a **ten (10)** [~~five (5)~~] percent interest;

(b) The pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than **ten (10)** [~~five (5)~~] percent of the applicant's operation;

(c) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management; and

(d) All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(3) Is not restricted in any manner from receiving a permit under Title 405, Chapters 7 through 24; and

(4) Does not organize or reorganize his [~~or her~~] company solely for the purpose of obtaining assistance under this administrative regulation.

Section 6. Filing for Assistance. The application form "Kentucky Small Operator Application for Assistance", revised **September 1994** [~~October 1991~~], is hereby incorporated by reference. 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. Each applicant shall submit the following information to the cabinet when filing for assistance:

(1) A statement of the operator's intent to file a permit application;

(2) The names and addresses of:

(a) The permit applicant; and

(b) The operator if different from the applicant.

(3) The names, addresses, and percentages of ownership of all owners of and stockholders in the applicant;

(4) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under Section 5(2) of this administrative regulation. The schedule shall include for each location:

(a) The operator or company name under which coal is or will be mined;

(b) The permit number and MSHA number if currently or previously permitted;

(c) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant; and

(d) Mine location (county).

(5) The Kentucky coal severance tax vendor number and copies of payments for the past twelve (12) months made by the applicant and any affiliated companies as defined under Section 5(2) of this administrative regulation;

(6) A description of:

(a) The proposed method of coal mining;

(b) The anticipated starting and termination dates of mining operations;

(c) The total number of acres of land to be affected by the proposed mining and number of acres (surface or underground) from which coal is to be removed;

(d) A general statement on the probable depth and thickness of the coal resource, and the name(s) of the coal seam(s) to be mined; and

(e) A statement identifying the coal resources in the permit area and the method by which they were calculated.

(7) A USGS topographic map of 1:6,000 scale or larger or other topographic map of equivalent detail which clearly shows:

(a) The area of land to be affected;

(b) The names of property owners within the area to be affected and of adjacent lands;

(c) The location and extent of known workings for the proposed underground mine; and

(8) Copies of documents which show that:

(a) The applicant has a legal right to enter and commence mining within the permit area; and

(b) A legal right of entry has been obtained for the cabinet and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental information [data] or to install necessary instruments.

Section 7. Application Approval and Notice. (1) If the cabinet finds the applicant eligible and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:

(a) Notify the applicant in writing that the application is approved;

(b) Determine the minimum information [data] requirements necessary to meet the provisions of Section 8 of this administrative regulation; and

(c) Select the services of one (1) or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved reports shall be provided to the applicant.

(2) If the cabinet finds the applicant ineligible, the applicant shall be informed in writing that the application is denied and the reasons for denial shall be stated.

(3) The granting of assistance under this administrative regulation shall not be a factor in decisions by the cabinet on a subsequent permit application.

Section 8. Information [Data] Requirements. (1) General. This section describes the minimum requirements for information necessary [the collection of data] to meet the objectives of this Program. The cabinet shall determine [the data collection requirements] for each applicant or group of applicants the specific information, including the collection and analysis of field information and the development of engineering and other technical analyses, designs, and plans, that shall be provided under this section. [Data] Collection, [and] analysis, and development of information under this section may proceed concurrently with the development of mining and reclamation plans by the applicant.

(2) Specific provisions. Pursuant to Sections 1 through 4 of this administrative regulation, [data and] information required [to be contained in permit applications] under the administrative regulations listed in this subsection[,] may be supplied under this Program.

(a) Surface mines.

1. 405 KAR 8:030, Section 11(2); Cultural, historic, and archaeological resources information.

2. 405 KAR 8:030, Section 12; General requirements for geology and hydrology.

3. [2.] 405 KAR 8:030, Section 13; Geology information.

4. [3.] 405 KAR 8:030, Section 14; Groundwater information.

5. [4.] 405 KAR 8:030, Section 15; Surface water information.

6. [5.] 405 KAR 8:030, Section 16; Alternative water supply information.

7. [6.] 405 KAR 8:030, Section 17; Climatological information.

8. 405 KAR 8:030, Section 19; Vegetation information.

9. [7.] 405 KAR 8:030, Section 20; Fish and wildlife resources information. [(2)(c); Biological assessment of surface waters.]

10. 405 KAR 8:030, Section 23; Maps and drawings.

11. 405 KAR 8:030, Section 30; MRP; protection of public parks and historic places.

12. [11.] [8.] 405 KAR 8:030, Section 32(1); Description of measures to protect the hydrologic balance.

13. [12.] [9.] 405 KAR 8:030, Section 32(3); Determination of probable hydrologic consequences of mining.

14. [13.] [10.] 405 KAR 8:030, Section 32(4); Plan for monitoring groundwater and surface water.

15. [14.] 405 KAR 8:030, Section 36; MRP; fish and wildlife protection and enhancement.

16. [15.] 405 KAR 16:120, Section 2; Preblasting survey.

(b) Underground mines:

1. 405 KAR 8:040, Section 11(2); Cultural, historic, and archaeological resources information.

2. 405 KAR 8:040, Section 12; General requirements for geology and hydrology.

3. [2.] 405 KAR 8:040, Section 13; Geology information.

4. [3.] 405 KAR 8:040, Section 14; Groundwater information.

5. [4.] 405 KAR 8:040, Section 15; Surface water information.

6. [5.] 405 KAR 8:040, Section 16; Alternate water supply information.

7. [6.] 405 KAR 8:040, Section 17; Climatological information.

8. 405 KAR 8:040, Section 19; Vegetation information.

9. [7.] 405 KAR 8:040, Section 20; Fish and wildlife resources information. [(2)(c); Biological assessment of surface waters.]

10. 405 KAR 8:040, Section 23; Maps and drawings.

11. **405 KAR 8:040, Section 30; MRP; protection of public parks and historic places.**

12. [8.] 405 KAR 8:040, Section 32(1); Description of measures to protect the hydrologic balance.

13. [12.] [9.] 405 KAR 8:040, Section 32(3); Determination of the probable hydrologic consequences of mining.

14. [13.] [10.] 405 KAR 8:040, Section 32(4); Plan for monitoring groundwater and surface water.

15. [14.] 405 KAR 8:040, Section 36; MRP; fish and wildlife protection and enhancement.

16. [15.] 405 KAR 18:120, Section 2; Preblasting survey.

(3) [Data] Availability of information. Information [Data] collected under this Program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the

coal which is potentially toxic in the environment shall be made available.

Section 9. Allocation of Funds. If available funds are not sufficient to provide services under this regulation to all eligible applicants, the cabinet shall allocate the available funds among eligible applicants based upon a formula which shall include, but shall not be limited to, the following factors:

(1) Date of filing of application for assistance; and

(2) Anticipated date for commencing mining operations.

Section 10. Qualified Laboratories. (1) General.

(a) The cabinet shall establish a list of qualified laboratories which may be used by the cabinet under the procedures of this section. A qualified laboratory shall be a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination, statement, or other eligible services under this program.

(b) Persons who desire to be included in the list of qualified laboratories established by the cabinet shall apply to the cabinet and provide such information as is necessary to establish the qualifications required by subsection (2) of this section.

(2) Basic qualifications.

(a) To be designated a qualified laboratory, a firm shall demonstrate that it:

1. Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed.

2. Is capable of collecting necessary field information [~~data~~] and samples.

3. Has adequate space for material preparation and cleaning and sterilizing of necessary equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods.

4. Meets the requirements of the Occupational Safety and Health Act or the equivalent Commonwealth safety and health program.

5. Has the financial capability and business organization necessary to perform the work required.

6. Has analytical, monitoring, and measuring equipment capable of meeting the applicable standards and methods contained in: "Standard Methods for the Examination of Water and Waste Water," 14th Edition, 1975; "Methods for Chemical Analysis of Water and Wastes," 1974; and other references as specified by the cabinet.

7. Has the capability of making hydrologic field measurements and to conduct analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods or by those appropriate methods or guidelines for information [~~data~~] acquisition recommended by the cabinet.

(b) The qualified laboratory shall be capable of performing some or all of the services set forth in Section 8 of this administrative regulation. Subcontractors may be used to provide the services required if their use is defined in the application for qualification and they meet the requirements established by the cabinet.

Section 11. Applicant Liability. (1) The applicant shall reimburse the cabinet for the costs of the [~~laboratory~~] services performed pursuant to this administrative regulation:

(a) If the applicant submits false information;

(b) If the applicant fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory reports;

(c) If the applicant fails to mine after obtaining a permit;

(d) If the cabinet finds that the applicant's actual and attributed production of coal for all locations exceeds 300,000 tons during the twelve (12) months immediately following the date the permit is issued [~~any consecutive twelve (12) month period either during the term of the permit for which assistance is provided or during the first five (5) years after issuance of the permit, whichever is shorter~~]; or

(e) If the permit rights or the permit application is sold, transferred, or assigned to another person [~~during the twelve (12) months immediately following the date the permit is issued~~] and the **successor's** [~~transferee's~~] total actual and attributed production exceeds the 300,000 ton annual production limit during the twelve (12) months immediately following the **date the original permit is reissued in the name of the successor** [~~effective date of the sale, transfer, or assignment~~] [~~any consecutive twelve (12) month period during the remaining term of the permit~~]. Under this paragraph, the applicant and its successor shall be [~~are~~] jointly and severally obligated to reimburse the cabinet.

(2) The cabinet may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: May 12, 1994
FILED WITH LRC: May 13, 1994 at 11 a.m.

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

601 KAR 15:010. Disciplinary actions relating to employees commissioned pursuant to the provisions of KRS 281.770.

RELATES TO: KRS 281.770, **281.771, 281.772, 281.773** [~~1994 Ky. Acts ch. 317~~]

STATUTORY AUTHORITY: **KRS 281.772** [~~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 **shall be** ~~[is considered to have been]~~ violated, and disciplinary action for the original charge(s) **shall** ~~[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 **made** ~~[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 **for the action** ~~[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 **he**:

(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 miscon-

duct 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, **shall be** [~~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) Temporary transfer of work station for up to sixty (60) days; or

(e) 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 **representatives** 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 **as set forth in KRS 281.771(17)** **[**~~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~~].

(45) Sexual harassment.

(a) Commissioned employees shall not engage in any form of sexual harassment.

(b) Sexual harassment 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.

(c) Sexual harassment 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: September 6, 1994
FILED WITH LRC: September 9, 1994 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

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, **211.1755,** 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. **KRS 211.1755** [~~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) An appointing authority may deny an annual increment to an employee for the following reasons;

(a) Documented unsatisfactory work performance;

(b) Excessive absenteeism;

(c) Excessive tardiness;

(d) Record of disciplinary action; or

(e) Failure to cooperate.

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

(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.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health and Community Safety
(As Amended)

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 shall not include:**

(a) Liquid or solid material removed from a septic tank;

(b) Cesspool;

(c) Similar treatment works that receives commercial wastewater processes or individual wastewater processes; or

(d) Grease removed from a grease trap at a restaurant or similar grease producing business. [~~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" **is defined pursuant to KRS 211.970(3) and shall not apply to mineral-based oils or greases.** [~~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 **shall not be** [~~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 **shall be** [~~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.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health and Community Safety
(As Amended)

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 shall not include:**

(a) Liquid or solid material removed from a septic tank;

(b) Cesspool;

(c) Similar treatment works that receives commercial wastewater processes or individual wastewater processes; or

(d) Grease removed from a grease trap at a restaurant or similar grease producing business. [~~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" **is defined pursuant to KRS 211.970(3) and shall not apply to mineral-based oils or greases.** [~~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**, if it is determined that they are likely to have an adverse environmental impact, the cabinet shall submit the application for review by** [~~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 **shall be** [~~is~~] restricted for at least twelve (12) months.

(2) Grazing of animals whose products are consumed by humans **shall be** [~~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 **shall be** [~~is~~] maintained at 131 degrees Fahrenheit or greater for three (3) days. Using the windrow composting method, the temperature of the domestic septage **shall be** [~~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 **shall be** [~~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 **shall exceed** [~~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 **shall exceed** [~~exceeds~~] 176 degrees Fahrenheit.

(c) Heat treatment. Liquid domestic septage **shall be** [~~is~~] heated to a temperature of 356 degrees Fahrenheit or greater for thirty (30) minutes.

(d) Thermophilic aerobic digestion. Liquid domestic septage **shall be** [~~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 **shall be** [~~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 **shall be** [~~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 **shall be** [~~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 **to** 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 determination shall be made after a site evaluation and physical inspection by the cabinet of the existing site. Results of the determination shall be made in writing to the site owner.** 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. **The determination shall be made after a physical inspection by the cabinet of the vehicles, tanks, equipment, and facilities. Results of the determination shall be made in writing to the owner.**

(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.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health and Community Safety
(As Amended)

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 shall not include:**

(a) Liquid or solid material removed from a septic tank;

(b) Cesspool;

(c) Similar treatment works that receives commercial wastewater processes or individual wastewater processes; or

(d) Grease removed from a grease trap at a restaurant or similar grease producing business. **[**~~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" **is defined pursuant to KRS 211.970(3) and shall not apply to mineral-based oils or greases.** **[**~~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.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(As Amended)

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 allied health professionals**, 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.

I. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical **and other patient** 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**, and allied health professional in accordance with**

subsecction (8)(b)2 of this section;

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER HEARING OR WRITTEN COMMENTS RECEIVED

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 7:095. Assessment of civil penalties.

RELATES TO: KRS 350.990(1), 30 CFR Parts 730-733, 735, 845, 917, 30 USC 1268

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 350.990(1), 30 CFR Parts 730-733, 735, 845, 917, 30 USC 1268

NECESSITY AND FUNCTION: KRS 350.990(1) directs the cabinet to promulgate an administrative regulation setting forth the method for calculating monetary penalties. This regulation establishes how and when penalties will be assessed and includes a point system for calculating penalties, rules for assessing continuing violations, and a provision allowing waiver of the point system.

Section 1. How Penalty Assessments are Made. The cabinet shall review each violation, condition or practice cited in a notice of noncompliance and order for remedial measures or order of cessation and immediate compliance in accordance with the assessment procedures described in 405 KAR 7:092 and this administrative regulation to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

Section 2. When Penalty Will be Assessed. (1) The cabinet shall assess a penalty for each violation, condition or practice cited in an order of cessation and immediate compliance.

(2) The cabinet shall assess a penalty for each violation cited in a notice of noncompliance and order for remedial measures, if the violation is assigned thirty-one (31) points or more under the point system described in Section 3 of this administrative regulation.

(3) The cabinet may assess a penalty for each violation cited in a notice of noncompliance and order for remedial measures if the violation is assigned thirty (30) points or less under the point system described in Section 3 of this administrative regulation. In determining whether to assess a penalty, the cabinet shall consider the factors listed in 405 KAR 7:092, Section 3(2).

Section 3. Point System for Penalties. The cabinet shall use the point system described in this section to determine the amount of any penalty. Points shall be assigned as follows:

(1) History of previous violations. The cabinet shall assign up to thirty (30) points based on the history of previous violations. One (1) point shall be assigned for each past violation cited in a notice of noncompliance and order for remedial measures. Five (5) points shall be assigned for each violation (but not a condition or practice) cited in an order of cessation and immediate compliance. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(a) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one (1) year.

(b) No violation for which the notice or order has been vacated shall be counted; and

(c) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) Seriousness. The cabinet shall assign up to thirty (30) points based on the seriousness of the violation, as follows:

(a) Probability of occurrence. The cabinet shall assign up to fifteen (15) points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

1. No probability of occurrence; zero points.
2. Insignificant probability of occurrence; one (1) to four (4) points.
3. Unlikely probability of occurrence; five (5) to nine (9) points.
4. Likely probability of occurrence; ten (10) to fourteen (14) points.
5. Occurred; fifteen (15) points.

(b) Extent of potential or actual damage. The cabinet shall assign up to fifteen (15) points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

1. If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the cabinet shall assign zero to seven (7) points, depending on the duration and extent of the damage or impact.

2. If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the cabinet shall assign eight (8) to fifteen (15) points, depending on the duration and extent of the damage or impact.

(c) Administrative requirements. In the case of a violation of an administrative requirement, such as a requirement to keep records, the cabinet shall, in lieu of paragraphs (a) and (b) of this subsection, assign up to fifteen (15) points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence. The cabinet shall assign up to twenty-five (25) points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(a) A violation, condition or practice which occurs through no negligence shall be assigned no penalty points for negligence. No negligence means an inadvertent violation, condition or practice which was unavoidable by the exercise of reasonable care.

(b) A violation, condition or practice which is caused by negligence shall be assigned twelve (12) points or less, depending on the degree of negligence. Negligence means the failure of a permittee to prevent the occurrence of the violation, condition or practice due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation, condition or practice due to indifference, lack of diligence, or lack of reasonable care.

(c) A violation, condition or practice which occurs through a greater degree of fault than negligence shall be assigned thirteen (13) to twenty-five (25) points, depending on the degree of fault. A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(4) Good faith in attempting to achieve compliance. The cabinet shall subtract up to fifteen (15) points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation, condition or practice. Points shall be subtracted as follows:

(a) Rapid compliance. Six (6) to fifteen (15) points shall be subtracted from the total points if the person to whom the notice or order was issued took extraordinary measures to abate the violation, condition or practice in the shortest possible time and that abatement

was achieved before the time set for abatement.

(b) Normal compliance. Zero to five (5) points shall be subtracted from the total points if the person to whom the notice or order was issued abated the violation, condition or practice by the abatement date.

Section 4. Determination of Amount of Penalty. For each violation, condition, or practice cited in a notice or order, the cabinet shall determine the amount of any civil penalty by converting the total number of points assigned under Section 3 of this administrative regulation to a dollar amount, according to the schedule in Appendix A of this administrative regulation.

Section 5. Assessment of Separate Violations for Each Day. (1) The cabinet may assess separately a civil penalty for each day from the date of issuance of the notice or order to the date of abatement of the violation. In determining whether to make such an assessment, the cabinet shall consider the factors listed in 405 KAR 7:092, Section 3(2) and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two (2) or more days and which is assigned more than seventy (70) points under Section 3 of this administrative regulation, the cabinet shall assess a civil penalty for a minimum of two (2) separate days.

(2) **In addition to the civil penalty provided for in subsection (1) of this section,** whenever a violation, condition or practice contained in a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance has not been abated within the abatement period set in the notice or order, a civil penalty of not less than $750 shall be assessed for each day during which such failure continues according to the provisions of 405 KAR 7:092, Section 13(2).

Section 6. Waiver of Use of Point System to Determine Civil Penalty. (1) The cabinet upon its own initiative, or upon a written request by the person to whom the notice or order was issued that is received within fifteen (15) days of mailing of the proposed penalty assessment, may waive the use of the point system contained in Section 3 of this administrative regulation to set the civil penalty, if the cabinet determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the cabinet shall not waive the use of the point system or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate the violation, condition or practice. The basis for every waiver shall be fully explained and documented in the records of the case.

(2) If the cabinet waives the use of the point system, it shall use the criteria set forth in 405 KAR 7:092, Section 3(2) to determine the appropriate penalty. When the cabinet has elected to waive the use of the point system, it shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

Section 7. Procedures for Assessment of Civil Penalties Document. "Procedures for Assessment of Civil Penalties", Kentucky Department for Surface Mining Reclamation and Enforcement, June 15, 1994, is hereby incorporated by reference. This document may be reviewed or a copy may be obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

APPENDIX A OF 405 KAR 7:095

Penalty Schedule

Point	Dollars	Points	Dollars
1	20	36	1,600
2	40	37	1,700
3	60	38	1,800
4	80	39	1,900
5	100	40	2,000
6	120	41	2,100
7	140	42	2,200
8	160	43	2,300
9	180	44	2,400
10	200	45	2,500
11	220	46	2,600
12	240	47	2,700
13	260	48	2,800
14	280	49	2,900
15	300	50	3,000
16	320	51	3,100
17	340	52	3,200
18	360	53	3,300
19	380	54	3,400
20	400	55	3,500
21	420	56	3,600
22	440	57	3,700
23	460	58	3,800
24	480	59	3,900
25	500	60	4,000
26	600	61	4,100
27	700	62	4,200
28	800	63	4,300
29	900	64	4,400
30	1,000	65	4,500
31	1,100	66	4,600
32	1,200	67	4,700
33	1,300	68	4,800
34	1,400	69	4,900
35	1,500	70 and above	5,000

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: October 14, 1994
FILED WITH LRC: October 14, 1994 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:010. General provisions.

RELATES TO: KRS 350.020, 350.090, 350.093, 350.151, 350.405, 350.410, 350.440, 350.445, 350.450, 350.465, 30 CFR Parts 730-733, 735, 816.59, 816.79, 816.99, 816.131-.132, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.59, 816.79, 816.99, 816.131-.132, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This

administrative regulation contains general performance standards for maximizing coal recovery, protection of underground mining, prevention and correction of landslides, temporary cessation of operations, [and] permanent abandonment of operations, and protection of **underground mine** outcrop barrier [pillars].

Section 1. Applicability. The provisions of this chapter are applicable to all surface mining activities conducted under 405 KAR Chapters 7 through 24. The provisions of this chapter also apply to those special categories of surface mining activities for which performance standards are set forth under 405 KAR 20:030 through 405 KAR 20:080 except to the extent that a provision of those administrative regulations specifically exempts a particular category from a particular requirement of this chapter.

Section 2. Coal Recovery. Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

Section 3. Protection of Underground Mining. No surface mining activity shall be conducted within 500 feet of any point of either an active or abandoned underground mine, unless:

(1) If any of the workings of the underground mine are active, the nature, timing, and sequence of the surface mining activity are jointly approved by the cabinet, the MSHA, and the Kentucky Department of Mines and Minerals; and

(2) For both active and abandoned underground mines, the surface mining activity results in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

Section 4. Slide and Erosion Barriers. An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for a minimum distance of fifteen (15) feet or greater distance as the cabinet may determine is necessary to assure stability. The barrier shall be retained in place to prevent slides and erosion.

Section 5. Slides. At any time a slide occurs which may have a potential adverse effect on property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the cabinet by the fastest available means and comply with any remedial measures required by the cabinet.

Section 6. Permanent Abandonment of Operations. (1) Notice required. On or before the date of permanent abandonment of operations, the permittee shall provide written notice to the cabinet that permanent [such] abandonment is intended.

(2) Prior to permanent abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, backfilled, and otherwise permanently reclaimed in accordance with the requirements of KRS Chapter 350, the administrative regulations of this Title, and the permit.

(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the cabinet approves the retention of the [such] equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 7. Temporary Cessation of Operations. (1) Notice required. Prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the cabinet that [such] temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with 405 KAR 16:070, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 16:110, and the obligation to comply with all applicable conditions of the permit during the cessation.

(3) During temporary cessations, equipment and facilities necessary to environmental monitoring or to compliance with performance standards shall be made secure to the extent practicable.

Section 8. **Protection of Underground Mine Outcrop Barriers.**

(1) Coal shall not be removed from an outcrop barrier left by an underground mine, unless the cabinet has approved the proposed coal removal under this section.

(2) The cabinet shall approve the proposed coal removal if it determines that the removal meets all other applicable requirements of 405 KAR Chapters 7-24 and KRS Chapter 350 and also meets at least one (1) of paragraphs (a)-(e) of this subsection:

(a) The removal will not adversely affect the stability of the outcrop barrier;

(b) The removal will completely eliminate or significantly reduce existing underground workings;

(c) The removal will eliminate or significantly reduce an existing or potential threat to the health or safety of the public resulting from the existing underground workings;

(d) The removal will eliminate or significantly reduce existing or potential adverse impacts to the quantity or quality of groundwater or surface water resulting from the existing underground workings; or

(e) The outcrop barrier is not necessary to protect the health or safety of the public or to protect the quantity or quality of groundwater or surface water. [~~Protection of Outcrop Barrier Pillars. (1) Coal shall not be removed by auger mining, contour mining, or other surface mining activities, from an outcrop barrier pillar left by an underground mine, unless the cabinet approves the proposed coal removal.~~

~~(2) The cabinet may approve the proposed coal removal if it determines that:~~

~~(a) The removal will completely eliminate existing underground workings;~~

~~(b) The removal will eliminate or significantly reduce an existing or potential threat to the health or safety of the public resulting from the existing underground workings; or~~

~~(c) The removal will eliminate or significantly reduce existing or potential adverse impacts to the quantity or quality of groundwater or surface water resulting from the existing underground workings.~~]

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: October 14, 1994
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 16:200. Revegetation.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.420, 350.435, 350.465, 30 CFR Parts 730-733, 735, 816.111-.116, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.465, 30 CFR Parts 730-733, 735, 816.111-.116, 917, 30 USC 1253, 1255, 1265

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth requirements for revegetation of areas affected by surface mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1)(a) Each permittee shall establish on all affected land a diverse, effective, and permanent vegetative cover that meets the requirements of this administrative regulation and the revegetation provisions of 405 KAR 16:180, and that supports the approved postmining land use.

(b) For prime farmland areas, the requirements of 405 KAR 20:040 shall apply in lieu of the productivity standards of this administrative regulation unless those areas are exempted by 405 KAR 8:050, Section 3, in which case the productivity standards of this administrative regulation shall apply.

(2) All revegetation shall be in compliance with the plans submitted under 405 KAR 8:030, Sections 24(4) and 37, as approved by the cabinet, and shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(3) If the approved postmining land use is not cropland or pastureland, all disturbed land except water areas, rock areas such as those used for drainage control and wildlife enhancement, and surface areas of roads that are approved as a part of the postmining land use or uses shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region that is capable of soil stabilization, self-regeneration, and plant succession. The vegetative cover shall be considered of the same seasonal variety if it consists of a mixture of species of equal or superior utility for the approved postmining land use when compared with the utility of naturally occurring vegetation during each season of the year.

(4) If the postmining land use is cropland or pastureland, establishment of crops or pasture species normally grown in the mine vicinity and normal husbandry practices, and compliance with 405 KAR 16:180, Section 3(2) for cropland, will meet the requirements of subsection (1)(a) of this section.

(5)(a) Plant species used for revegetation shall be compatible with the plant and animal species of the area, and shall meet the requirements of applicable state and federal laws or regulations for seeds, poisonous and noxious plants, and introduced species.

(b) Except for cropland, selection of species, distribution patterns, seeding rates, and planting arrangements shall be approved case-by-case by the cabinet based upon this administrative regulation and TRM #21, "Plant Species, Distribution Patterns, Seeding Rates, and Planting Arrangements for Revegetation of Mined Lands", Kentucky Department of Fish and Wildlife Resources, Kentucky Department of Natural Resources, Division of Forestry, and Kentucky Department for Surface Mining Reclamation and Enforcement (July 12, 1994). ~~[TRM #20, "Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations", Kentucky Department for Fish and Wildlife Resources and Kentucky Department for Surface Mining Reclamation and Enforcement (December 6, 1991).]~~ This document is incorporated by reference. It may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. Two (2) or more permanent legume species and two (2) or more permanent grasses shall be established on pastureland unless fewer species are approved by the cabinet based on a pasture management plan specifically tailored to the species mix.

(6) Subject to the approval of the cabinet, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards if no adverse environmental impact will occur if the exemption is granted.

(7) The extended liability period under the performance bond requirements of 405 KAR Chapter 10 shall begin after the last time of augmented seeding, fertilizing, irrigating, or other related work, and shall continue for not less than five (5) years; except:

(a) Discrete areas of 0.25 acre or less needing reseeding due to circumstances specified in subparagraphs 1 through 5 of this paragraph may be reseeded (including reliming, refertilizing, and remulching) without restarting the five (5) year liability period. The total acreage of these areas reseeded during the liability period shall not exceed three (3) percent of the permit area acreage. This paragraph shall only apply to:

1. Reseeding associated with repair of rills and gullies;

2. Reseeding areas where vegetation was disturbed by vehicular traffic not under the control of the permittee;

3. Reseeding areas where vegetation was disturbed by the installation or removal of oil and gas wells or utility lines;

4. Reseeding areas where there was poor seed germination of the initial seeding; and

5. Reseeding areas where vegetation was unavoidably disturbed in the course of conducting some other necessary reclamation activity.

(b) Liming, fertilizing, mulching, seeding, or stocking of haul roads, locations where sedimentation ponds and off-site temporary diversions that divert water to or away from sedimentation ponds have been removed, and locations where collected sediment and embankment material from sedimentation pond removal have been disposed shall not restart the five (5) year liability period. Vegetation established in these areas shall be in place for at least two (2) years before Phase III bond release;

(c) For cropland, the five (5) year liability period shall commence at the date of initial planting for the long-term intensive agricultural postmining land use;

(d) Irrigating, reliming, and refertilizing cropland and pastureland; reseeding cropland; and renovating pastureland by overseeding with legumes after Phase II bond release and after three (3) years from the initial seeding shall be considered normal husbandry practices and shall not restart the liability period if the amount and frequency of these practices do not exceed normal agricultural practices used on unmined land within the region; and

(e) Other normal husbandry practices that may be conducted without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting of trees and shrubs in accordance with Section 6 of this administrative regulation.

(8) For pastureland, and for cropland except prime farmland subject to 405 KAR 20:040, ground cover and productivity success standards shall be met during the growing seasons of any two (2) years of the liability period except the first year; and areas approved for other uses shall equal or exceed the applicable success standards during the growing season of the last year of the liability period.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the cabinet under the following conditions:

(1) The species shall meet the applicable requirements of Section 1(2), (3), (4), and (5) of this administrative regulation.

(2)(a) Appropriate field trials or other studies shall be conducted or published literature shall be submitted to demonstrate to the satisfaction of the cabinet that proposed, unproven, introduced

species are desirable and are necessary for achieving the postmining land use; or

(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plan submitted under 405 KAR 8:030, Sections 24(4)(e) and 37.

Section 3. Timing. Seeding and planting of disturbed areas with permanent species shall be conducted no later than during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally, or as approved by the cabinet in the permit, for the type of plant materials selected. In accordance with Section 4 of this administrative regulation and 405 KAR 16:020, a disturbed area shall be seeded and mulched, as contemporaneously as practicable with the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Soil Amendments and Stabilization. (1) Nutrients and soil amendments shall be applied to regraded areas in accordance with 405 KAR 16:050, Section 5.

(2) Suitable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, to 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.

(3) For areas within the permit boundary to be used as cropland, the area shall be seeded or planted in order to maintain a vegetative cover effective in controlling erosion until the permittee chooses to grow crops.

Section 5. Success Standards for Ground Cover and Productivity. (1) Determination of success of ground cover and productivity may be made on the basis of reference areas from unmined lands in the vicinity of the operation, where applicable, or by application of the specific ground cover and productivity standards of this section (tree and shrub stocking standards are set forth in Section 6 of this administrative regulation).

(2)(a) For an approved postmining land use of pastureland or cropland used for the production of hay (except prime farmland subject to 405 KAR 20:040);

1. Ground cover (percent) and productivity (tons of forage per acre) shall be at least ninety (90) percent of that of an approved reference area with a statistical confidence of ninety (90) percent; or

2. Ground cover shall be at least ninety (90) percent, and productivity shall be at least ninety (90) percent of the average yield for that hay in the county in the three (3) years prior to the year of measurement, as determined from "Kentucky Agricultural Statistics 1989-1990", [and] "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", and "Kentucky Agricultural Statistics 1992-1993", with a statistical confidence of ninety (90) percent.

3. "Kentucky Agricultural Statistics 1989-1990" [and] "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", and "Kentucky Agricultural Statistics 1992-1993", Kentucky Agricultural Statistics Service, Kentucky Department of Agriculture, and National Agricultural Statistics Service, U.S Department of Agriculture, are incorporated by reference. These documents may be reviewed, copied, 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.

(b) For areas within the permit boundary where row crops will be planted (except prime farmland subject to 405 KAR 20:040);

1. Ground cover on any area not planted in row crops shall be at least ninety (90) percent with a statistical confidence of ninety (90) percent; and

2. Crop production shall be at least ninety (90) percent of that of an approved reference area or at least ninety (90) percent of the average yield for the crop in the county in the three (3) years prior to the year of measurement, as determined from "Kentucky Agricultural Statistics 1989-1990", "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", and "Kentucky Agricultural Statistics 1992-1993", [yield data available from the Kentucky Department of Agriculture,] with a statistical confidence of ninety (90) percent.

(c) Forest land, or other areas within the permit boundary where woody plants are stocked, shall have at least eighty (80) percent ground cover with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6.

(d) For all other land uses, ground cover shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6.

(e) For all land uses other than cropland planted in row crops, at Phase III bond release there shall be no discrete bare area or sparsely covered (less than fifty (50) percent ground cover) area greater than 0.25 acre in size.

(3) For previously mined areas that were not reclaimed to the requirements of 405 KAR Chapters 16 through 20, the ground cover of living plants shall not be less than the ground cover existing before the redisturbance and shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 16:190, Section 6.

Section 6. Tree and Shrub Stocking. This section sets forth stocking standards and criteria for counting woody plants for measuring stocking success, and shall apply [applies] in addition to Section 5 of this administrative regulation, where the approved postmining land use or the approved fish and wildlife protection and enhancement plan requires the planting of trees or shrubs.

(1) If forest land is the [an] approved postmining land use, [:

(a) The forested area shall have] a minimum stocking density of 300 [450] trees or trees and shrubs per acre determined with a statistical confidence of ninety (90) percent, with tree (not shrub) species comprising at least seventy-five (75) [fifty (50)] percent of the total stock, shall be achieved on at least seventy (70) percent of the area stocked. [woody plant species;]

(a) For noncommercial (unmanaged) forest land, [(b)] at least four (4) species of trees or trees and shrubs shall be planted in a mixed distribution pattern [for noncommercial (unmanaged) forest land] with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock.

(b) [; and

(c)] For [areas to be used as] commercial (managed) forest land, at least seventy-five (75) percent of the total stock [woody plant stocking] shall be [with] tree (not shrub) species providing good to excellent commercial value. The species shall be selected from those listed in TRM #21 [20], except the cabinet may approve other species on a case-by-case basis.

(2) For other postmining land uses:

(a) If fish and wildlife is the postmining land use, at least thirty (30) percent of the area shall be planted in [comprised of] multiple rows or plots of trees or shrubs [if fish and wildlife is the postmining land use].

(b) For subareas within the permit boundary where trees or shrubs will be planted for the purpose of creating wildlife habitat (either for a fish and wildlife postmining land use or for fish and

wildlife enhancement of other postmining land uses):

1. The minimum stocking density [~~rate~~] shall be 300 [~~450~~] woody plants per acre, except the cabinet may approve a lesser stocking density if the specific stocking density and species are recommended by the Kentucky Department of Fish and Wildlife Resources for the permit area based upon site-specific considerations and consist of at least 150 trees or shrubs per acre of recommended species, determined with a statistical confidence of ninety (90) percent;

2. At least six (6) [~~four (4)~~] species of trees or shrubs listed in Appendix A of TRM #21 **or recommended by the Kentucky Department of Fish and Wildlife Resources for the permit area based upon site-specific considerations** shall be planted, including at least three (3) hard mast species, one (1) conifer species, and two (2) soft mast or shrub species, with each of the six (6) [~~four (4)~~] species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than thirty (30) [~~fifty (50)~~] percent of the total stock; and

3. Tree and shrub species shall be selected, grouped, and distributed in a manner which optimizes edge effect, cover, and food for wildlife.

4. This amendment to this paragraph shall apply to original applications for permits and applications for permit amendments submitted after the effective date of this amendment. Permits issued or applications submitted prior to the effective date of this amendment may be revised to comply fully with this paragraph.

(c) For subareas within the permit boundary where trees and shrubs will be planted for the purposes of creating recreation areas, green belts, fence rows, woodlots, or shelter belts for wildlife, or otherwise facilitating the postmining land use, the minimum stocking density [~~rate~~] shall be 300 [~~450~~] woody plants per acre, unless a lesser density is approved by the cabinet based on site-specific considerations.

(3) For determining tree or shrub stocking success for areas within the permit boundary to be stocked with woody plants, the following criteria shall apply:

(a) At Phase II bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than one (1) growing season. At Phase III bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than two (2) growing seasons;

(b) At Phase III bond release each tree or shrub counted shall have at least one-third (1/3) of its height in live crown;

(c) At Phase III bond release, only woody plants over one (1) foot in height shall be counted, and if multiple stems occur on the same plant, only the tallest stem shall be counted;

(d) Up to a cumulative twenty (20) percent of the woody plants needed to meet the approved stocking [~~standard of 450 per acre~~] may be replanted during the liability period without restarting the liability period;

(e) At Phase III bond release, at least eighty (80) percent of the trees and shrubs used to determine success shall have been in place for three (3) years or more; [~~and~~]

(f) Volunteer plants that meet all applicable requirements of this administrative regulation may be counted; and

(g) [~~(f)~~] Portions of the site occupied by approved rock areas, brush piles, permanent impoundments, permanent roads, and surface drainageways shall be excluded from the stocking success determinations.

Section 7. Use of Reference Areas. (1) Access.

(a) If the reference area is not under the control of the permittee, there shall be a written agreement between the permittee and the landowner specifying that the area may be used for the purposes of a reference area;

(b) The agreement shall also specify that representatives of the cabinet and OSM have right of entry for the purpose of observing and measuring vegetation; and

(c) The agreement shall be effective until final bond release on the permit area, and a copy of the agreement shall be submitted in the permit application.

(2) Selection and management.

(a) Reference areas shall be:

1. Located in unmined areas;

2. Of sufficient area to allow meaningful vegetation measurements and comparisons with the permit area;

3. As close to the permit area as practicable;

4. Representative of the geology, soil, and slope of the permit area, and have the same vegetative type or crops proposed for the postmining land use; and

5. Delineated on the vegetation map pursuant to 405 KAR 8:030, Section 19 or on another appropriate map.

(b) Management of the reference area shall be comparable to that which is required for the approved land use of the permit area.

Section 8. Planting Report. (1) Prior to or simultaneously with the submittal of an application for Phase I bond release on an area, the permittee shall file a certified planting report with the cabinet, on a form prescribed and furnished by the cabinet, giving the following information:

(a) Identification of the operation;

(b) The type of planting or seeding, including mixtures and amounts;

(c) The date of planting or seeding;

(d) The area of land planted or seeded; and

(e) Any other relevant information that the cabinet requires.

(2) A planting report as described in subsection (1) of this section shall also be submitted to the cabinet if any augmentive reseeding or replanting, or other augmentive work, is performed within the permit area.

Section 9. Measurement of Vegetation Success. (1) "TRM #19, Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands", Department for Surface Mining Reclamation and Enforcement, June 28, 1991, is hereby incorporated by reference. This document 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.

(2) Ground cover and tree and shrub stocking shall be measured using the techniques outlined in TRM #19.

(3) Productivity for pastureland and cropland shall be measured by either:

(a) The techniques established in TRM #19 or alternatives approved under subsection (4) of this section; or

(b) Harvesting and weighing the entire crop or forage by the permittee to determine total yield from the entire permit area or the entire portion designated as cropland (including prime farmland) or pastureland. Representative samples shall be taken to determine moisture content. Procedures for determining total yields under this option shall be approved in advance by the cabinet[~~; or~~

~~(c) For cropland where hay is grown that is not prime farmland and for pastureland, harvesting and weighing by the permittee of the forage from a productivity test area that is an approved representative subarea of the area designated as pastureland or cropland, under subsection (6) of this section~~].

(4) The cabinet may approve alternative sampling and measurement techniques for productivity determinations in addition to those established by TRM #19 if:

(a) A complete description and justification of the methodology is submitted to the cabinet;

(b) The cabinet determines that use of the methodology would provide substantial benefit to the user in terms of cost, efficiency, or accuracy of measuring productivity;

(c) The methodology is determined by the cabinet to be procedurally and statistically valid and in compliance with this administrative regulation;

(d) Methodologies used for prime farmland shall be approved in consultation with SCS; and

(e) Alternative methodologies shall not be used unless they are approved by OSM.

(5) Measurements of ground cover, tree and shrub stocking, and productivity for Phase II and Phase III bond release shall be made by the cabinet, except the permittee may measure productivity.

(a) If the permittee intends to measure productivity, he shall notify the department's appropriate regional office of the measurement dates in order to provide the opportunity for cabinet personnel to observe the measurements. This notification shall be provided in writing at least thirty (30) days prior to the anticipated measurement dates and shall be provided by telephone or in person within two (2) days prior to the measurement dates.

(b) If the permittee measures productivity, he shall ensure that the measurements are made by qualified persons.

(c) The cabinet may make measurements or take other appropriate action as deemed necessary to verify measurements made by the permittee.

(6) [~~Productivity test area for cropland where hay is grown that is not prime farmland and for pastureland. If approved by the cabinet a permittee may determine productivity by mowing, baling and weighing the forage on a test area that is a representative subarea of the area designated as pastureland or cropland.~~

~~(a) The test area shall be one (1) contiguous subarea of the larger area to be represented; shall include ten (10) percent or more of the larger area but shall not be less than one (1) acre; shall be representative of the soil types, slopes and aspect of the larger area; and at the time of harvesting shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area.~~

~~(b) Prior to submitting an application for Phase II bond release the permittee shall submit a copy of the MRP map marked to show the proposed test area. The cabinet shall evaluate the proposed test area and shall notify the permittee in writing whether the proposed test area is approved. The approval shall be conditioned that fertilization and other management of the test area shall be the same as that of the larger area, and that at the time of harvesting the test area shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area. If the cabinet approves the test area the permittee shall physically mark the location of the test area with appropriate markers. The cabinet in its approval may specify the type of markers required.~~

~~(c) Within ten (10) working days of receipt of the written notice of anticipated measurement dates under subsection (5)(a) of this section, the cabinet shall inspect the area to determine if species composition, ground cover, and extent of vegetative growth on the test area are representative of the larger area. If the cabinet determines that the test area does not meet the applicable criteria, it shall promptly notify the permittee in writing and set forth the reasons for its determination. If the cabinet determines that the test area meets the applicable criteria, it shall promptly notify the permittee in writing that the test area may be harvested to determine productivity.~~

~~(d) The permittee shall mow, bale and weigh the yield from the test area, and shall ensure that the yield from the test area is kept separate from the yield from surrounding areas. Representative samples shall be taken to determine moisture content. Personnel of the cabinet may observe the mowing, baling and weighing and may take any reasonable actions necessary to verify the validity of these activities.~~

~~(e) The permittee shall submit the results of the yield measurements to the cabinet. The cabinet shall have the right to reject the results, in whole or in part, for good cause. The cabinet shall evaluate the results and shall notify the permittee in writing of the extent to which the results fulfill the requirement to demonstrate productivity for the larger area.~~

~~(7)~~] All crop and forage yields shall be adjusted to standard moisture content: fifteen (15) percent for pasture and hay, fifteen and five-tenths (15.5) percent for corn, and twelve and five-tenths (12.5) percent for soybeans and wheat.

(7) [~~(8)~~] Whether measured by the cabinet or the permittee, vegetation success shall be measured prior to the submittal of an application for a Phase II or Phase III bond release.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: October 14, 1994
FILED WITH LRC: October 14, 1994 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:010. General provisions.

RELATES TO: KRS 350.020, 350.090, 350.093, 350.151, 350.410, 350.440, 350.465, 30 CFR Parts 730-733, 735, 817.59, 817.99, 817.131-.132, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.59, 817.99, 817.131-.132, 917, 30 USC 1253, 1255, 1266

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation contains general performance standards for maximizing coal recovery, prevention and correction of landslides, temporary cessation of operations, [~~and~~] permanent abandonment of operations, and outcrop barrier**s for protection against water blowouts** [~~pillars~~].

Section 1. Applicability. The provisions of this chapter are applicable to all underground mining activities including coal processing plants, conducted under Title 405, Chapters 7 through 24. The provisions of this chapter also apply to those special categories of underground mining activities for which performance standards are set forth under 405 KAR 20:020 through 405 KAR 20:080, except to the extent that a provision of those administrative regulations specifically exempts a particular category from a particular requirement of this chapter.

Section 2. Coal Recovery. Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal operations is minimized.

Section 3. Slides. At any time a slide occurs which may have a potential adverse effect on property, health, safety, or the environment, the permittee shall notify the cabinet by the fastest available means and comply with any remedial measures required by the cabinet.

Section 4. Permanent Abandonment of Operations. (1) Notice required. On or before the date of permanent abandonment of operations, the permittee shall provide written notice to the cabinet that permanent [~~such~~] abandonment is intended.

(2) Prior to permanent abandonment, and prior to removal of necessary equipment from the site, all affected areas shall be closed, backfilled, and otherwise permanently reclaimed in accordance with the requirements of KRS Chapter 350, the administrative regulations of this Title, and the permit.

(3) All equipment, underground openings, structures, or other facilities not required for monitoring shall be removed and the affected areas reclaimed unless the cabinet approves the retention of the [~~such~~] equipment, openings, structures, or other facilities as compatible with the postmining land use or as beneficial to environmental monitoring.

Section 5. Temporary Cessation of Operations. (1) Notice required. Prior to a temporary cessation of operations which the permittee intends to last for thirty (30) days or more, or as soon as it is known to the permittee that an existing temporary cessation will last beyond thirty (30) days, the permittee shall provide written notice to the cabinet that [~~such~~] temporary cessation is anticipated. The notice shall state to what extent equipment will be removed from the site during the temporary cessation, and shall state the approximate date on which the permittee intends that operations will be resumed.

(2) Temporary cessation shall not relieve a permittee of the obligation to comply with 405 KAR 18:070, Section 1(1)(g) and the surface and groundwater monitoring requirements of 405 KAR 18:110, and the obligation to comply with all applicable conditions of the permit during the cessation.

(3) During temporary cessations, equipment and facilities necessary to environmental monitoring or to compliance with performance standards shall be made secure to the extent practicable.

Section 6. **Outcrop Barriers for Protection Against Water Blowouts. (1) Except where surface openings are approved in the permit, an unmined barrier of coal shall be left where the underground workings dip toward and approach the land surface. The cabinet shall waive this requirement if it determines that the proposed operation meets all other applicable requirements of 405 KAR Chapters 7-24 and KRS Chapter 350 and also meets either paragraph (a) or (b) of this subsection:**

(a) The applicant has demonstrated in the permit application to the satisfaction of the cabinet, based upon the geologic and hydrologic conditions in the permit area, that accumulation of water in the underground workings cannot reasonably be expected to occur; or

(b) Adequate measures to prevent accumulation of water in the underground workings have been included in the permit application and have been approved by the cabinet.

(2) If an outcrop barrier is required under subsection (1) of this section, it shall be of sufficient width to prevent failure and sudden release of water.

(a) The cabinet may determine on a case-by-case basis the width of outcrop barrier that shall be required to comply with this subsection.

(b) The width of the outcrop barrier shall not be less than the width given by the following formula: W = 50 + H, where W is the minimum width in feet and H is the maximum hydrostatic head in feet that can build up on the outcrop barrier. The cabinet shall approve, for the purpose of protecting against water blowouts, a width less than the minimum width determined by this formula if the applicant has demonstrated in the permit application to the satisfaction of the cabinet that the lesser width will achieve the purpose of this subsection. [~~Outcrop Barrier Pillars. (1) Except where entries and ventilation shafts are approved, an unmined section of coal shall be left at each area where the coal seam approaches the land surface, to create an outcrop barrier pillar.~~

~~(2) The outcrop barrier pillar shall be of sufficient width to support the overburden and to prevent failure and sudden release of water due to water pressure against the unmined coal. The cabinet may determine on a case by case basis the width of outcrop barrier pillar that shall be required to comply with this subsection; except if the coal seam dips toward the land surface, the width of the outcrop barrier pillar shall not be less than the width given by the following formula: W = 50 + H, where W is the minimum width in feet and H is the maximum hydrostatic head in feet that can build up on the outcrop barrier.~~]

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: October 14, 1994
FILED WITH LRC: October 14, 1994 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 18:200. Revegetation.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.405, 350.410, 350.420, 350.435, 350.465, 30 CFR Parts 730-733, 735, 817.111-.116, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.100, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.111-.116, 917, 30 USC 1253, 1255, 1266

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth requirements for revegetation of areas affected by surface operations and facilities of underground mining activities, including requirements for temporary and permanent vegetative cover, use of introduced species, timing of revegetation, mulching and other soil stabilizing practices, standards for measuring revegetation success, and reporting requirements.

Section 1. General Requirements. (1)(a) Each permittee shall establish on all areas affected by surface operations and facilities a diverse, effective, and permanent vegetative cover that meets the requirements of this administrative regulation and the revegetation provisions of 405 KAR 18:180, and that supports the approved postmining land use.

(b) For prime farmland areas, the requirements of 405 KAR 20:040 shall apply in lieu of the productivity standards of this administrative regulation unless those areas are exempted by 405 KAR 8:050, Section 3, in which case the productivity standards of this administrative regulation shall apply.

(2) All revegetation shall be in compliance with the plan submitted under 405 KAR 8:040, Sections 24(4) and 37, as approved by the cabinet, and shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(3) If the approved postmining land use is not cropland or pastureland, all disturbed land except water areas, rock areas such as those used for drainage control and wildlife enhancement, and surface areas of roads that are approved as a part of the postmining land use or uses shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the region that is capable of soil stabilization, self-regeneration, and plant succession. The vegetative cover shall be considered of the same seasonal variety if it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared

with the utility of naturally occurring vegetation during each season of the year.

(4) If the postmining land use is cropland or pastureland, establishment of crops or pasture species normally grown in the mine vicinity and normal husbandry practices, and compliance with 405 KAR 18:180, Section 3(2) for cropland, will meet the requirements of subsection (1)(a) of this section.

(5)(a) Plant species used for revegetation shall be compatible with the plant and animal species of the area, and shall meet the requirements of applicable state and federal laws or regulations for seeds, poisonous and noxious plants, and introduced species.

(b) Except for cropland, selection of species, distribution patterns, seeding rates, and planting arrangements shall be approved case-by-case by the cabinet based upon this administrative regulation and TRM #21, "Plant Species, Distribution Patterns, Seeding Rates, and Planting Arrangements for Revegetation of Mined Lands", Kentucky Department of Fish and Wildlife Resources, Kentucky Department of Natural Resources, Division of Forestry, and Kentucky Department for Surface Mining Reclamation and Enforcement (July 12, 1994). [~~TRM #20, "Methodologies for the Evaluation, Protection, and Enhancement of Fish and Wildlife Resources for Coal Mining and Reclamation Operations", Kentucky Department for Fish and Wildlife Resources and Kentucky Department for Surface Mining Reclamation and Enforcement (December 6, 1991).~~] This document is incorporated by reference. It may be reviewed, copied, 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. Two (2) or more permanent legume species and two (2) or more permanent grasses shall be established on pastureland unless fewer species are approved by the cabinet based on a pasture management plan specifically tailored to the species mix.

(6) Subject to the approval of the cabinet, small incidental areas related to the fulfillment of the postmining land use may be exempted from the revegetation standards if no adverse environmental impact will occur if the exemption is granted.

(7) The extended liability period under the performance bond requirements of 405 KAR Chapter 10 shall begin after the last time of augmented seeding, fertilizing, irrigating, or other related work, and shall continue for not less than five (5) years; except:

(a) Discrete areas of 0.25 acre or less needing reseeding due to circumstances specified in subparagraphs 1 through 5 of this paragraph may be reseeded (including reliming, refertilizing, and remulching) without restarting the five (5) year liability period. The total acreage of these areas reseeded during the liability period shall not exceed three (3) percent of the acreage affected by surface operations and facilities. This paragraph shall only apply to:

1. Reseeding associated with repair of rills and gullies;

2. Reseeding areas where vegetation was disturbed by vehicular traffic not under the control of the permittee;

3. Reseeding areas where vegetation was disturbed by the installation or removal of oil and gas wells or utility lines;

4. Reseeding areas where there was poor seed germination of the initial seeding; and

5. Reseeding areas where vegetation was unavoidably disturbed in the course of conducting some other necessary reclamation activity.

(b) Liming, fertilizing, mulching, seeding, or stocking of haul roads, locations where sedimentation ponds and off-site temporary diversions that divert water to or away from sedimentation ponds have been removed, and locations where collected sediment and embankment material from sedimentation pond removal have been disposed shall not restart the five (5) year liability period. Vegetation established in these areas shall be in place for at least two (2) years before Phase III bond release;

(c) For cropland, the five (5) year liability period shall commence at the date of initial planting for the long-term intensive agricultural postmining land use;

(d) Irrigating, reliming, and refertilizing cropland and pastureland; reseeding cropland; and renovating pastureland by overseeding with legumes after Phase II bond release and after three (3) years from the initial seeding shall be considered normal husbandry practices and shall not restart the liability period, if the amount and frequency of these practices do not exceed normal agricultural practices used on unmined land within the region; and

(e) Other normal husbandry practices that may be conducted without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting of trees and shrubs in accordance with Section 6 of this administrative regulation.

(8) For pastureland, and for cropland except prime farmland subject to 405 KAR 20:040, ground cover and productivity success standards shall be met during the growing seasons of any two (2) years of the liability period except the first year; and areas approved for other uses shall equal or exceed the applicable success standards during the growing season of the last year of the liability period.

Section 2. Use of Introduced Species. Introduced species may be substituted for native species only if approved by the cabinet under the following conditions:

(1) The species shall meet the applicable requirements of Section 1(2), (3), (4), and (5) of this administrative regulation.

(2)(a) Appropriate field trials or other studies shall be conducted or published literature shall be submitted to demonstrate to the satisfaction of the cabinet that proposed, unproven, introduced species are desirable and are necessary for achieving the postmining land use; or

(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plans submitted under 405 KAR 8:040, Sections 24(4)(e) and 37.

Section 3. Timing. Seeding and planting of disturbed areas with permanent species shall be conducted no later than during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally, or as approved by the cabinet in the permit, for the type of plant materials selected. In accordance with Section 4 of this administrative regulation and 405 KAR 18:020, a disturbed area shall be seeded and mulched, as contemporaneously as practicable with the completion of backfilling and grading, to establish a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

Section 4. Soil Amendments and Stabilization. (1) Nutrients and soil amendments shall be applied to regraded areas in accordance with 405 KAR 18:050, Section 5.

(2) 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.

(3) For areas within the area affected by surface operations and facilities to be used as cropland, the area shall be seeded or planted in order to maintain a vegetative cover effective in controlling erosion until the permittee chooses to grow crops.

Section 5. Success Standards for Ground Cover and Productivity. (1) Determination of success of ground cover and productivity may be made on the basis of reference areas from unmined lands in the vicinity of the operation, where applicable, or by application of the specific ground cover and productivity standards of this section (tree

and shrub stocking standards are set forth in Section 6 of this administrative regulation).

(2)(a) For an approved postmining land use of pastureland or cropland used for the production of hay (except prime farmland subject to 405 KAR 20:040);

1. Ground cover (percent) and productivity (tons of forage per acre) shall be at least ninety (90) percent of that of an approved reference area with a statistical confidence of ninety (90) percent; or

2. Ground cover shall be at least ninety (90) percent, and productivity shall be at least ninety (90) percent of the average yield for that hay in the county in the three (3) years prior to the year of measurement, as determined from "Kentucky Agricultural Statistics 1989-1990", "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", and "Kentucky Agricultural Statistics 1992-1993", [~~yield data available from the Kentucky Department of Agriculture,~~] with a statistical confidence of ninety (90) percent.

3. "Kentucky Agricultural Statistics 1989-1990", "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", and "Kentucky Agricultural Statistics 1992-1993", Kentucky Agricultural Statistics Service, Kentucky Department of Agriculture, and National Agricultural Statistics Service, United States Department of Agriculture, are incorporated by reference. These documents may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

(b) For areas within the area affected by surface operations and facilities where row crops will be planted (except prime farmland subject to 405 KAR 20:040):

1. Ground cover on any area not planted in row crops shall be at least ninety (90) percent with a statistical confidence of ninety (90) percent; and

2. Crop production shall be at least ninety (90) percent of that of an approved reference area or at least ninety (90) percent of the average yield for the crop in the county in the three (3) years prior to the year of measurement, as determined from "Kentucky Agricultural Statistics 1989-1990", "Kentucky Agricultural Statistics 1990-1991", "Kentucky Agricultural Statistics 1991-1992", and "Kentucky Agricultural Statistics 1992-1993", [~~yield data available from the Kentucky Department of Agriculture,~~] with a statistical confidence of ninety (90) percent.

(c) Forest land, or other areas within the area affected by surface operations and facilities where woody plants are stocked, shall have at least eighty (80) percent ground cover with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 18:190, Section 4.

(d) For all other land uses, ground cover shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 18:190, Section 4.

(e) For all land uses other than cropland planted in row crops, at Phase III bond release there shall be no discrete bare area or sparsely covered (less than fifty (50) percent ground cover) area greater than 0.25 acre in size.

(3) For previously mined areas that were not reclaimed to the requirements of 405 KAR Chapters 16 through 20, the ground cover of living plants shall not be less than the ground cover existing before the redisturbance and shall be at least eighty (80) percent with a statistical confidence of ninety (90) percent, with no sign of significant erosion as set forth in 405 KAR 18:190, Section 4.

Section 6. Tree and Shrub Stocking. This section sets forth stocking standards and criteria for counting woody plants for measuring stocking success, and shall apply [~~applies~~] in addition to Section 5 of this administrative regulation, where the approved postmining land use or the approved fish and wildlife protection and enhancement plan requires the planting of trees or shrubs.

(1) If forest land is the [~~an~~] approved postmining land use, [~~:~~ ~~(a) The forested area shall have~~] a minimum stocking density of 300 [~~450~~] trees or trees and shrubs per acre determined with a statistical confidence of ninety (90) percent, with tree (not shrub) species comprising at least seventy-five (75) [~~fifty (50)~~] percent of the total stock, shall be achieved on at least seventy (70) percent of the area stocked. [~~woody plant species;~~]

(a) For noncommercial (unmanaged) forest land, [~~(b)~~] at least four (4) species of trees or trees and shrubs shall be planted in a mixed distribution pattern [~~for noncommercial (unmanaged) forest land~~] with each of the four (4) species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than fifty (50) percent of the total stock. [~~; and~~]

(b) [~~(c)~~] For [~~areas to be used as~~] commercial (managed) forest land, at least seventy-five (75) percent of the total stock [~~woody plant stocking~~] shall be [~~with~~] tree (not shrub) species providing good to excellent commercial value. The species shall be selected from those listed in TRM #21 [~~20~~], except the cabinet may approve other species on a case-by-case basis.

(2) For other postmining land uses:

(a) If fish and wildlife is the postmining land use, at least thirty (30) percent of the area shall be planted in [~~comprised of~~] multiple rows or plots of trees or shrubs [~~if fish and wildlife is the postmining land use~~].

(b) For subareas within the area affected by surface operations and facilities where trees or shrubs will be planted for the purpose of creating wildlife habitat (either for a fish and wildlife postmining land use or for fish and wildlife enhancement of other postmining land uses):

1. The minimum stocking density [~~rate~~] shall be 300 [~~450~~] woody plants per acre, except the cabinet may approve a lesser stocking density if the specific stocking density and species are recommended by the Kentucky Department of Fish and Wildlife Resources for the permit area based upon site-specific considerations and consist of at least 150 trees or shrubs per acre of recommended species, determined with a statistical confidence of ninety (90) percent;

2. At least six (6) [~~four (4)~~] species of trees or shrubs listed in Appendix A of TRM #21 **or recommended by the Kentucky Department of Fish and Wildlife resources for the permit area based upon site-specific considerations** shall be planted, including at least three (3) hard mast species, one (1) conifer species, and two (2) soft mast or shrub species, with each of the six (6) [~~four (4)~~] species comprising at least ten (10) percent of the total stock; however, none of the species shall comprise more than thirty (30) [~~fifty (50)~~] percent of the total stock; and

3. Tree and shrub species shall be selected, grouped, and distributed in a manner which optimizes edge effect, cover, and food for wildlife.

4. This amendment to this paragraph shall apply to original applications for permits and applications for permit amendments submitted after the effective date of this amendment. Permits issued or applications submitted prior to the effective date of this amendment may be revised to comply fully with this paragraph.

(c) For subareas within the area affected by surface operations and facilities where trees and shrubs will be planted for the purposes of creating recreation areas, green belts, fence rows, woodlots, or shelter belts for wildlife, or otherwise facilitating the postmining land use, the minimum stocking density [~~rate~~] shall be 300 [~~450~~] woody plants per acre, unless a lesser density is approved by the cabinet based on site-specific considerations.

(3) For determining tree or shrub stocking success for areas within the area affected by surface operations and facilities to be stocked with woody plants, the following criteria shall apply:

(a) At Phase II bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than one

(1) growing season. At Phase III bond release, each tree or shrub counted shall be alive and healthy and shall have been in place for not less than two (2) growing seasons:

(b) At Phase III bond release each tree or shrub counted shall have at least one-third (1/3) of its height in live crown;

(c) At Phase III bond release, only woody plants over one (1) foot in height shall be counted, and if multiple stems occur on the same plant, only the tallest stem shall be counted;

(d) Up to a cumulative twenty (20) percent of the woody plants needed to meet the approved stocking [~~standard of 450 per acre~~] may be replanted during the liability period without restarting the liability period;

(e) At Phase III bond release, at least eighty (80) percent of the trees and shrubs used to determine success shall have been in place for three (3) years or more; [~~and~~]

(f) Volunteer plants that meet all applicable requirements of this administrative regulation may be counted; and

(g) [~~(f)~~] Portions of the site occupied by approved rock areas, brush piles, permanent impoundments, permanent roads, and surface drainageways shall be excluded from the stocking success determinations.

Section 7. Use of Reference Areas. (1) Access.

(a) If the reference area is not under the control of the permittee, there shall be a written agreement between the permittee and the landowner specifying that the area may be used for the purposes of a reference area;

(b) The agreement shall also specify that representatives of the cabinet and OSM have right of entry for the purpose of observing and measuring vegetation; and

(c) The agreement shall be effective until final bond release on the permit area, and a copy of the agreement shall be submitted in the permit application.

(2) Selection and management.

(a) Reference areas shall be:

1. Located in unmined areas;

2. Of sufficient area to allow meaningful vegetation measurements and comparisons with the area affected by surface operations and facilities;

3. As close to the area affected by surface operations and facilities as practicable;

4. Representative of the geology, soil, and slope of the area affected by surface operations and facilities, and have the same vegetative type or crops proposed for the postmining land use; and

5. Delineated on the vegetation map pursuant to 405 KAR 8:040, Section 19 or on another appropriate map.

(b) Management of the reference area shall be comparable to that which is required for the approved land use of the area affected by surface operations and facilities.

Section 8. Planting Report. (1) Prior to or simultaneously with the submittal of an application for Phase I bond release on an area, the permittee shall file a certified planting report with the cabinet, on a form prescribed and furnished by the cabinet, giving the following information:

(a) Identification of the operation;

(b) The type of planting or seeding, including mixtures and amounts;

(c) The date of planting or seeding;

(d) The area of land planted or seeded; and

(e) Any other relevant information that the cabinet requires.

(2) A planting report as described in subsection (1) of this section shall also be submitted to the cabinet if any augmentive reseeding or replanting, or other augmentive work, is performed within the area affected by surface operations and facilities.

Section 9. Measurement of Vegetation Success. (1) Ground cover and tree and shrub stocking shall be measured using the techniques outlined in TRM #19. TRM #19, "Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands", Department for Surface Mining Reclamation and Enforcement, June 28, 1991, is incorporated by reference. It may be reviewed, copied, 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.

(2) Productivity for pastureland and cropland shall be measured by either:

(a) The techniques established in TRM #19 or alternatives approved under subsection (3) of this section;

(b) Harvesting and weighing the entire crop or forage by the permittee to determine total yield from the entire surface operations and facilities area or the entire portion designated as cropland (including prime farmland) or pastureland. Representative samples shall be taken to determine moisture content. Procedures for determining total yields under this option shall be approved in advance by the cabinet[~~; or~~

~~(c) For cropland where hay is grown that is not prime farmland and for pastureland, harvesting and weighing by the permittee of the forage from a productivity test area that is an approved representative subarea of the area designated as pastureland or cropland, under subsection (5) of this section~~].

(3) The cabinet may approve alternative sampling and measurement techniques for productivity determinations in addition to those established by TRM #19 if:

(a) A complete description and justification of the methodology is submitted to the cabinet;

(b) The cabinet determines that use of the methodology would provide substantial benefit to the user in terms of cost, efficiency, or accuracy of measuring productivity;

(c) The methodology is determined by the cabinet to be procedurally and statistically valid and in compliance with this administrative regulation;

(d) Methodologies used for prime farmland shall be approved in consultation with SCS; and

(e) Alternative methodologies shall not be used unless they are approved by OSM.

(4) Measurements of ground cover, tree and shrub stocking, and productivity for Phase II and Phase III bond release shall be made by the cabinet, except the permittee may measure productivity.

(a) If the permittee intends to measure productivity, he shall notify the department's appropriate regional office of the measurement dates in order to provide the opportunity for cabinet personnel to observe the measurements. This notification shall be provided in writing at least thirty (30) days prior to the anticipated measurement dates and shall be provided by telephone or in person within two (2) days prior to the measurement dates.

(b) If the permittee measures productivity, he shall ensure that the measurements are made by qualified persons.

(c) The cabinet may make measurements or take other appropriate action as deemed necessary to verify measurements made by the permittee.

(5) [~~Productivity test area for cropland where hay is grown that is not prime farmland and for pastureland. If approved by the cabinet a permittee may determine productivity by mowing, baling and weighing the forage on a test area that is a representative subarea of the area designated as pastureland or cropland.~~

~~(a) The test area shall be one (1) contiguous subarea of the larger area to be represented; shall include ten (10) percent or more of the larger area but shall not be less than one (1) acre; shall be representative of the soil types, slopes and aspect of the larger area; and at the time of harvesting shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area.~~

~~(b) Prior to submitting an application for Phase II bond release the permittee shall submit a copy of the MRP map marked to show the proposed test area. The cabinet shall evaluate the proposed test area and shall notify the permittee in writing whether the proposed test area is approved. The approval shall be conditioned that fertilization and other management of the test area shall be the same as that of the larger area, and that at the time of harvesting the test area shall be representative of the vegetative species, ground cover, and extent of vegetative growth on the larger area. If the cabinet approves the test area the permittee shall physically mark the location of the test area with appropriate markers. The cabinet in its approval may specify the type of markers required.~~

~~(c) Within ten (10) working days of receipt of the written notice of anticipated measurement dates under subsection (4)(a) of this section, the cabinet shall inspect the area to determine if species composition, ground cover, and extent of vegetative growth on the test area are representative of the larger area. If the cabinet determines that the test area does not meet the applicable criteria, it shall promptly notify the permittee in writing and set forth the reasons for its determination. If the cabinet determines that the test area meets the applicable criteria, it shall promptly notify the permittee in writing that the test area may be harvested to determine productivity.~~

~~(d) The permittee shall mow, bale and weigh the yield from the test area, and shall ensure that the yield from the test area is kept separate from the yield from surrounding areas. Representative samples shall be taken to determine moisture content. Personnel of the cabinet may observe the mowing, baling and weighing and may take any reasonable actions necessary to verify the validity of these activities.~~

~~(e) The permittee shall submit the results of the yield measurements to the cabinet. The cabinet shall have the right to reject the results, in whole or in part, for good cause. The cabinet shall evaluate the results and shall notify the permittee in writing of the extent to which the results fulfill the requirement to demonstrate productivity for the larger area.~~

~~(6)~~] All crop and forage yields shall be adjusted to standard moisture content: fifteen (15) percent for pasture and hay, fifteen and five-tenths (15.5) percent for corn, and twelve and five- tenths (12.5) percent for soybeans and wheat.

(6) [~~(7)~~] Whether measured by the cabinet or the permittee, vegetation success shall be measured prior to the submittal of an application for a Phase II or Phase III bond release.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: October 14, 1994
FILED WITH LRC: October 14, 1994 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(Amended After Hearing)

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.

(2) [~~(3)~~] "Direct supervision" means that a **qualified electrician is readily available** [~~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.

(3) [~~(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.

(4) [~~(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.

(5) [~~(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.

(6) [~~(7)~~] "Fail safe" means designed and installed in a manner that will ensure proper operation of a device under normal and abnormal conditions.

(7) [~~(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.~~]

(8) [~~(10)~~] "Mobile equipment" means equipment that is self-propelled.

(9) [~~(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.

(10) [~~(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.

(11) [~~(13)~~] "Proper fitting" means a fitting whose design has been approved by the department **or is in accordance with the National Electrical Code or 30 CFR Parts 18, 75, or 77, both of which are incorporated herein by reference.**

(12) [~~(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.

(13) [~~(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.

(14) [~~(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.

(15) [~~(17)~~] "Suitable" means approved by the department.

(16) [~~(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.

(17) [~~(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 **procedures** 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 **high voltage [~~power~~]** lines **or uninsulated low or medium voltage lines on the surface** 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) **Unless otherwise authorized by the department,** 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 **which ensures that alternating current from the power source does not appear on the battery leads** 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 **or in accordance with the National Electrical Code or 30 CFR Parts 18, 75, or 77**;

(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 **or in accordance with the National Electrical Code or 30 CFR Parts 18, 75, or 77**; 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 **by the department**;

(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 **or in accordance with the National Electrical Code or 30 CFR Parts 18, 75, or 77**.

(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. **If the manufacturer recommends that there be a modification or update in the machinery, that modification or update shall be subject to the approval of the department.**

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 **or 30 CFR Parts 18, 75 or 77** [~~; 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 **or MSHA, in accordance with 30 CFR**;

(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 **or in accordance with methods set out in the National Electrical Code or 30 CFR Parts 18, 75 or 77**.

(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 transform-

er.

(6) Stationary electrical equipment located on the surface shall be grounded by a method approved by the department **or in accordance with methods set out in the National Electrical Code or 30 CFR Parts 18, 75 or 77** 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 **or in accordance with standards set out in the National Electrical Code or 30 CFR Parts 18, 75 or 77** 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 **or which are set out in the National Electrical Code or 30 CFR Parts 18, 75 or 77**;

(c) Be installed in a manner approved by the department **or in accordance with methods set out in the National Electrical Code or 30 CFR Parts 18, 75 or 77**;

(d) Be separated from other ground fields by distances approved by the department **or in accordance with methods set out in the National Electrical Code or 30 CFR Parts 18, 75 or 77**;

(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 **or in accordance with methods set out in the National Electrical Code or 30 CFR Parts 18, 75 or 77**.

(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 **or by the National Electrical Code or 30 CFR Parts 18, 75 or 77**;

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 **or the National Electrical Code or 30 CFR Parts 18, 75 or 77**;

(e) Short-circuit and overload protective devices shall provide at least the minimum protection required by the National Electrical Code **or 30 CFR Parts 18, 75 or 77** **[**~~, 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 **or the National Electrical Code or 30 CFR Parts 18, 75 or 77**. 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 **as soon as practicable and before the circuits are energized for use** **[**~~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 **or be in accordance with standards set out in the National Electrical Code or 30 CFR Parts 18, 75 or 77.**

(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 **readily** 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. **The National Electrical Code, 1993 Edition, published by the National Fire Protection Association, is incorporated herein by reference. 30 CFR Parts 18, 75, and 77, revised as of July 1, 1993, are also incorporated herein by reference. These documents can be inspected and copied at the following offices of the Department of Mines and Minerals during the hours of 8 a.m. and 4:30 p.m., prevailing local time, on all business days:**

(1) Department of Mines and Minerals, 3572 Iron Works Pike, Lexington, Kentucky 40511;

(2) Harlan District Office, 2nd & Central Street, Harlan, Kentucky 40831;

(3) Hazard District Office, Hazard Village Shopping Center, 556 Village Lane, Hazard, Kentucky 41701;

(4) London District Office, 94 State Police Road, London, Kentucky 40741;

(5) Martin District Office, Coal Building, Junction of Rts. 80 & 122, Martin, Kentucky 41649;

(6) Pikeville District Office, 441 Chloe Road, Pikeville, Kentucky 41501;

(7) West Kentucky District Office, 625 Hospital Drive, Madisonville, Kentucky 42431.

Section 23. 805 KAR 3:090 is hereby repealed.

EDWARD J. HOLMES, Secretary
BURL SCOTT, Commissioner
APPROVED BY AGENCY: October 5, 1994
FILED WITH LRC: October 6, 1994 at 2 p.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 14, 1994

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.075, 18A.0751, 18A.111
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 for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or 12th month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Conservation Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2306	Park Ranger	12 months
2312	Park Ranger Captain	12 months
2401	Police Communications Dispatcher	12 months
2403	Police Communications Dispatcher Senior	12 months
2404	Police Communications Dispatcher Coordinator	12 months
2405	Police Communications Dispatcher Supervisor	12 months
2408	MVE Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer	12 months
2493	Mounted Security Office	12 months
2494	Mounted Security Sergeant	12 months
2495	Mounted Security Captain	12 months
2496	Mounted Security Officer Trainer	12 months
3254	Boiler Inspector Trainee	12 months
3416	Financial Institution Examiner Trainee	12 months
3601	Alcoholic Beverage Enforcement Officer	12 months
3734	Assessment Conference Officer	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
6248	Residential Facility Superintendent I	12 months
6250	Residential Facility Superintendent III	12 months
6252	Residential Facility Superintendent II	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months
9859	Environmental Administrative Hearing Officer	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

(4) When an employee is appointed to a position from a competitive register, such appointment shall be considered as an initial appointment.

(5) Effective July 1, 1991, the following job classifications in the Department of Education shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
5303	Exceptional Children Consultant I	12 months
5304	Exceptional Children Consultant II	12 months
5305	Exceptional Children Program Manager I	12 months
5306	Exceptional Children Program Manager II	12 months
5309	Education Academic Program Consultant I	12 months
5310	Education Academic Program Consultant II	12 months
5311	Education Academic Program Manager I	12 months
5312	Education Academic Program Manager II	12 months
5313	Education Administration Program Consultant I	12 months
5314	Education Administration Program Consultant II	12 months
5315	Education Administration Program Manager I	12 months
5316	Education Administration Program Manager II	12 months

5321	Education Facilities Program Consultant	12 months
5323	Education Facilities Program Manager	12 months
5324	Education Instructional Services Advisor	12 months
5325	School Accreditation Evaluator	12 months
5327	School Accreditation Evaluation Manager	12 months
5329	School Food Services Program Consultant	12 months
5330	School Food Services Program Coordinator	12 months
5331	School Food Services Program Manager	12 months
5337	Education Financial Analyst	12 months
5341	Education Health/P.E. Program Consultant I	12 months
5342	Education Health/P.E. Program Consultant II	12 months
5343	Education Reading Program Consultant I	12 months
5344	Education Reading Program Consultant II	12 months
5345	Education Social Studies Program Consultant I	12 months
5346	Education Social Studies Program Consultant II	12 months
5347	Education Science Program Consultant I	12 months
5348	Education Science Program Consultant II	12 months
5349	Education Language Arts Program Consultant I	12 months
5350	Education Language Arts Program Consultant II	12 months
5351	Education Math Program Consultant I	12 months
5352	Education Math Program Consultant II	12 months
5353	Education Primary Program Consultant I	12 months
5354	Education Primary Program Consultant II	12 months
5355	Education Vocational Program Consultant I	12 months
5356	Education Vocational Program Consultant II	12 months

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, copies of the notice of reversion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service no later than twelve (12) months after the beginning of a break in service shall be reinstated with status. An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

LEWIS H. WARRIX, Vice-Chairman

APPROVED BY AGENCY: October 14, 1994

FILED WITH LRC: October 14, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1994, at 9 a.m., at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1994, five days prior to the scheduled 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: R. Hanson Williams, Executive Director, Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, Telephone: (502) 564-7830

REGULATORY IMPACT ANALYSIS

Contact Person: R. Hanson Williams

(1) Type and number of entities affected: This regulation affects all state agencies having probationary periods in excess of 6 months. The proposed amendment increases the probationary period from 6 months to 12 months for police communications dispatchers and residential facility superintendents.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments received. Cost of living and employment not affected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments received. Cost of doing business not affected.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Compliance does not result in increased reporting, paperwork or cost.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal savings may be achieved through delay in paying probationary increments.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: The source of revenue is the cabinets' or agencies' budget for its employees.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No economic impact.

(b) Kentucky: No public comments received. No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to retain the 6 month probationary period which would not provide an adequate period of time to train and evaluate employees before achieving status.

(8) Assessment of expected benefits: By increasing the initial probationary period to 12 months in the classifications of police communications dispatchers and residential facility superintendents, the affected agencies will be able to adequately train and evaluate employees before achieving status thus allowing the most qualified individuals to be placed into these classifications.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on environment and public health will result if not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect will result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This regulation must apply equally to all classified employees in all state agencies with classified employees.

GENERAL GOVERNMENT CABINET
State Board of Physical Therapy
(Proposed Amendment)

201 KAR 22:052. Refusal, revocation, suspension or probation of license or certificate; administrative warning to licensee or certificant.

RELATES TO: KRS 327.070, 327.090

STATUTORY AUTHORITY: KRS 327.040

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with KRS Chapter 13A. The function of this administrative regulation is to establish a complaint and hearing procedure. [~~The board has the responsibility of enforcing the definitive procedures of refusal, revocation, suspension, or placing on probation, the license of any physical therapist and the certificate of any physical therapist's assistant or issuing an administrative warning to any licensee or certificant. Often questions concerning the law or possible violations can be resolved by mutual discussions; however, these guidelines are to be followed when the board receives, or initiates, a written and signed explicit complaint. All aspects of an investigation of a complaint shall be held strictly confidential until after enforcement action is completed or a decision is made to take no action.~~]

Section 1. (1) Complaint.

(a) A complaint that a person [~~(hereinafter called)~~ (respondent) has failed [~~to~~] or refused to obey the requirements of KRS Chapter 327[~~,~~] or the administrative [~~rules and~~] regulations of the board shall be made in writing to [~~or by~~] the Kentucky State Board of Physical Therapy.

(b) The complaint shall [~~must be a clear and concise statement of violation and it must~~] be signed by the complainant.

(c) The complainant need not be a physical therapist or assistant. [~~Within ten (10) days the chairman of the board shall acknowledge to the complainant receipt of the complaint by registered or certified mail.~~]

(2) Notice to respondent.

(a) [~~Within ten (10) days after receipt of the written complaint,~~] The [~~chairman of the~~] board shall notify the respondent of the receipt of the complaint and the essential contents of the complaint. The board may keep the complainant's name confidential until completion of any board investigation. [~~by registered or certified mail, return receipt requested.~~]

(b) Respondent shall file a [~~This notice shall require the respondent to~~] reply to the complaint with [~~by registered or certified mail to~~] the board within twenty (20) days after receipt of notice of the complaint.

(c) Failure of the respondent to file a timely reply to the complaint shall constitute a violation of a board order or administrative regulation and shall be grounds for disciplinary action under KRS 327.070(9).

(3) Investigation of complaint.

(a) The board may, if it deems appropriate, assign one (1) or more persons to conduct an investigation of the facts alleged in a complaint and submit a report to the board.

(b) The board may, at any time, conduct an investigation on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of KRS Chapter 327 or the administrative regulations of the board.

(c) The board may dismiss a complaint at any time if the board determines that the facts stated in the complaint, or facts known to the board after investigation, fail to establish a violation of KRS Chapter 327 or the administrative regulations of the board. [~~The investigation shall be a thorough, objective review of the circumstances under which the alleged violation took place. Two (2) members of the board or its official representative may wish to discuss the complaint with the respondent or complainant to collect and organize more information, but not make a decision. An investigative file shall be formed to include all information and documents acquired during the investigation.~~]

Section 2. Arrangement for a Hearing. (1) After receipt of the complaint, any reply, and completion of any investigation, the board shall determine whether there is sufficient evidence to believe that a violation of KRS Chapter 327 or the administrative regulations of the board has occurred and whether the violation warrants disciplinary action.

(2) If the board determines that a hearing is necessary, the board shall give the respondent written notice of the date, time, and place of the hearing and a formal statement of the charges at least twenty (20) days before the hearing is held.

(3) The notice may be served by personal delivery to the respondent or by mail to the last known business or home address of the respondent.

(4) Respondent shall file with the board an answer to the formal charges and written notice that respondent intends to appear at the hearing within ten (10) days after receipt of the board's notice of hearing and formal statement of charges.

(5) Respondent's failure to either file an answer to the formal charges or failure to appear at the hearing may be taken by the board as an admission of the formal charges which entitles the board to cancel the hearing and take whatever disciplinary action is deemed appropriate against the respondent. [~~After receiving respondent's~~

~~written reply and after possible discussion between the board and respondent, the board shall determine if a hearing will be necessary to further investigate the complaint. If no hearing is necessary or all parties come to an agreement, the board shall advise all parties that the matter is determined to be settled or closed. If a hearing is necessary, the board shall give all involved parties thirty (30) days notice of the date, time and place the hearing will be held.~~

~~(1) Hearing. At the hearing the respondent has the right to be present and to be represented by counsel. The board may or may not wish to follow formal rules of evidence, but the board may exclude irrelevant or repetitious evidence. The hearing may be conducted to bring out pertinent facts, including the calling of witnesses and the production of pertinent documents. Testimony shall be under oath or affirmation. The hearing shall be recorded. All documents accepted by the board, including the investigative file, shall be made part of the record of the hearing.~~

~~(2) Findings and decisions. After the hearing the board shall make findings as to all questions of fact and all questions of interpretation of KRS Chapter 327 and board rules and regulations. The board may close the matter or settle, and notify all persons involved, or it may take appropriate disciplinary action after conferring with the Attorney General to assure that all guidelines have been followed correctly.]~~

Section 3. Parties, Hearing Officer, and Evidence. (1) A party may:

(a) Represent himself; or

(b) Be represented by an attorney.

(2) The chairman of the board or a hearing officer designated by the chairman shall preside at the hearing.

(3) The hearing officer may:

(a) Issue subpoenas;

(b) Authorize the taking of depositions;

(c) Require production of documents;

(d) Administer oaths;

(e) Examine witnesses;

(f) Render decisions on motions, requests, or other matters that do not result in a final disposition of the complaint;

(g) Receive evidence; and

(h) Take other action required in the conduct of hearings.

(4) A hearing officer or board member may be disqualified for:

(a) Bias or prejudice;

(b) Conflict of interest;

(c) Violation of the provisions of statutes or administrative regulations governing board hearings; or

(d) Other causes for which a judge may be disqualified.

(5)(a) A party may make a written motion to disqualify a hearing officer or board member upon:

1. Receipt of notice of the identity of the hearing officer; or

2. Discovery of facts establishing grounds for disqualification of the hearing officer or board member.

(b) The motion shall state the facts or reasons supporting it.

(6) Formal rules of evidence shall not apply except to the extent authorized by the hearing officer.

(7) The hearing officer may 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.

(8) Testimony or other evidence may be admitted if it is:

(a) Based on facts; and

(b) Commonly relied upon by reasonably prudent persons.

(9) Hearsay evidence, including affidavits, which would otherwise be inadmissible, may be admitted for the purpose of supplementing other relevant evidence.

(10) 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.

(11) Evidence may be received in written form if it will:

(a) Expedite the hearing; and

(b) Not substantially prejudice the interest of a party.

(12) Official notice may be taken of:

(a) A fact that would be judicially noticed in the courts of the Commonwealth;

(b) The record of other proceedings before the board;

(c) Technical or scientific matters within the specialized knowledge of the board; and

(d) Codes or standards that have been adopted by:

1. An agency of the United States, the Commonwealth, or another state; or

2. A nationally recognized organization or association that has been incorporated by reference as provided by KRS Chapter 13A.

Section 4. Separation of Functions. A person shall not participate as a board member in the adjudication of a matter, or serve as a hearing officer of a hearing, or assist or advise a hearing officer in a hearing, if he has served as an investigator, prosecutor, or complainant with regard to the subject matter of the hearing.

Section 5. Procedure at Hearing. A hearing shall normally proceed as follows unless altered by the hearing officer:

(1) Opening statements by:

(a) Board or its counsel; and

(b) Respondent or respondent's counsel.

(2) Board presentation of:

(a) Witnesses; and

(b) Evidence.

(3) Respondent's presentation of:

(a) Witnesses; and

(b) Evidence.

(4) Closing arguments by:

(a) Board or its counsel; and

(b) Respondent or respondent's counsel.

(5) The hearing officer may require parties to submit legal memoranda in lieu of opening statements or closing arguments.

Section 6. Posthearing Procedures. (1) The hearing officer shall prepare and submit to the board findings of fact, conclusions of law, and order which shall be reviewed by, and voted upon by, the board.

(2) A copy of the board's final decision consisting of findings of fact, conclusions of law, and order shall be mailed to all parties of record.

DEBORAH B. THARP, President

APPROVED BY AGENCY: August 12, 1994

FILED WITH LRC: September 29, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the 21st day of November, 1994, at 9 a.m. at the offices of the Kentucky State Board of Physical Therapy, 9110 Leesgate Road, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by the 16th day of November, 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: Nancy Brinly, Executive Secretary, Kentucky State Board of Physical Therapy, 9110 Leesgate Road, Louisville, Kentucky 40222-5159.

REGULATORY IMPACT ANALYSIS

Agency Contact: Nancy Brinly

(1) Type and number of entities affected: Approximately 1460 persons licensed as physical therapists and 625 persons licensed as physical therapist assistants.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: There is no direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: There is no direct or indirect costs or savings on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no direct or indirect costs or savings on the compliance, reporting, and paperwork requirements the first year following implementation.

2. Second and subsequent years: There is no direct or indirect costs or savings on the compliance, reporting, and paperwork requirements the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

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

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation was amended to conform with KRS Chapter 13A. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all applicants are treated uniformly under the law.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:260. Crow hunting season.

RELATES TO: KRS 150.015, 150.105, 150.170, 150.175, 150.235, 150.330, 150.340, 150.600, 150.630, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.105, 150.170, 150.175, 150.340, 150.600, 150.630

EFFECTIVE: August 15, 1994

NECESSITY AND FUNCTION: This administrative regulation pertains to seasons for the taking of crow. The framework of this administrative regulation falls within the season guidelines prescribed by the United States Fish and Wildlife Service. The function of this administrative regulation is to provide for the prudent taking of crows within reasonable seasonal restrictions based upon an adequate supply.

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

(2) "Decoy" means any type of visual device used to entice birds into shooting range.

(3) "Call" means any type of auditory device used to attract crows into shooting range.

(4) "Depredation" means any act committed by crows which would result in a damage or economic loss of ornamental or shade trees, agricultural crops, livestock, or wildlife, or when crows are concentrated in such numbers as to constitute a health hazard or other nuisance.

Section 2. Crow Hunting Requirements. (1) Seasons: September 1 through November 7 and January 4 through the last day of February.

(2) Shooting hours: one-half (1/2) hour before sunrise until sunset.

(3) Persons taking crows must have a valid hunting license.

(4) Crow hunters may use mechanical or electronic calling devices during the open season.

Section 3. Acts of Depredation. (1) Persons may take crows committing or about to commit acts of depredation during the closed season.

(2) Persons taking depredating crows shall not use blinds, decoys, calls or other means of luring the birds into shooting range during the closed season. [~~Season. Crows shall be taken only during the period 1 September through 12 November and 9 January through 28 February. Persons taking or attempting to take crows must have a valid hunting license in possession.~~

~~Section 3. Shooting Hours. One half (1/2) hour before sunrise to sunset.~~

~~Section 4. Use of Mechanical and Electronic Attracting Devices. Mechanical and electronic attracting devices for crow hunting may only be used during the open season defined in Section 2 of this administrative regulation.~~

~~Section 5. Acts of Depredation. Crows observed committing or about to commit acts of depredation may be taken year round; however, persons attempting to take depredating crows shall not use blinds, decoys, calls or other lures to attract birds into shooting range during the closed season.~~]

C. TOM BENNETT, Commissioner
CRIT LUALLEN, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: October 13, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 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, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 25, 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 shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director, Wildlife Division, 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:

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Direct costs involve the purchase of a state hunting license. Indirect costs would be determined by the hunter, depending upon his level of participation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. No anticipated impact on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Persons participating in the hunting proposed for authorization by this administrative regulation would be required to possess a valid hunting license ($12.50 for residents) unless exempt by administrative regulations.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: This administrative regulation will impose no additional costs or create any additional savings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay any other state taxes on items purchased in connection with hunting and the hunting trip.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Revenue from the sale of hunting and fishing licenses will be used for implementation and enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No anticipated economic impact.

(b) Kentucky: No anticipated economic impacts.

(7) Assessment of alternative methods, reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Environmental benefits accrue both regionally and statewide from proper wildlife management; personal recreational benefits accrue to those who participate in the hunting activities permitted under this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without this administrative regulation, federal laws would prohibit taking crows in Kentucky. This could lead to overpopulation and resultant environmental damage.

(9) 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: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Ch. 1 (10/01/91)/Part 20/Page 295/Para. 20.133, and 50 CFR Ch. 1 (10/01/91)/Part 21/Page 321/Para. 21.43.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Crow - season may not be scheduled to occur during the peak nesting period within the state (March - June) with a 124 day maximum season length.

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October 12, [~~June 14,~~] 1994, are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Kentucky Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.1	Occupational Exposure to Bloodborne Pathogens
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents (Amended 10/12/94)
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.9	Dental Services
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14.4	Legal Services Program
14.6	Inmate Grievance Procedures
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties
15.3	Meritorious Good Time
15-05-01	Restoration of Forfeited Good Time
15.6	Adjustment Procedures and Programs
15.7	Inmate Account Restriction
16.1	Inmate Visits
16.2	Inmate Correspondence
16.3	Telephone Calls
16.4	Inmate Packages
17-01-01	Inmate Personal Property
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates
18.1	Classification of the Inmate [~~(Amended 6/14/94)~~]
18.5	Custody and [\] Security Guidelines (Amended 10/12/94)
18.6	Classification Document
18.7	Transfers
18.9	Out-of-state Transfers
18-10-01	Preparole Progress Reports
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures (Amended 10/12/94)
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
18.17	Interestate Agreement on Transfers (Added 10/12/94)
18.18	International Transfer of Inmates (Added 10/12/94)
19.1	Government Services Projects
19.2	Community Services Projects
19.3	Inmate Wage Program
20.1	Educational Programs and Educational Good Time
21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
21.2	Phase I: Program Selection Assessment Criteria
21.3	Program Schedule - Phase II and Phase III
21.4	Platoon Size and Composition
21.5	Physical Conditions Program Component
21.6	Group and Individual Counseling
21.7	Drug and Alcohol Abuse Counseling and Treatment
21.8	Work Programs Component
21.9	Education and Life Management
21.10	Auxiliary Services
21.11	Offenses and Penalties
22.1	Privilege Trips

25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program
25.4 Inmate Furloughs
25.6 Community Center Program
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-08-01 Use of Force
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview
27-12-04 Conditions of Regular Supervision/Request for Modification -
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions
27-13-01 Drug and Alcohol Testing of Offenders
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
27-15-01 Supervision Report; Violations, Unusual Incidents
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01 Absconder Procedures
27-18-01 Probation and Parole Issuance of Detainer/Warrant
27-19-01 Preliminary Revocation Hearing
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
27-20-03 Prisoner Status Change
27-21-01 Apprehension and Transportation of Probation and Parole Violators
27-22-01 Fugitive Unit - Apprehensions
27-22-02 Fugitive Unit - Transportation of Fugitives
27-23-01 In-state Transfer
27-24-01 Closing Supervision Report
27-24-02 Reinstatement of Clients to Active Supervision
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01 Expedient Release Program
28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01 Furlough Verifications
28-05-01 Out-of-state Investigations.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: October 12, 1994
FILED WITH LRC: October 12, 1994 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1994, at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601 or Louis Smith, Office of Adult Institutions, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and visitors to all state correctional institutions.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: None
2. Second and subsequent years: None
(3) 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: Policy revisions.
(4) Assessment of anticipated effect on state and local revenues: None
(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.
(6) Economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: None
(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October [~~September~~] 12, 1994, are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-15	Cooperation and Coordination with Oldham County Court
KSR 01-00-19	Personal Service Contract Personnel
[~~KSR 01-00-20 Consent Decree Notification to Inmates (Deleted 10/12/94)~~]	
KSR 02-00-01	Inmate Canteen
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities
KSR 05-00-03	Management Information Systems
KSR 06-00-01	Inmate Master File
KSR 06-00-02	Records Audit
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 07-00-07	Discharge Monitoring Report (DMR)
KSR 07-00-08	Control of Hazardous Energy (Lockout or Tagout)
KSR 07-00-09	Inventory Control of Underground Storage Tanks
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery or Death
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure Limited Issue
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-21	Crime Scene Camera
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23	Drug Abuse Testing
[~~KSR 09-00-25 Inmate Motor Vehicle Operator's License (Deleted 10/12/94)~~]	
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas
KSR 09-00-29	Transportation of Inmates
KSR 09-00-30	Parole Board
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area
KSR 10-00-10	Segregation - Special Management Inmate Legal Access [~~(Amended 9/12/94)~~]
KSR 10-00-11	Unit D - Behavior Problem Control
KSR 10-01-13	Unit D - Property Room Access
KSR 10-01-01	Segregation Unit - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation [~~(Amended 9/12/94~~]
KSR 10-01-02	Segregation - General Operational Procedures [~~(Amended 9/12/94)~~]
KSR 10-01-03	Segregation - Inmate Tracking System and Records System [~~(Amended 9/12/94)~~]
KSR 10-01-04	Segregation - Administrative Segregation [~~(Amended 9/12/94)~~]
KSR 10-01-05	Segregation - Disciplinary Segregation [~~(Amended 9/12/94)~~]
KSR 10-01-06	Segregation - Protective Custody [~~(Amended 9/12/94)~~]
KSR 10-01-07	Segregation - Convalescent Care Unit [~~(Amended 9/12/94)~~]
KSR 10-01-08	Unit D - Safekeepers and Pretrial Contract Hold Status Inmates
KSR 10-01-09	Unit D - Hold Ticket Residents
KSR 10-01-11	Segregation Unit - Behavior Problem Control [~~(Amended 9/12/94)~~]
KSR 10-01-13	Segregation Unit - Property Room Access [~~(Amended 9/12/94)~~]
KSR 10-02-01	Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training, Time and Attendance
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care

KRS 10-02-04 Department of Corrections Division of Mental Health's Intensive Services Transitional Program: General Operating Procedures
KSR 11-00-01 Meal Planning for the General Population
KSR 11-00-02 Special Diets
KSR 11-00-03 Food Service Inspections
KSR 11-00-04 Dining Room Rules and Dress Code for Inmates
KSR 11-00-06 Health Standards/Regulations for Food Service Employees
KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01 Inmate Summer Dress Regulations
KSR 12-00-03 State Items Issued to Inmates
KSR 12-00-05 Sanitation Policy and Standards (Added 10/12/94)
KSR 12-00-07 Regulations for Inmate Barbershop
KSR 12-00-09 Treatment of Inmates with Body Lice
KSR 13-00-02 Hospital Operations, Rules and Regulations
KSR 13-00-03 Medication for Inmates Leaving Institution Grounds
KSR 13-00-04 Medical and Dental Care
KSR 13-00-05 Medical Records
KSR 13-00-08 Institutional Laboratory Procedures
KSR 13-00-09 Institutional Pharmacy Procedures
KSR 13-00-10 Requirements for Medical Personnel
KSR 13-00-11 Health Evaluation
KSR 13-00-12 Vision Care/Optometry Services
KSR 13-00-14 Periodic Health Examinations for Inmates
KSR 13-00-15 Medical Alert System
KSR 13-00-16 Suicide Prevention and Intervention Program
KSR 13-00-17 Special Care
KSR 13-02-01 Mental Health Services
KSR 13-02-02 Mentally Retarded Inmates
KSR 13-02-03 Suicide Prevention and Intervention Program
KSR 13-02-04 Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Program Description
KSR 13-02-05 Access to Intensive Services Programs Operated at Kentucky State Reformatory by the Division of Mental Health
KSR 14-00-01 Inmate Rights (Amended 10/12/94)
KSR 14-00-04 Inmate Grievance Procedure
KSR 15-00-02 Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
[~~KSR 15-00-05 Differential Status for SU (QUIT) Inmates (Deleted 10/12/94)~~]
KSR 15-00-06 Inmate I.D. Cards
KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08 Firehouse Living Area
KSR 15-00-09 Smoking and No Smoking Areas for Inmates and Staff
KSR 15-00-10 Program Services for Special Housing Placement (Amended 10/12/94)
KSR 15-01-01 Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel [~~(Amended 9/12/94)~~]
KSR 15-01-02 Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures (Amended 10/12/94)
KSR 15-01-03 Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations (Amended 10/12/94)
KSR 15-01-04 Operational Procedures and Rules and Regulations for Unit A, B & C: Institutional Medical and Fire Safety Service: Unit Application (Amended 10/12/94)
KSR 15-01-05 Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services (Amended 10/12/94)
KSR 15-01-06 Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations (Amended 10/12/94)
KSR 16-00-02 Inmate Correspondence and Mailroom Operations
KSR 16-00-03 Inmate Access to Telephones
KSR 16-01-01 Visiting Regulations
KSR 16-01-02 Lawn Visit Procedure and Regulations
KSR 16-01-03 Night Visit Regulations
KSR 17-00-05 Assessment and Orientation, Consent Decree Notification to Inmates (Added 10/12/94) [~~Dormitory 10 Operations (Deleted 10/12/94)~~]
[~~KSR 17-00-06 Identification Department Admission and Discharge Procedures (Deleted 10/12/94)~~]
KSR 17-00-07 Inmate Personal Property
KSR 17-00-08 Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04 Intratransfers, Identification Department, Departure - Admission and Discharge (Added 10/12/94) [~~Returns from Other Institutions (Deleted 10/12/94)~~]
KSR 18-00-05 Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06 Classification (Amended 10/12/94) [~~and Special Notice Form~~]
KSR 18-00-07 Kentucky State Reformatory Placement Committee
KSR 19-00-01 Inmate Work Incentives
KSR 19-00-02 On-the-job Training Program
KSR 19-00-03 Safety Inspections of Inmate Work Assignment Locations
[~~KSR 19-00-05 Food Service On-The-Job Training and Workers Rules (Deleted 10/12/94)~~]
KSR 20-00-01 Technical and Adult Basic Level Learning Center Programs
KSR 20-00-04 Criteria for Participation in A College Program
KSR 20-00-06 English as a Second Language
KSR 21-00-01 Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02 Inmate Library Services
KSR 21-00-03 Library Services for Unit D
KSR 22-00-03 Inmate Organizations
KSR 22-00-07 Inmate Magazine
KSR 22-00-08 Privilege Trips
KSR 23-00-02 Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03 Religious Programming
KSR 25-00-01 Discharge of Inmates to Hospital or Nursing Home
KSR 25-00-02 Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03 Preparole Progress Report

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: October 12, 1994
FILED WITH LRC: October 12, 1994 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1994 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Clark Taylor
(1) Type and number of entities affected: 558 employees of the correctional institutions, 1287 inmates, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) 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: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised October 12, [~~May 12,~~] 1994, are incorporated by reference and shall be referred to as Blackburn Correctional Complex and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays 8 a.m. to 4:30 p.m.

BCC 01-05-01	Duty Officer and Acting Warden
BCC 01-07-01	Extraordinary Occurrence Reports
BCC 01-09-01	Legal Assistance for Staff
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-15-01	Internal Affairs Office
BCC 01-16-01	Tours of Blackburn Correctional Complex
BCC 01-19-01	Inmate Access to BCC Staff
BCC 02-01-01	Inmate Canteen
BCC 02-02-01	Fiscal Responsibility
BCC 02-02-02	Fiscal Management: Accounting Procedures
BCC 02-02-03	Fiscal Management: Checks
BCC 02-02-04	Fiscal Management: Budget
BCC 02-02-05	Fiscal Management: Insurance
BCC 02-02-06	Fiscal Management: Audits
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract
BCC 02-05-01	Property Inventory
BCC 02-06-01	Purchasing
BCC 02-07-01	Inmate Personal Accounts
BCC 04-02-01	Firearms Training
BCC 04-03-01	Educational Assistance Program
BCC 05-01-01	Inmate Participation in Authorized Research
BCC 06-01-01	Storage of Expunged Records
BCC 06-02-01	Records - Release of Information
BCC 06-02-02	Offender Records
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board
BCC 08-02-01	Natural Disaster Plan (Tornado)
BCC 08-03-01	Emergency Preparedness Plan Manual
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties
BCC 08-04-02	Immediate Release of Inmates from Locked Areas
BCC 08-05-01	Duties of Fire Safety Officer
BCC 08-06-01	Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
BCC 08-07-01	Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers
BCC 09-01-01	Inclement Weather/Emergency Condition Operation
BCC 09-02-01	Restricted Areas (Amended 10/12/94)
BCC 09-02-02	Inmate Pass System to Restricted Areas
BCC 09-02-03	Regulation of Inmate Movement
BCC 09-02-04	Radio Escorted Yard Movement During Daylight Savings Time (November 1 - April 30)
BCC 09-03-01	Inmate Identification
BCC 09-04-02	Complex Entry & Exit
BCC 09-05-01	Key Control
BCC 09-06-02	Transportation to Courts
BCC 09-07-01	Drug Abuse and Intoxicants Testing
BCC 09-08-02	Use of Restraints
BCC 09-09-01	Population Counts and Count Documentation
BCC 09-10-03	Development of Institutional Post Orders
BCC 09-10-04	Governmental Services, Study Release Officer Post Orders
BCC 09-10-05	Unit A-1 Post Orders
BCC 09-10-06	Recreation Post Orders: Observation

BCC 09-10-07 Entrance Gate Post Orders
BCC 09-10-08 Visiting Area Post Orders
BCC 09-10-09 Security Staff General Orders
BCC 09-10-10 Dining Room Officer Post Orders
BCC 09-12-01 Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment
BCC 09-13-01 Perimeter Patrol
BCC 09-14-01 Prohibiting Inmate Authority Over Other Inmates
BCC 09-15-01 Search Policy/Disposition of Contraband
BCC 09-16-01 Security Activity Logs
BCC 09-17-01 Institutional Supervisor Inspections
BCC 09-18-01 Use of State Vehicles and Staff Owned Vehicles
BCC 09-19-01 Duties and Responsibilities of the Institutional Captain
BCC 09-19-02 Duties and Responsibilities of the Shift Supervisor
BCC 09-20-01 Inmate Death
BCC 09-21-01 Tool Control
BCC 09-22-01 Emergency Communication System
BCC 10-01-01 Special Management Inmates
BCC 10-01-02 Short-Term Administrative Segregation Holding Area
BCC 11-01-01 Menu and Special Diets
BCC 11-02-01 Food Service: Inspection, Health Protection and Sanitation
BCC 11-03-01 Food Service: Meals
BCC 11-04-01 Dining Room Guidelines
BCC 11-05-01 Food Service Security: Knife & Other Sharp Instrument/Utensil Control
BCC 11-06-01 Purchasing, Storage and Farm Products
BCC 11-07-01 Food Service Operations Manual
BCC 12-02-01 Personal Hygiene Items
BCC 12-02-02 Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities
BCC 12-05-01 Barber Shop Services
BCC 12-06-01 BCC Housekeeping Plan
BCC 13-01-01 Sick Call and Pill Call
BCC 13-02-01 Administration and Authority for Health Services
BCC 13-03-01 Provisions of Health Care Delivery
BCC 13-04-01 Licensure and Training Standards
BCC 13-05-01 Medical Alert System
BCC 13-06-01 Health Care Practices
BCC 13-07-01 Emergency Medical Care Plan
BCC 13-07-02 Emergency and Specialized Health Services
BCC 13-07-03 Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent
BCC 13-08-01 Inmate Health Screening and Evaluation
BCC 13-09-01 Prohibition on Medical Experimentation
BCC 13-10-01 Dental Services
BCC 13-11-01 Suicide Prevention and Intervention Program
BCC 13-12-01 Use of Pharmaceutical Products
BCC 13-12-02 Parenteral Administration of Medications and Use of Psychotropic Drugs
BCC 13-13-01 Inmate Health Education
BCC 13-14-01 Management of Serious and Infectious Diseases
BCC 13-15-01 Informed Consent
BCC 13-16-01 Health Records
BCC 13-17-01 Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 13-19-01 Physicians Referrals/Continuity of Care
BCC 13-20-01 Chronic and Convalescent Care
BCC 13-22-01 Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers
BCC 13-23-01 First Aid Kits
BCC 14-01-01 Office of Public Advocacy Attorney Visits
BCC 14-02-01 Law Library
~~[BCC 14-03-01 Inmate Grievance Procedure (Deleted 10/12/94)]~~
BCC 14-04-01 Inmate Rights and Responsibilities
BCC 14-05-01 Inmate Claims
BCC 14-06-01 Legal and Support Services for Indigent Inmates
~~[BCC 15-02-01 Meritorious Living Unit (B-1) (Deleted 10\12\94)]~~
BCC 15-02-02 Room Assignment (Amended 10/12/94)
BCC 15-03-01 Rules and Regulations for Dormitories
BCC 15-04-01 Restoration of Forfeited Good Time
BCC 15-05-01 Extra Duty Assignments
BCC 16-01-01 Inmate Furloughs
BCC 16-02-01 Inmate Visiting
BCC 16-03-01 Inmate Packages
BCC 16-03-02 Outgoing Inmate Packages
BCC 16-03-03 Inmate Correspondence
BCC 17-02-01 Authorized Inmate Personal Property (Amended 5/12/94)
BCC 17-03-01 Processing of New Inmates From Local Jails
BCC 18-01-01 Classification: Institutional Classification and Reclassification
BCC 18-02-01 Racial Balance in Living Areas (Amended 10/12/94)
BCC 19-01-01 Inmate Work Programs (Amended 10/12/94)
BCC 19-02-01 Classification of Inmates to Governmental Service Program
BCC 19-03-01 Correctional Industries
BCC 20-01-01 Academic and Vocational School
BCC 20-02-01 College Programs
BCC 20-04-01 Educational Program Evaluation
BCC 20-05-01 Educational Program Planning
BCC 20-06-01 Academic and Vocational Curriculum
BCC 21-01-01 Library Services
BCC 22-01-01 Arts and Crafts/Production and Sale of Items
BCC 22-02-01 Privileged Trips
BCC 22-03-01 Recreational Employees
BCC 22-04-01 Recreation and Inmate Activities
BCC 22-04-02 Inmate Clubs and Organizations
BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs
BCC 22-04-04 Recreation Program Availability
BCC 22-04-05 Supervision of Leisure-time Craft Club Activities and Materials
BCC 22-06-01 Music Club
BCC 22-08-01 Unit Recreation Program
BCC 22-09-01 Use of Inmates in Recreation Programs
BCC 23-01-01 Religious Services (Amended 10/12/94)
BCC 24-01-01 Duties and Responsibilities of Classification and Treatment Officers
BCC 24-02-01 Duties and Responsibilities of the Unit Director and Assistant to the Unit Director
BCC 24-03-01 Social Services
BCC 25-01-01 Inmate Check Out Procedure
BCC 25-02-02 Temporary Release and Community Center Release (Amended 10/12/94)
BCC 25-05-01 Supplemental Preparole Progress Reports
BCC 26-01-01 Citizen Involvement and Volunteer Service Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: October 12, 1994
FILED WITH LRC: October 12, 1994 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1994, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or William Seabold, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Betty Ann Walker
(1) Type and number of entities affected: 92 employees of the correctional institutions, 403 inmates, and all visitors to state

correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) 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: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Office of Minority Affairs
(Proposed Amendment)

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.

RELATES TO: KRS Chapters 96A, 174, 176, 177, 183, 13 CFR 121.1-121.3, 49 CFR 23, 15 USC 637

STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 CFR 23

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program. It also sets forth the requirement that certified and prequalified DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.

Section 1. Definitions. (1) "Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification as a disadvantaged, minority or women business enterprise.

(2) "Approval" means that the applicant meets disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(3) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged, minority or women business enterprise or joint venture criteria.

(4) "Challenge" means an action of a third party which takes issue with the socially and economically disadvantaged status of certified disadvantaged business enterprise program participants or applicants for DBE certification.

(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet which certification has not expired, as a disadvantaged, minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged, minority or women business enterprise or joint venture.

(6) "Denial" means that the applicant does not meet disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(7) "Disadvantaged business enterprise" or "DBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations:

(a) Which is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged persons; or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

(8) "Joint venture" means an association of two (2) or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge.

(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or

(f) Members of other groups, or other individuals, found to be

economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)).

(10) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and

(b) Whose management and daily business operations are controlled by one (1) or more such individuals.

(11) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(12) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment.

(13) "Prequalified" means that the Transportation Cabinet has approved the firm or business enterprise to perform certain functions on behalf of the cabinet in accordance with KRS Chapter 45A, 600 KAR 1:101, or 603 KAR 2:015.

(14) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Transportation Cabinet shall have a rebuttable presumption that individuals listed in paragraphs (a) through (f) of this subsection are socially and economically disadvantaged. The Transportation Cabinet also may determine, on a case-by-case basis, that individuals who are not a member of one (1) of the following groups are socially and economically disadvantaged:

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(f) "Women."

(15) "Women business enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. Adoption of Governing Federal Material. (1) 49 CFR 23 effective June 1, 1992 is adopted without change. This federal regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements which the Transportation Cabinet shall impose on firms desiring certification.

(2) "The Disadvantaged Business Enterprise Program Administration Participants Manual", Chapters I - VI, US Department of Transportation's Publication No. FHWA FHWA-CR-90-003 dated April, 1990 is incorporated by reference as a part of this administrative regulation. This manual shall be used by the Transportation Cabinet for guidance and direction in administering the DBE program.

(3) The manual incorporated by reference in this section can be viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502)564-3601. The office hours are 8 a.m. through 4:30 p.m., local prevailing time, on weekdays.

Section 3. Application Process. (1)(a) Application for certification or recertification as set forth in Section 6 of this administrative regulation as a DBE, MBE, or WBE shall be made to the Transportation Cabinet's Office of Minority Affairs on form TC 10-3.

(b) Each application form shall be completed in full.

(c) All documentation required by the application shall be attached to the completed application.

(d) The person signing the application shall be one (1) of the persons on whom the DBE, MBE, or WBE status is based and shall identify his position with the firm or business enterprise applying for certification.

(e) The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Transportation Cabinet, Office of Minority Affairs.

(3)(a) The Transportation Cabinet [~~Office of Minority Affairs~~] shall perform an on-site inspection of each new applicant, regardless of the applicant's geographical location.

(b) The Transportation Cabinet may perform an on-site inspection of any firm previously certified which is applying for recertification pursuant to Section 6 of this administrative regulation.

(c) [~~the offices and any job sites in Kentucky on which the firm is working at the time of the application evaluation of any new applicant.~~] Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Transportation Cabinet [~~Office of Minority Affairs~~] to deny the application.

(4) An out-of-state applicant as a prerequisite to consideration of certification by the Transportation Cabinet [~~Office of Minority Affairs~~] shall be certified as a DBE, MBE, or WBE by the state transportation agency responsible for certifying firms under 49 CFR Part 23 in the state in which the firm has residence.

(5) The Transportation Cabinet [~~Office of Minority Affairs~~] may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Transportation Cabinet [~~Office of Minority Affairs~~] to deny the application.

(6) During the period prior to the formal submittal of the application, the Transportation Cabinet [~~Office of Minority Affairs~~] or its supportive services contractor shall:

(a) When requested by the applicant, provide technical advice needed by the applicant in completing the application form and the supporting documentation;

(b) When requested by the applicant, advise the applicant firm of any apparent existing structural, organizational, or financial impediments to the firm's certification; or

(c) [~~(b) When requested by the applicant, provide technical advice needed by the applicant in completing the application form and the supporting documentation; or~~

~~(c)~~] Allow the applicant to make any structural, organizational, or financial changes to its organization necessary to bring the applicant into compliance with the requirements of this administrative regulation.

(7) The form TC 10-3, Application for Certification Schedule A, last revised in January, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained,

viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. The [~~Its~~] telephone number is (502)564-3601.

Section 4. Evaluation of Application. (1)(a) The Transportation Cabinet[~~, Office of Minority Affairs~~] shall use the eligibility standards set forth in 49 CFR Part 23.53 to determine the eligibility of a firm to be certified or recertified as a MBE.

(b) The Transportation Cabinet [~~Office of Minority Affairs~~] shall use the eligibility standards set forth in 49 CFR Part 23.53; 49 CFR Part 23.62; 49 CFR Part 23, Subpart D, Appendix A, Appendix B and Appendix C to determine the eligibility of a firm to be certified or recertified as a DBE or WBE.

(c) To be certified a firm shall:

1. [~~Perform a commercially useful function as set forth in 49 CFR Part 23.47;~~

~~2.~~] Be operated with the intention of making a profit; and

2. Submit evidence of the firm's operational status prior to the date of the application which includes, but is not limited to the following:

a. A copy of a bid or quotation on a publicly or privately funded project;

b. A copy of an invoice, purchase order, or bill of lading;

c. Proof of gross receipts or receivables due; or

d. A copy of the current certificate of existence or authorization issued by the Kentucky Secretary of State pursuant to KRS 271B.1-280.

[~~3. Be operational and performing as an independent business concern prior to the date the application for certification was filed.~~]

(2) The Transportation Cabinet [~~Office of Minority Affairs~~] shall issue a written determination of eligibility for certification within ninety (90) days of receipt of a completed application provided that a challenge as set forth in Section 9 of this administrative regulation has not been received.

Section 5. Certification of Applicant Firm. (1) If an application for certification as a DBE, MBE, or WBE is approved by the Transportation Cabinet[~~, Office of Minority Affairs~~] and a challenge to the status of a firm from a third party as set forth in Section 9 of this administrative regulation is not received during the time the Transportation Cabinet [~~Office of Minority Affairs~~] is evaluating the application, the written notification required by Section 4(2) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE, MBE, or WBE.

(2) Certification as a DBE, MBE, or WBE is valid for one (1) year from the date of notice of certification.

(3) Records of a certified firm shall be retained for a period of not less than five (5) years from the date of notice of certification.

(4) Certification of a firm or business enterprise shall expire immediately upon any change in ownership or control of the firm or business enterprise. The firm or business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control. If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 6. Recertification. (1) At least thirty (30) days prior to its certification expiration, a certified DBE, MBE, or WBE that intends to continue its certification shall submit an application to the Transportation Cabinet, Office of Minority Affairs.

(a) Every other year the application shall be in the same form and require the same information as in Section 3 of this administrative regulation.

(b) In the alternate year, if there have been no changes since the last application was filed and the application form and attachments would be identical to the last one filed, the applicant may submit a written, sworn statement of no change to the Transportation Cabinet.

(c) [~~except that~~] Beginning with the application for recertification for the third year of certification, certified firms prequalified to engage in highway construction, design, or right-of-way activities, shall also submit evidence of participation in at least one (1) management development course as set forth in Section 14 of this administrative regulation.

(2) Certification of a DBE, MBE, or WBE which has requested recertification at least thirty (30) days prior to the date of certification expiration shall not expire unless the Transportation Cabinet [~~Office of Minority Affairs~~] denies the request for recertification as set forth in Section 6 of this administrative regulation.

(3) If a firm is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, its request for recertification shall be denied.

(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(5) If the Transportation Cabinet's [~~Office of Minority Affairs'~~] decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective immediately. However, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

Section 7. Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, [~~Office of Minority Affairs,~~] the notification required by Section 4(2) of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 of this administrative regulation.

(3) An applicant firm shall [~~may~~] not reapply for certification for one (1) year from the effective date of denial.

(4) The effective date of denial shall be one (1) of the following dates:

(a) If the denial is not appealed, the date the notice is received or delivery is attempted [~~if the denial is not appealed~~].

(b) If the denial is appealed and the denial is upheld, [~~the effective date of the denial shall be~~] the date of the notice of final action on behalf of the Transportation Cabinet.

(c) If the denial is appealed and the appellant withdraws, cancels, or otherwise suspends the appeal, the date of the withdrawal, cancellation, or suspension of the appeal.

Section 8. Decertification. (1) The Transportation Cabinet[~~, Office of Minority Affairs~~] may perform periodic reviews or on-site inspections of a [~~each~~] certified DBE, MBE, or WBE during its certification period to verify continued eligibility of the firm. If the Transportation Cabinet [~~Office of Minority Affairs~~] finds noncompliance with the eligibility criteria or the certified firm fails to provide reasonable information requested by the Transportation Cabinet [~~Office of Minority Affairs~~] as a part of the periodic review, the cabinet [~~office~~] may initiate a decertification proceeding.

(2) The Transportation Cabinet [~~Office of Minority Affairs~~] shall notify the certified firm of the pending decertification. The notice shall specify the reasons for the pending decertification. The firm may request a predetermination meeting within ten (10) days of the date the notice is received or delivery is attempted. If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this

administrative regulation.

(4) If the Transportation Cabinet's [~~Office of Minority Affairs'~~] decision after the predetermination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

(5) The effective date of the decertification is thirty (30) days after the date the notice of decertification is mailed to the firm providing the firm does not appeal the decertification to the Transportation Cabinet. If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation. Decertification shall be for a specific period of time but not less than one (1) year.

Section 9. Challenge of DBE Certification. (1) Any third party may challenge the socially and economically disadvantaged status of any individual, except an individual who has a current certification from the Small Business Administration issued pursuant to United States Code Title 15 Section 637, rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE. The challenge shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the challenging third party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The Transportation Cabinet [~~Office of Minority Affairs~~] shall determine, on the basis of the information provided by the challenging party, if there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

(4) If the Transportation Cabinet [~~Office of Minority Affairs~~] determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the office shall so inform the challenging party in writing. This shall terminate the proceeding.

(5) If the Transportation Cabinet [~~Office of Minority Affairs~~] determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the office shall notify the challenged party that his status as a socially and economically and disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the Office of Minority Affairs, within a specified reasonable time, information sufficient to evaluate his status as a socially and economically disadvantaged individual. Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the challenge proceedings shall be completed prior to completion of the certification.

(7) The Transportation Cabinet [~~Office of Minority Affairs~~] shall evaluate the information available and make a proposed determination of the social and economic disadvantage of the challenged party. The office shall notify both parties of this proposed determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within ten (10) days of the date of the notice. If neither party requests a predetermination meeting within the ten (10) days, the proposed determination of the Transportation Cabinet [~~Office of Minority Affairs~~] shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 10 of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section and Section 10 of this administrative regulation as it relates to challenge, the Transportation Cabinet [~~Office of Minority Affairs~~] shall use the standards set forth in 49 CFR Part 23, Subpart D, Appendix C.

(11) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) The decision of the Transportation Cabinet [~~Office of Minority Affairs~~] in subsection (4) of this section or after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 CFR Part 23.55.

Section 10. Predetermination Meeting. (1) A predetermination meeting with the Transportation Cabinet [~~Office of Minority Affairs~~] may be requested by any party as set forth in Sections 6, 8, and 9 of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the date for the predetermination meeting to be between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority Affairs and all affected parties the meeting may be scheduled later than the ten (10) days.

(3) The Office of Minority Affairs shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting shall provide the opportunity for the affected parties to present evidence or arguments, either written or oral, on the matter being considered by the Transportation Cabinet [~~Office of Minority Affairs~~]. The affected parties may be represented by legal counsel.

(5) The Transportation Cabinet [~~Office of Minority Affairs~~] shall render a written decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Transportation Cabinet [~~Office of Minority Affairs~~] shall use the standards set forth in Section 4 of this administrative regulation. The affected parties shall be notified of the decision of the Transportation Cabinet [~~Office of Minority Affairs~~].

Section 11. Appeal and Hearing. (1) Any party in Sections 6(2), 8(4) and 9(10) of this regulation adversely affected by a decision of the Transportation Cabinet[~~, Office of Minority Affairs~~] may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet.

(2)(a) The Transportation Cabinet shall schedule the date for the hearing on the appeal to be between fifteen (15) and thirty (30) days after the appeal is received unless otherwise agreed to by all parties.

(b) If an appeal hearing is rescheduled beyond the thirty (30) days from the date of the notification to deny certification at the request of the applicant firm, the Office of Minority Affairs may [~~shall~~] not approve as part of an established DBE goal any of the work contracted by the applicant.

[~~(c) A firm for which decertification proceedings has been started shall not be approved by the Office of Minority Affairs to meet established DBE goals.~~]

(3) The Transportation Cabinet shall provide written notice to the appellant of the date, time, and location of the hearing.

(4) At the hearing, the hearing officer appointed by the Transportation Cabinet[~~,~~] shall provide an opportunity for the appellant to call witnesses and present evidence and arguments both written and oral as to why the decision of the Transportation Cabinet [~~Office of Minority Affairs~~] should be overturned.

(5) The Office of Minority Affairs shall present evidence at the hearing on the reasons their decision was made. However, the burden of proof is on the appellant.

(6) The hearing officer appointed by the Transportation Cabinet

has the authority to issue subpoenas to compel the appearance of witness or the production of other evidence.

(7) The Transportation Cabinet shall provide a stenographer to record all oral testimony at the hearing.

(8)(a) The hearing officer shall prepare a written report setting forth findings of fact, conclusions of law and a recommendation of final action within sixty (60) days of the hearing unless otherwise agreed to by all parties.

(b) The hearing officer's findings of fact shall be based on conditions existing at the time the on-site inspection or [~~and~~] owner interview were conducted by the Transportation Cabinet [~~Office of Minority Affairs~~]. Changes made in an applicant's firm since the on-site inspection or owner interview shall not be considered by the Office of Minority Affairs or a hearing examiner in determining the eligibility of the firm.

(c) The report shall be submitted to the Secretary of the Transportation Cabinet or his appointed designee.

(9) The Secretary shall render the final decision of the Transportation Cabinet within ten (10) days of receipt of the hearing officer's report. A copy of the decision shall be sent by certified mail to the appellant and the Office of Minority Affairs.

(10) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 CFR 23.55 and 49 CFR 23 Subpart D, Appendix A, Decertification Procedures.

Section 12. Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE, or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE, or WBE program. Application for certification shall be on Transportation Cabinet Form TC 10-5 which is incorporated by reference as a part of this administrative regulation. The application procedure, eligibility standards, and certification procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet as a joint venture eligible to participate in the DBE, MBE, or WBE program.

(3) If all firms involved in the joint venture are certified DBEs, MBEs, or WBEs, there shall not be a need for the joint venture to request certification as a joint venture eligible to participate in the DBE, MBE, or WBE program.

(4) The form TC 10-5, DBE/WBE Joint Venture Eligibility Application, Schedule B, last revised in February, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained, viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. The [~~Its~~] telephone number is (502) 564-3601.

Section 13. Additional Program Guidelines. 13 CFR 121.1-121.3, effective April 22, 1994, is adopted without change. The federal regulation sets [~~forth the small business size~~] standards for the size of small businesses as established by the Small Business Administration. These size standards, when less than $15.37 million, are required by 49 CFR Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from the certification program, i.e., it is no longer considered to be a small business.

Section 14. Management Development Course. (1) Each owner of a Kentucky-based certified firm which is also prequalified by the Transportation Cabinet under the provisions of KRS 45A.825, 600 KAR 1:101, or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend at least one (1), one (1) week management development course prior to being recertified for its third year as a DBE.

(2) DBE certified firms not based in Kentucky but which are within a seventy-five (75) mile (120.7 kilometer) proximity may be required by the Office of Minority Affairs to attend at least one (1) management development course. This attendance requirement shall be based on an assessment of the firm's managerial and operational capability in relationship to the regulatory requirements determined during the conduct of the on-site inspection, personnel interviews, and evaluation of the firm's prequalification status.

(3) DBE certified firms which have previously attended a management development course and which have been cited for a violation of this administrative regulation or 600 KAR 4:020 may be required to attend an additional management development course.

(4) The management development course shall be offered free of charge by the Entrepreneurial Development Institute.

(5) All owners of firms required to attend a management development course shall attend the course.

(6) The owners of certified firms which are not required to attend the management development course may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

Section 15. Disadvantaged Business Enterprise Orientation Program. (1) The Transportation Cabinet shall offer a one (1) day orientation program for any certified DBE firm. The orientation program shall acquaint owners of DBE firms with the following:

(a) The organization, structure and expectations of the Transportation Cabinet;

(b) The requirements of the DBE program and with the provisions of the "Standard Specifications for Road and Bridge Construction" and "Standard Drawings"; and

(c) The supportive services and technical assistance available to the DBE.

(2) Each owner of a certified DBE firm which is also prequalified under KRS 45A.825, 600 KAR 1:101, [~~600 KAR 1:100~~] or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend an orientation program prior to competing for a U.S. Department of Transportation assisted project.

(3) If the certified DBE firm is based out of Kentucky, the orientation program may be completed by telephone and mail.

(4) The owners of certified firms which are not required to attend the orientation program may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

MAURICE SWEENEY, Executive Director
J.M. YOWELL, P.E., State Highway Engineer
JERRY ANGLIN, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: October 13, 1994
FILED WITH LRC: October 14, 1994 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 21, 1994 at 1 p.m. local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 16, 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 November 16, 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. If the hearing is held, written comments will be accepted until the close of the hearing. If the

hearing is cancelled, written comments will be accepted until close of business on November 21, 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

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All firms applying to be certified or recertified as a DBE, MBE, or WBE. Currently, there are 180 firms certified by the Transportation Cabinet. Of these 75 are prequalified under 603 KAR 2:015.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change as a result of the changes to the administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No changes as a result of the changes to the administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No effect as a result of the changes to this administrative regulation.

2. Second and subsequent years: The applicants for recertification will not have to file the entire form and back-up documentation more than every other year. While this will not impact competition, it will reduce the paperwork for those firms.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: By keeping the DBE program in compliance with the federal mandate, there will be no withholding of federal highway construction funds.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State road fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: N/A

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because the program was technically in noncompliance with the federal mandate and to prevent a loss of federal funds, immediate action had to be taken. In the change requiring the provision of the proof of operational status of a firm applying for certification, a more rigid standard was rejected pending the completion of a federal notice of proposed rulemaking which is in process. If the US Department of Transportation promulgates stricter standards, the Kentucky Transportation Cabinet will then follow suit.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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: N/A

(10) Any additional information or comments: The Federal Highway Administration informed the Transportation Cabinet shortly after the effective date of the last change to the administrative regulation that the administrative regulation was out of compliance with the federal mandate. Due process was no longer afforded previously certified firms.

(11) TIERING: Is tiering applied? Yes (Explain why tiering was or was not used) Tiering was applied in that the firms to be prequalified are required to meet different standards if they are prequalifying for different classifications.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 Code of Federal Regulations Part 23 contains the federal mandate for this certification program. The authorities for the federal regulation are Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978; Section 30 of the Airport and Airway Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Title 23 of the US Code and Title VI of the Federal Rights Act of 1964.

2. State compliance standards. The same as the federal mandate on the certification of DBE, MBE or WBE firms. The primary change to this administrative regulation is needed to allow the Kentucky Transportation Cabinet to resume compliance with the federal mandate. The Federal Highway Administration determined that a change promulgated by the cabinet in May, 1994 did not provide adequate due process.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate imposes on the state the requirement of setting the process of certification and managing the program. The Transportation Cabinet through this administrative regulation and 600 KAR 4:020 has set reasonable procedures for certification and managing the program including due process hearings. US Department of Transportation has found the procedures to be consistent with 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? The federal mandate does not address how the state is to manage the certification program. Rather, it requires the state to get federal approval of its management program. The change in the management program has received federal approval and brought Kentucky Transportation Cabinet back into compliance with the mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Office of Minority Affairs
(Proposed Amendment)

600 KAR 4:020. The disadvantaged, minority and women business enterprise program.

RELATES TO: KRS Chapters 96A, 174, 176, 177 183

STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 CFR Part 23

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program of supporting the fullest possible participation of firms owned and controlled by minorities, women and socially and economically

disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program that requires the participation of disadvantaged, minority, and women business enterprises in contracts financed in whole or in part with federal funds. This administrative regulation establishes the procedures to be followed by and requirements of contractors and subcontractors dealing with the Transportation Cabinet.

Section 1. Definitions. (1) "DBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a disadvantaged business enterprise.

(2) "MBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a minority business enterprise.

(3) "WBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a women business enterprise.

(4) "Good faith effort" means an attempt that can reasonably be expected to produce a level of disadvantaged, minority or women business enterprise participation sufficient to meet contract goals.

(5) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the firm's application for certification or bid documents.

(6) "Prime contractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that contracts with the Kentucky Transportation Cabinet for the performance of prescribed work.

(7) "Subcontractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that subcontracts any portion of a contract with the written consent of the Transportation Cabinet.

(8) "Suspension" means the action taken for cause by the Transportation Cabinet to disqualify for a specified period of time a person or firm from participating as a DBE, MBE, or WBE in Transportation Cabinet federal-aid projects.

(9) "Apparent successful competitor" means the bidder submitting the lowest and best bid in accordance with KRS 176.080 or Chapter A.

Section 2. Contract Goals. (1) Goals shall be established for DBE, MBE, or WBE participation in a portion of the Transportation Cabinet projects in which there is United States Department of Transportation funding.

(2) A project proposal may contain goals for participation of DBE, MBE, or WBE subcontractors who are certified in accordance with 600 KAR 4:010.

(3) Any contractor who bids on and is the apparent successful competitor for a project with established DBE participation goals shall be responsible for meeting the goals for participation of certified DBE, MBE, or WBE subcontractors which are set forth in the project proposal. The contractor shall submit to the Transportation Cabinet DBE, MBE, or WBE subcontractor participation information as specified in Sections 3(1) and 6 of this administrative regulation.

Section 3. Prime Contractor Guidelines. (1)(a) Before a prime contractor enters into a contractual agreement with the Transportation Cabinet on a project which contains goals for participation of DBE, MBE, or WBE subcontractors, he shall submit an original and two (2) copies of each agreement between the prime contractor and any DBE, MBE, or WBE to the Transportation Cabinet, Department of Highways.

(b) The agreement shall be signed and notarized by both parties to the agreement.

(c) The agreement shall set forth:

1. A description of the work the DBE, MBE, or WBE subcontractor is to perform or the materials or services to be supplied;

2. The unit price the DBE, MBE, or WBE subcontractor is to be paid for each item; and

3. The total dollar value of the subcontract.

(d) Contractual agreements shall be reviewed by the Transportation Cabinet, Office of Minority Affairs prior to the execution of the project contract to ensure that the project goal will be met and that the DBE, MBE, or WBE subcontractors are certified in Kentucky and have completed the orientation program required by 600 KAR 4:010, Section 15 and are eligible to act as a certified DBE, MBE, or WBE.

~~[(e) The Office of Minority Affairs shall not approve a subcontractor as a DBE, WBE, or MBE to fulfill a goal requirement on a project if the DBE, MBE, or WBE is related in the first or second degree by birth or marriage to the prime contractor. This prohibition shall include a subcontractor to a joint venture.]~~

(2) Toward the DBE, MBE, or WBE participation goal established for the project, the prime contractor may count expenditures for materials and supplies obtained from certified DBE, MBE, or WBE suppliers and manufacturers, provided the DBE, MBE, or WBE assumes actual and contractual responsibility for providing the materials and supplies as follows:

(a) The prime contractor may count its entire expenditure to a DBE, MBE, or WBE manufacturer who operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor; and

(b) The prime contractor may count sixty (60) percent of its expenditures to DBE, MBE, or WBE regular dealers who own, operate or maintain a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

(c) Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this administrative regulation.

(3) The prime contractor may count toward its MBE, DBE, or WBE goals the following expenditures to certified MBE, DBE, or WBE firms that are not manufacturers or regular dealers:

(a) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services; and

(c) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar service.

(4)(a) Toward the DBE, MBE, or WBE participation goal established for the project, the prime contractor may count only expenditures to certified DBEs, MBEs, or WBEs that perform a commercially useful function in the work of the specific [a] contract.

(b) A DBE, MBE, or WBE firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its

responsibilities by actually performing, managing and supervising the work involved.

(c) To determine if a DBE, MBE, or WBE is performing a commercially useful function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated.

(5) A prime contractor may count toward its certified DBE, MBE, or WBE goal a portion of the total dollar value of a subcontract with a joint venture certified under the provisions of 600 KAR 4:010 equal to the percentage of ownership and control of the DBE, MBE, or WBE partner in the joint venture.

(6) If the prime contractor fails to reach the goals of the project and fails to demonstrate sufficient good faith efforts as set forth in Section 5 of this administrative regulation, the Office of Minority Affairs shall in writing advise the Department of Highways that the contract agreement with the prime contractor shall not be executed because he has failed to reach the DBE, MBE, or WBE participation goals of the contract.

(7) If the prime contractor reaches the DBE, MBE, or WBE participation goals and the contractual agreement with the Transportation Cabinet is executed, the prime contractor is bound by the approved DBE, MBE, or WBE percentage participation of the contract.

(8)(a) If the prime contractor[~~'s~~] cancels the subcontract of a DBE, MBE, or WBE for any reason, [~~is cancelled for nonperformance or because the subcontractor has lost its program certification,~~] it shall make a good faith effort to replace the approved DBE, MBE, or WBE with another certified DBE, MBE, or WBE firm in the amount necessary to meet the project goal as originally established.

(b) An original and two (2) copies of the completed and executed agreement between the prime contractor and the new DBE, MBE, or WBE subcontractor shall be submitted to the Office of Minority Affairs.

(c) The agreement shall be reviewed by the Office of Minority Affairs as set forth in subsection (1) of this section prior to the replacement DBE, MBE, or WBE beginning work on the project.

(d) If the prime contractor is unable to replace the subcontractor with a certified DBE, MBE, or WBE he shall request a finding of good faith effort as set forth in Section 6 of this administrative regulation.

(9) If the prime contractor and DBE, MBE, or WBE subcontractor intend to amend their agreement which has previously been reviewed by the Office of Minority Affairs, the revision shall be submitted to the Office of Minority Affairs for review prior to the amendment being implemented to ensure that the DBE, MBE, or WBE participation goal will still be met.

(10) The prime contractor shall pay the DBE, MBE, or WBE subcontractor for work performed or materials furnished within seven (7) working days after receiving payment from the Transportation Cabinet.

(11) The prime contractor shall, upon request, make available to the Office of Minority Affairs information related to the conduct of the project.

Section 4. Prime Contractor Failure. (1) The following shall be deemed failure of the prime contractor to meet the approved DBE, MBE, or WBE percentage participation of the contract and thus violation of his contract provisions:

(a) Failure to use the approved DBE, MBE, or WBE subcontractor;

(b) Use of the approved DBE, MBE, or WBE subcontractors to an extent that provides a percentage participation less than indicated in the contract agreement with the Transportation Cabinet; and

(c) Use of a DBE, MBE, or WBE subcontractor other than those named in the subcontract reviewed by the Office of Minority Affairs.

(2) The Office of Minority Affairs shall notify the prime contractor of his failure to meet the approved DBE, MBE, or WBE percentage participation of the contract. The notice shall contain the reasons for the failure and a time deadline for correction of the failure. The prime contractor in accordance with the provisions of Section 11 of 600 KAR 4:010 may file an appeal within the time deadline. If the firm fails to file an appeal and fails to meet the DBE, MBE, or WBE percentage participation of the contract, the Office of Minority Affairs shall in writing advise the Department of Highways of the violation of contract provisions.

Section 5. Good Faith Efforts. (1) If the apparent successful competitor for the project is unable to meet his DBE, MBE, or WBE goals but believes he has made a good faith effort toward the goal, he may in writing request a finding of good faith effort from the Office of Minority Affairs. The written request shall substantiate his claim that reasonable efforts were put forth to obtain the project goals. The Office of Minority Affairs shall consider the application for a finding of good faith effort and provide notice to the apparent successful competitor of its decision within ten (10) days of receipt of the application.

(2) The Office of Minority Affairs shall in writing advise the Department of Highways of its decision.

(3) The criteria used by the Office of Minority Affairs for determining if an apparent successful competitor has demonstrated good faith efforts shall include:

(a) The apparent successful competitor's attendance at the prebid meeting regarding the specific project;

(b) The apparent successful competitor's providing written announcement of project to a reasonable number of DBEs, MBEs or WBEs regarding subcontracting opportunities;

(c) The apparent successful competitor's allowing sufficient time for DBEs, MBEs or WBEs to respond to the written announcement of project;

(d) The apparent successful competitor's following up written announcement of project with telephone calls or personal contact;

(e) The apparent successful competitor's contacting the Transportation Cabinet's supportive services contractor for assistance in identifying DBE, MBE, or WBE firms. The supportive services contractor is a contractor that provides services to the Transportation Cabinet relating to DBE, MBE, or WBE;

(f) The apparent successful competitor's selecting items of work on the project that DBEs, MBEs, or WBEs are prequalified in accordance with 603 KAR 2:015 to perform;

(g) The apparent successful competitor's providing DBEs, MBEs, or WBEs with adequate information about the project when requesting quotations;

(h) The apparent successful competitor's making efforts to assist DBEs, MBEs, or WBEs in obtaining bonding, credit or insurance;

(i) The apparent successful competitor's advertising in general circulation, trade association and minority focus media for a reasonable time, preferably at least twenty (20) days, before bids or proposals are due;

(j) The location of the project;

(k) The size of the project;

(l) The type of work required by the project; and

(m) The availability of DBEs, MBEs, and WBEs.

(4) If the apparent successful competitor is unable to meet the DBE, MBE, or WBE participation goal and either did not request a finding of good faith effort or failed to satisfy the Office of Minority Affairs that he has substantiated his claim of good faith efforts, the Office of Minority Affairs shall notify the apparent successful competitor of the reasons why his claim of good faith efforts was not accepted and additional efforts he may make to meet the contract goal.

(5) The apparent successful competitor for the project may file an appeal with the Transportation Cabinet in accordance with the provisions of Section 11 of 600 KAR 4:010 within ten (10) days of the date of the notice. If the firm fails to file an appeal or successfully make the additional efforts within the ten (10) days, the Office of Minority Affairs shall in writing advise the Department of Highways that the firm has neither met the project goals nor made a good faith

effort to meet the project goals.

(6) If the apparent successful competitor elects not to file an appeal under the provisions of 600 KAR 4:010, he may within the ten (10) days appeal to the Commissioner, Department of Highways as provided in Sections 9 and 10 of 603 KAR 2:015. However, instead of departmental construction engineers a representative of the Office of Minority Affairs shall be present at the hearing. The hearing examiner and the Commissioner of the Department of Highways shall use the criteria set forth in subsection (3) of this section to determine if the apparent successful competitor has demonstrated good faith efforts.

Section 6. Subcontractor's Guidelines. (1) Only a subcontractor who is certified and has attended a Transportation Cabinet orientation program under the provisions of 600 KAR 4:010 prior to the date of the bid letting for the project may issue a quote on a USDOT assisted project in order to meet a DBE, MBE, or WBE goal.

(2) At least fifty (50) percent of the work outlined in the subcontract shall be performed by the DBE, MBE, or WBE subcontractor's work force.

(3) Second tier subcontracting by a DBE, MBE, or WBE subcontractor may only be accomplished if the proposed second tier subcontractor is a certified DBE, MBE, or WBE and the Office of Minority Affairs has reviewed and approved the second tier DBE, MBE, or WBE subcontract prior to execution.

(4) A DBE, MBE, or WBE subcontractor shall designate in writing a project superintendent who supervises the subcontractor's work force daily. The project superintendent shall not be employed by any other contractor on the same project for the life of the project.

(5) If the subcontractor rents equipment from another contractor, the rental agreement shall be in writing and be approved by the Transportation Cabinet's resident engineer on the project.

Section 7. DBE, MBE, or WBE as Contractor. (1) The provisions of this administrative regulation shall not be construed so as to prohibit a DBE, MBE, or WBE from competing on a project in the role of prime contractor.

(2) If a DBE, MBE, or WBE is the prime contractor on a project which has participation goals established for the project pursuant to Section 2 of this administrative regulation, the work performed by the DBE, MBE, or WBE shall count toward the participation goal.

Section 8. DBE, MBE, or WBE Noncompliance. (1) If any certified DBE, MBE, or WBE is found to be in noncompliance with any of the requirements of this administrative regulation, the firm may have its certification suspended for a specified period of time. The Office of Minority Affairs shall notify the certified firm of the pending suspension. The notice shall specify the reasons for the pending suspension.

(2) The firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days it shall be suspended for a specified period of time.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of 600 KAR 4:010.

(4) If the Transportation Cabinet's [~~, Office of Minority Affairs'~~] decision after the predetermination meeting is that the firm shall be suspended, the firm may appeal the decision in accordance with Section 11 of 600 KAR 4:010.

(5) The effective date of the suspension shall be thirty (30) days after the date the notice of suspension is mailed to the firm, providing the firm does not appeal the suspension to the Transportation Cabinet. If a firm appeals the suspension, the effective date of the suspension shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of 600 KAR 4:010.

MAURICE SWEENEY, Executive Director
J.M. YOWELL, P.E., State Highway Engineer
JERRY ANGLIN, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: October 13, 1994
FILED WITH LRC: October 14, 1994 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 21, 1994 at 1 p.m. local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 16, 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 November 16, 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. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until November 21, 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

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All firms applying to be certified or recertified as a DBE, MBE, or WBE. Currently, there are 180 firms certified by the Transportation Cabinet. Of these 75 are prequalified under 603 KAR 2:015.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change as a result of the changes to the administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No changes as a result of the changes to the administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None as a result of the changes to this administrative regulation.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: By keeping the DBE program in compliance with the federal mandate, there will be no withholding of federal highway construction funds.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State road fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be

implemented: N/A

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because the program was technically in noncompliance with the federal mandate and to prevent a loss of federal funds, immediate action had to be taken. In the change requiring the provision of the proof of operational status of a firm applying for certification, a more rigid standard was rejected pending the completion of a federal notice of proposed rulemaking which is in process. If the US Department of Transportation promulgates stricter standards, the Kentucky Transportation Cabinet will then follow suit.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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: N/A

(10) Any additional information or comments: The Federal Highway Administration informed the Transportation Cabinet shortly after the effective date of the last change to the administrative regulation that the administrative regulation was out of compliance with the federal mandate. Due process was no longer afforded previously certified firms.

(11) TIERING: Is tiering applied? Yes. There are differing requirements for a prime and subcontractor. A prime contractor has more responsibilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 Code of Federal Regulations Part 23 contains the federal mandate for this certification program. The authorities for the federal regulation are Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978; Section 30 of the Airport and Airway Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Title 23 of the US Code and Title VI of the Federal Rights Act of 1964.

2. State compliance standards. The same as the federal mandate on the certification of DBE, MBE or WBE firms.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate imposes on the state the requirement of setting the process of certification and managing the program. The Transportation Cabinet through this administrative regulation and 600 KAR 4:020 has set reasonable procedures for certification and managing the program including due process hearings. US Department of Transportation has found the procedures to be consistent with 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? The federal mandate does not address how the state is to manage the certification program. Rather, it requires the state to get federal approval of its management program. This management program has received federal approval.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(Proposed Amendment)

704 KAR 20:020. Fifth-year program for renewal of [~~provisional~~] teaching certificates [~~certification~~] and for Rank II equivalency.

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, [~~156.070, 157.390,~~] 161.030

NECESSITY AND FUNCTION: [~~KRS 157.390 authorizes the State Board of Education to adopt regulations to determine the salary ranks of certified teachers and to determine equivalent qualifications for the salary ranks; and~~] KRS 161.030 vests authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board [~~State Board of Education~~]. This administrative regulation defines an equivalency for the Rank II salary classification and the fifth-year program acceptable for [~~provisional~~] certificate renewal.

Section 1. (1) Effective June 30, 1995, candidates shall not be admitted to any plan for certificate renewal and for Rank II identified in this administrative regulation; instead, candidates shall apply for admission to one (1) of the plans identified in 704 KAR 20:021.

(2) Candidates who are admitted to a plan in accordance with 704 KAR 20:020 before June 30, 1995, shall complete the program by September 1, 2000, and shall file the application for certificate renewal and Rank II with the Division of Certification prior to June 30, 2001.

Section 2. The preparation program required for the renewal of [~~provisional~~] teaching certificates and for a Rank II classification [~~under the Foundation Law~~] shall be planned as outlined in 704 KAR 20:010 and shall require completion of one (1) of the plans [~~as~~] described in the following sections.

Section 3. [~~2.~~] The Plan I Fifth Year Program shall be the completion of a master's degree leading to a standard teaching certificate from a regionally accredited college or university or from any foreign institution recognized by its government for teacher education purposes.

Section 4. [~~3.~~] The Plan II Fifth-Year Program shall be the completion of a master's degree in a professional education specialty from a regionally accredited college or university or from a foreign institution recognized by its government for teacher education purposes.

Section 5. [~~4.~~] The Plan III Fifth-Year program shall be the completion of a master's degree in an academic subject identified in the teacher certification requirements as a teaching field from a regionally accredited college or university or from a foreign institution recognized by its government for teacher education purposes.

Section 6. [~~5.~~] The Plan IV Fifth Year Program shall consist of a program completed in accordance with the following guidelines:

(1) The Plan IV Fifth Year Program shall be planned individually with each applicant by the teacher education institution which shall be an institution approved for offering programs leading to the standard teaching certificates.

(2) The Plan IV Fifth Year Program shall consist of thirty-two (32) semester hours of credit earned above and beyond the bachelor's degree and the four (4) year program of preparation required for a provisional certificate, except that persons who complete a mandated dual certification program shall be allowed to count toward the Plan IV Fifth Year Program those credits in the second certification area

which are beyond those required for a bachelor's degree and certification in the first area.

(3) The academic standing for the thirty-two (32) semester hour program shall be no less than is required at the planning institution for the teacher education graduates, [and] of the total program;

(a) At least eighteen (18) semester hours shall [must] be earned at the planning institution;

(b) At least twelve (12) semester hours shall be graduate level course work;

(c) At least twelve (12) semester hours shall be professional education; and

(d) At least twelve (12) semester hours shall be from the area of the teacher's specialization.

(4) [(3)] Once the Plan IV Fifth Year Program has been planned with the individual, the planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college.

(5) [(4)] Course work earned by the applicant prior to planning the Fifth Year Program may be evaluated for acceptance by the planning institution.

(6) [(5)] Credit earned by correspondence shall not apply toward the Plan IV Fifth Year Program.

Section 7. [6.] (1) The Plan V Fifth Year Program shall follow the same guidelines as for the Plan IV Fifth Year Program described in Section 6 [5] of this administrative regulation except for the modifications described and permitted in this section.

(2) The Plan V Fifth Year Program shall include [at least] thirty-two (32) semester hours of credit, except that continuing education units (CEU) [and/]or professional staff development units (PSDU) may be substituted under an equivalent formula for up to twelve (12) semester hours of the total program.

(3) [Among] The college credits [there] shall [be] include[d at least] twelve (12) semester hours in professional education and six (6) semester hours from the area of the teacher's specialization.

(4) [Furthermore,] At least eighteen (18) semester hours of credit shall [must] be earned at the planning institution. [and]

(5) Twelve (12) semester hours of the total program shall [must] be for graduate level credit.

(6) [(3)] The Plan V Fifth Year Program shall be planned by the teacher education institution individually with each applicant in terms of the position held by the applicant or in terms of a position anticipated by the applicant. Standard college credits earned by the applicant prior to planning the program shall be evaluated for possible acceptance by the planning institution; however, all preparation recorded as continuing education units or as professional staff development units shall [must] be included as a component of applicant's planned program as approved in advance for acceptance as a part of the Plan V Fifth Year Program.

(7) The grade point standing for the college credit portion of the Plan V Fifth Year Program shall be no less than that required at the planning institution for teacher education graduates. [Once the Plan V Fifth Year Program has been planned with the individual,]

(8) The planning institution may authorize in advance the completion of a maximum of six (6) semester hours of the program at a senior college.

(9) Credit earned by correspondence shall not apply toward the Plan V Fifth Year Program.

(10) [(4)] The continuing education unit as used in the Plan V Fifth Year Program shall be the continuing education unit now in use by accredited colleges and universities and shall include [defined as] ten (10) contact clock hours of participation in an organized professional experience under responsible sponsorship, capable direction, and qualified instruction. For purposes of the Plan V Fifth Year Program the studies and experiences for continuing education units shall be planned in advance to insure relevance to the total program being planned with the applicant. For purposes of the Plan V Fifth Year Program two (2) continuing education units shall be applied on the same basis as one (1) semester hour of college credit.

(11) [(5)] The professional staff development unit as used in the Plan V Fifth Year Program shall be awarded for participation in short term workshops organized by the local school district or by the State Department of Education and shall require a minimum of ten (10) contact clock hours of participation for each unit. For purposes of the Plan V Fifth Year Program two (2) professional staff development units shall be applied on the same basis as one (1) semester hour of college credit. For this purpose the local district in-service education committee established under 704 KAR 3:035 shall approve in advance the local district workshops that are to be offered for professional staff development units on the basis of the following criteria:

(a) There is an assessment of educational need based upon input from the persons who are to be participants in the workshop activity;

(b) There is a statement of objectives relating to the assessment;

(c) The workshop activities and the study materials are appropriate to the attainment of the objectives. Participants have input into the design of the workshop;

(d) The instructor has appropriate expertise for the nature of the workshop; and

(e) Appropriate records will be prepared using forms authorized by the State Department of Education; each participant will be given an individual record of PSDU's granted.

[(6) The Superintendent of Public Instruction shall monitor and evaluate the effectiveness of the Plan V Fifth Year Program and report annually by September 1 his evaluation of program effectiveness to the State Board of Education. For this purpose local school districts and teacher education institutions shall provide pertinent information in such form as he may require.]

DANIEL GREENE, Chair

APPROVED BY AGENCY: October 3, 1994

FILED WITH LRC: October 11, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 29, 1994, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 24, 1994, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Roland Goddu, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 502 564-4606.

REGULATORY IMPACT ANALYSIS

Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Approximately 1,800 individuals who complete requirements for a Fifth Year Program annually and 12 institutions of higher education which offer approved Fifth Year Program.

(2) Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Cost of tuition and/or professional development required for completing the Fifth Year Program.

b. Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comments received: Teachers who complete the Fifth Year Program are eligible for a higher salary established for Rank II on the state salary schedule.

c. Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Individuals pursuing the Fifth Year Program under current requirements must be admitted to these programs by June 30, 1995, and must complete these programs before September 1, 2000, and apply for certificate renewal and Rank II before June 30, 2001.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on promulgating administrative body: Office of Teacher Education and Certification must approve Fifth Year Programs offered by institutions of higher education, review applications from candidates who have completed programs, and issue renewal certificates and maintain records.

a. Direct and indirect costs or savings:

1. First year: Costs associated with disseminating program requirements, approving programs, issuing certificates, and maintaining records.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: Office of Teacher Education and Certification must maintain records on all approved programs of preparation and maintain records and issue certificates.

(4) Assessment of anticipated effect on state and local revenues: No impact on state or local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund appropriations to the Office of Teacher Education and Certification.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No comments received.

a. Geographical area in which administrative regulation will be implemented:

b. Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Qualified instructional personnel are required for the education of public school children.

(8) Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: No direct impact on public health and environment.

b. State whether a detrimental effect on environment and public health would result if not implemented: None

c. If detrimental effect would result, explain detrimental effect: None

(9) 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Certificate renewal and Rank II requirements are applied uniformly to all applicants.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 4:010. Annual inspection of passenger elevators.

RELATES TO: KRS 198B.400-198B.540

STATUTORY AUTHORITY: KRS 198B.060(18), 198B.490, 198B.520

NECESSITY AND FUNCTION: KRS 198B.490 requires the commissioner to make rules and regulations exclusively for the safety and inspection of passenger elevators as defined by KRS 198B.400(1) and (2). The function of this administrative regulation is to adopt safety standards for passenger elevators used by the citizens of this Commonwealth. This amendment is necessary to update the incorporated ASME Code to the 1993 edition, without exception. [~~This amendment is necessary to formalize the department's policy that passenger elevators which comply with more recent editions of adopted standards shall be considered equivalently safe and therefore acceptable.~~]

Section 1. Incorporation of Code. (1) "Safety Code for Elevators and Escalators [~~(1990)~~]", ASME A17.1-1993 [~~1990, with the exception of rule 102.2(e)(4),~~] is incorporated by reference.

(2)(a) It may be inspected and copied at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, 8 a.m. to 4:30 p.m., Monday through Friday.

(b) It also may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017.

(3) Compliance with a later edition of this standard shall be deemed equivalent and may be used by the owner or contractor in lieu of the edition specified.

Section 2. Annual Inspection of Passenger Elevators and Escalators. Annual inspections of passenger elevators and escalators shall be conducted in accordance with the codes adopted in Section 1 of this administrative regulation.

Section 3. Annual Inspection Fees. (1) The fee for the annual inspection of passenger elevators and escalators from which certificates of operation are issued, shall be fifty-five (55) dollars per inspection.

(2) Any inspection, other than an inspection made pursuant to a permit or annual inspection, conducted at the request of the owner or user of a unit shall be fifty-five (55) dollars.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: October 11, 1994

FILED WITH LRC: October 12, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 22, 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 November 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 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: Commercial buildings in which an elevator is located.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No additional costs beyond the fees charged for inspections.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional compliance, reporting or paperwork required; negligible cost factors.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Department receives fees for annual inspections of elevators, escalators and moving walks.

1. First year:

2. Continuing costs or savings: Fees for annual inspections generate approximately $260,000 in revenue, plus $60,000 received from new installation or alteration permits to support the number of employees making the required amount of inspections.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Reporting and paperwork requirements remain the same.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No requirement of revenue for implementation; enforcement is implemented through employees making required inspections and no additional revenue required.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact relative to this regulation, geographically or statewide.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Fee for service viewed as best mechanism with appropriate persons paying.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public health and welfare are protected by applying the latest edition of applicable standards available.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Safety for users of elevators, escalators and moving walks will be compromised without implementation.

(c) If detrimental effect would result, explain detrimental effect: Lack of regulation for employees to perform necessary inspections and tests with the use of current industry safety standards will promote a poor level of maintenance for the equipment and escalate the level of "inherent danger".

(9) 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 in conflict.

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

(10) Any additional information or comments: Elevators, escalators and moving walks are the safest and most used form of transportation world-wide. This administrative regulation provides the ability to insure a higher level of safety.

(11) TIERING: Is tiering applied? Yes. Tiering is applied to the extent that the adopted code had different requirements for different types/levels of education.

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

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. This amendment is necessary to make certain technical changes throughout the code that were overlooked when originally published and are necessary for clarification, and amendments approved by the Board of Housing to update the edition of ASME A17.1, the Safety Code for Elevators, to the 1993 edition, without exception, and amend Section 3014.1 by deleting the exceptions dealing with inclined stairway lifts.

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."

(5) Section 108.3 shall be amended to read: "108.3 Previous approvals: This code shall not require changes in the construction documents, construction or designated use group of a building for which a lawful permit has been issued or otherwise lawfully authorized by approved construction documents, if substantial construction on the project has commenced within six (6) months from the date the permit was issued."

Section 3. Amendments to Chapter 3 of the 1994 Kentucky Building Code. Section 310.5 shall be amended by deleting the reference "(see Section 709.0)" from the end of the paragraph.

Section 4. Amendments to Chapter 4 of the 1994 Kentucky Building Code. Section 422.11 shall be amended to read: "422.11 Barrier-free design: All new work shall comply with the applicable provisions of Chapter 11. Exception: Church day care centers."

Section 5. Amendments to Chapter 5 of the 1994 Kentucky Building Code. Delete Section 504.4, Day care centers, in its entirety from the 1994 Kentucky Building Code.

Section 6. [~~3.~~] Amendment to Chapter 9 of the 1994 Kentucky Building Code. (1) Amend Section 917.10 by deleting "and 72E" from the reference to NFPA pamphlets and leaving the reference to "NFPA 72."

(2) Amend Sections 918.1, 918.4.3 and the Exception under Section 918.8 by deleting the reference to 'NFPA 72E' and replacing it with reference to "NFPA 72."

(3) Amend Sections 919.1 and 919.6 by deleting the reference to 'NFPA 74' and replacing it with reference to "NFPA 72."

(4) 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 7. [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 8. [~~5.~~] Amendments to Chapter 11 of the 1994 Kentucky Building Code. (1) Amend Section 1101.3 by deleting the word "shall" and replacing it with the word "may".

(2) 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."

(3) [~~(2)~~] Exception #2 under Section 1104.2 shall be amended to read: "2. The exceptions listed in Section 4.1.3(5) of ADAAG."

(4) [~~(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."

(5) [~~(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."

(6) [~~(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."

(7) [~~(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."

(8) [~~(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)."

(9) [~~(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."

(10) [~~(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 9. [~~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 10. Amendments to Chapter 18 of the 1994 Kentucky Building Code. Amend Section 1806.1 by deleting the word "below" from the fifth line of this section and replacing it with the word "to."

Section 11. [~~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 35 [~~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 12. Amendments to Chapter 30 of the 1994 Kentucky

Building Code. Amend Section 3014.1 to read as follows: "3014.1 General: Inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Chapter 35."

Section 13. [8.] Amendments to Chapter 35 of the 1994 Kentucky Building Code. (1) Amend Chapter 35 by inserting an additional reference to "Addendum 62A-1990" under "ASHRAE."

(2) Amend Chapter 35 under "ASME" by updating the edition of A17.1 to "1993" and deleting the language "with the exception to Rule 102.2(c)(4)."

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: October 11, 1994
FILED WITH LRC: October 12, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 22, 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 November 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 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, General Counsel

(1) Type and number of entities affected: Contractors, architects, engineers, design professionals.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No costs or savings involved because administrative regulation only establishes acceptability and sets standards.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No costs or savings involved as stated above.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None to users of KBC.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of printing KBC but this is recouped by the sale of the Code books.

2. Continuing costs or savings: Cost of printing 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.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Plan review fees, pursuant to 815 KAR 7:013.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Kentucky Building Code is used and enforced statewide, however, there is no known economic impact on these particular code changes.

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative option available; Board of Housing adopts or amends material within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety concerns.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without amendments, the Code would not conform to the latest safety standards listed and confusion over some provisions make design more difficult.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict of statute or policy.

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

(10) Any additional information or comments:

(11) TIERING: Is 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.

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

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.010, 318.020, 318.040, 318.050, 318.054
NECESSITY AND FUNCTION: KRS 318.040 requires the department to conduct examinations for master and journeyman plumber applicants. This administrative regulation relates to those requirements and the fees required. It also relates to the time, place and methods of examinations. This amendment is necessary to increase the renewal fees of licensed master and journeyman plumbers to a level sufficient to meet the costs of carrying out the plumbing program when taken together with permit fees in 815 KAR 20:050. This increase was approved by the Plumbing Code Committee on August 8, 1994. [~~This amendment is proposed to reduce the fees of licensed master and journeyman plumbers as agreed by the Plumbing Code Committee when operating funds were sufficient to carry out the plumbing program in the state.~~]

Section 1. Applications for Examination for Master or Journeyman Plumber's Licenses. Applications for examination for master or journeyman plumber's licenses shall be submitted to the Department of Housing, Buildings and Construction on forms furnished by the department. Each application shall be properly notarized and accompanied by a fee of $150 for a master plumber's license or fifty (50) dollars for a journeyman plumber's license. A signed photograph of the applicant not less than two (2) inches square nor larger than four (4) inches square taken within two (2) years shall accompany each application. Application fees shall be submitted at least two (2) weeks prior to the date of examination and remitted by post office or express money order, bank draft or certified check payable to the Kentucky State Treasurer.

Section 2. Examinations for Master or Journeyman Plumber's Licenses. (1) Examination of applicants. Regular examination of applicants for master or journeyman plumber's licenses shall be conducted during the months of February, May, August and November of each year. Special examinations may be conducted at other times as the Department of Housing, Buildings and Construction directs.

(2) Time and place of examination. Notice of the time and place of examination shall be given by United States mail at least one (1) week prior to the date of examination to all persons having applications on file.

(3) Materials required for journeyman plumbers' examinations. Applicants for journeyman plumber's licenses shall furnish the materials required for the practical examination.

(4) The testing requirements shall be designed by the State Plumbing Examining Committee and shall be more complex for the master's examination.

Section 3. Renewals of Master and Journeyman Plumber's Licenses. (1) Renewal fees. The annual license renewal fee shall be $250 [~~150~~] for master plumbers and forty (40) [~~twenty-five (25)~~] dollars for journeyman plumbers.

(2) Remittance of renewal fees. Renewal fees shall be remitted by post office or express money order, bank draft, or certified check payable to the Kentucky State Treasurer.

Section 4. Expiration, Renewal or Reinstatement of License. All licenses issued under KRS 318.040 shall expire on June 30 as prescribed in KRS 318.054.

Section 5. Requirements for Master Plumber Applicants. In addition to the citizenship and age limitations of KRS 318.040, each person shall meet the following requirements to become licensed as a master plumber:

(1) The applicant possessed a valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application and has been actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

(2) The applicant shall be a Kentucky registered engineer experienced in mechanical engineering.

(3) All applicants shall successfully complete the examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate that the applicant understands the Kentucky plumbing laws, is capable of the design of a plumbing system and understands the technical and practical installation techniques and principles for a safe and sanitary plumbing system. The examination shall include, but not be limited to, answering written questions pertaining to basic principles of plumbing and state plumbing laws, and preparing a drawing from a sheet of instruction that describes the number and type of fixtures on each floor. The applicant shall draw all stacks, wastes and vents and insert the proper pipe size required. Oversized piping shall be counted off the same as undersized.

(4) The passing grade for master plumbers shall be eighty (80) percent.

Section 6. Requirements for Journeyman Plumber Applicants. In addition to the citizenship and age limitations of KRS 318.040, each person shall meet the following requirements to become licensed as a journeyman plumber:

(1) The applicant has completed two (2) consecutive years experience as an apprentice plumber. Proof of this requirement shall be satisfied by submission of a W-2 form, affidavit of a Kentucky licensed master plumber, or other proof of experience acceptable to the Department.

(2) The applicant successfully completes the practical and written examination developed and administered by the State Plumbing Examining Committee. The examination shall be designed to demonstrate the practical and technical understanding of plumbing principles and the ability to apply those principles for a safe and sanitary plumbing system. The examination shall include, but not be limited to, answering written questions pertaining to basic principles of plumbing and state plumbing laws, as well as preparing a drawing from a sheet of instruction that describes the number and type of fixtures on each floor. The applicant shall draw all stacks, wastes and vents and insert the proper pipe size required. Oversized piping shall be counted off the same as undersized.

(3) The examination shall also include completing a practical section in which the applicant shall demonstrate ability to properly install plumbing by engaging in certain activities such as properly caulk a cast iron soil pipe spigot into a cast iron hub and soldering copper solder connections.

(4) The passing grade for journeyman plumbers shall be seventy-five (75) percent.

Section 7. All Master Plumbers and Journeyman Plumbers shall notify the department of the name of their business and its address, their employer and his address and any time a change of employment is made.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: October 11, 1994

FILED WITH LRC: October 12, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 22, 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 November 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 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: Approximately 2,100 master plumbers and 4,100 journeyman plumbers licensed each year.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Additional cost of employment for 4,100 journeyman plumbers will be $61,500 (4,100 x $15).

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Additional cost of doing business for 2,100 master plumbers will be $210,000 (2,100 x $100).

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Administrative requirements and procedures will remain the same and there will be no impact on costs or competition.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Licensing procedures are in place and there will be no direct or indirect cost or savings involved. Will provide needed revenue to maintain services.

1. First year: All licenses issued in current year, no additional revenue.

2. Continuing costs or savings: Additional revenue in the amount of $271,500 each succeeding year. Direct cost each fiscal year to those affected throughout the state will be as follows: Master plumbers - $210,000 (2,100 x $100); journeyman plumbers - $61,500 (4,100 x $15).

3. Additional factors increasing or decreasing costs: Increase or decrease in revenue will be in direct proportion to the increase or decrease in plumber licenses issued.

(b) Reporting and paperwork requirements: Administrative requirements will remain the same.

(4) Assessment of anticipated effect on state and local revenues: $271,500 in additional state revenue, no local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Increased licensing and application fees for master and journeyman plumbers.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Statewide

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: Licensing and testing procedures are in place and no additional administrative cost will be incurred. Previous requests for supplemental general funds have not been approved.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Essential plumbing regulation services will improve both public health and welfare throughout the state.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Services could not be maintained.

(c) If detrimental effect would result, explain detrimental effect: Reduced services. Also, delays which would increase costs and negatively impact economic development.

(9) 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 in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.

(10) Any additional information or comments: This amendment is consistent with the intent of the regulation to review fees on an annual basis and increase or decrease them accordingly based on funding requirements. This increase follows a decrease implemented in 1993.

(11) TIERING: Is tiering applied? Yes. Tiering was applied because the master plumber licenses were increased by a larger proportion than the journeyman plumber license. The responsibilities of the master plumber are greater in proportion to the journeyman plumber.

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

815 KAR 20:050. Installation permits.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.030, 318.134

NECESSITY AND FUNCTION: The department is directed by KRS 318.134 to adopt a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. This administrative regulation is to assure uniformity of fees and charges for plumbing installation permits throughout the state. This amendment is necessary to increase the base plumbing installation permit fee to a level sufficient to meet the costs of carrying out the plumbing program when taken together with license fees in 815 KAR 20:030. This increase was approved by the Plumbing Code Committee on August 8, 1994. [~~This amendment is proposed to reduce the inspection fees as agreed by the Plumbing Code Committee and set forth in Section 5 of this administrative regulation when operating funds were sufficient to carry out the plumbing program in the state.~~]

Section 1. Issuance of Permits. (1) Permits to construct, install or alter plumbing, sewerage or drainage shall be issued only to licensed master plumbers except as provided by subsection (3) of this section.

(2) Journeyman plumbers shall not construct, install or alter plumbing, sewerage or drainage unless the work is performed under the supervision of a licensed master plumber.

(3) Permits to construct, install or alter plumbing, sewerage or drainage may be issued to homeowners who desire to install plumbing in homes actually occupied by them or in a home to be constructed by them for their own personal residential use, if all the following requirements are met:

(a) Application is made for the permit prior to the beginning of the work; and

(b) The homeowner files with his application an affidavit stating that he shall abide by the terms of this section; and

(c) All work shall be performed in compliance with the state plumbing code; and

(d) All the work shall be personally performed by the owner; and

(e) Only one (1) homeowner permit for construction of a new home shall be issued to an individual in a five (5) year period. This requirement may be waived by the department if the applicant is actually installing the plumbing for his own use.

(4) A permit shall not be required for the repairing of leaks, cocks, valves, or for cleaning out waste or sewer pipes; however, a permit shall be required for the addition of a backflow prevention device to an existing potable water supply.

Section 2. When a Permit is Required. A plumbing installation permit shall be required for the following:

(1) For all new plumbing installations.

(2) For all existing plumbing installations if a fixture, soil or waste opening or conductor is to be moved or relocated.

(3) For each individual unit of a multistory building if there is more than one (1) unit.

(4) For each individual building. (Buildings shall be deemed separate if the connection between them is not a necessary part of the structure of either building, or if they are not under a continuous roof.)

(5) For a new house sewer and for a house sewer that is to be replaced.

(6) For a new water service and for a water service that is to be replaced, or for the addition of a backflow prevention device to an existing water service.

(7) For a new water heater installation and for a water heater installation that is to be replaced.

(8) For taking over a plumbing installation originally permitted to another master plumber or for assuming responsibility to correct and test an installation made by someone else.

Section 3. Plumbing Installation Permit Fees. (1) The base fee for each plumbing installation permit for residential, one (1) and two (2) family units, shall be twenty-eight (28) [~~ten (10)~~] dollars plus:

(a) Two (2) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances.

(b) Two (2) dollars for each domestic water heater.

(c) Two (2) dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(2) The base fee for each plumbing installation permit for other than residential, one (1) and two (2) family units, shall be twenty-eight (28) [~~ten (10)~~] dollars plus;

(a) Four (4) dollars for each plumbing fixture or appliance or plumbing fixture opening or appliance opening left in the soil or waste pipe system including openings left for future fixtures or appliances;

(b) Four (4) dollars for each domestic water heater.

(c) Four (4) dollars for each conductor opening.

(d) Four (4) dollars for each separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(3) If only one (1) new domestic water heater is installed or replaced within a single building, the only fee for the plumbing installation permit shall be ten (10) dollars. Alternatively, if more than one (1) water heater is replaced within a building, a permit shall be issued under Sections 1 or 2 of this administrative regulation.

(4) If the application for permit does not include any new installation but is to make corrections to or provide testing for an installation made by someone else, the permit fee shall be the base fee of twenty-eight (28) [~~ten (10)~~] dollars only.

(5) All persons securing plumbing permits shall be entitled to three (3) plumbing inspections at no additional cost. All plumbing inspections in excess of three (3), shall be charged at the rate of three (3) dollars per inspection.

(6) All plumbing installation permits issued under this administrative regulation shall expire one (1) year after date of issuance. If construction is begun within one (1) year after date of issuance, the permit shall not expire until completion of the planned plumbing installation.

Section 4. Plumbing Inspection Fees for Public Buildings. The schedule of fees for inspection of the construction, installation or alteration of plumbing in public buildings shall be the same as specified in Section 3 of this administrative regulation.

Section 5. The Department of Housing, Buildings and Construction shall appear before the State Plumbing Code Committee no later than March 1, 1992, and each year thereafter for a review of the fee structure set forth in this administrative regulation, and the State Plumbing Code Committee may approve the existing fee structure or recommend increases or reductions.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: October 11, 1994

FILED WITH LRC: October 12, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 22, 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 November 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 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, General Counsel

(1) Type and number of entities affected: Approximately 40,000 permit holders who obtain permits to do plumbing work.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No impact on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Additional cost of doing business for 40,000 permit holders will be approximately $720,000 (40,000 x $18).

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Administrative requirements and procedures will remain the same and there will be no impact on costs or competition.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Permit process is in place

and there will be no direct or indirect costs or savings involved. Will provided needed revenue to maintain services.

1. First year: $360,000 in last half of fiscal year.

2. Continuing costs or savings: $720,000 each succeeding year.

3. Additional factors increasing or decreasing costs: The increase or decrease in new construction activity.

(b) Reporting and paperwork requirements: Administrative requirements will remain the same.

(4) Assessment of anticipated effect on state and local revenues: $720,000 in additional state revenue, no local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Increase of $18 for 40,000 plumbing permits. The increase will not be applied to other water heater permits which will remain at $10.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Statewide

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: Procedures for issuing permits are in place and no additional administrative costs will be incurred. previous requests for supplemental General Funds have not been approved.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Essential plumbing regulation services will improve both public health and welfare throughout the state.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Services could not be maintained.

(c) If detrimental effect would result, explain detrimental effect: Reduced services. Also, delays which would increase costs and negatively impact economic development.

(9) 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 in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.

(10) Any additional information or comments: This amendment is consistent with the intent of the regulation to permit fees on an annual basis and increase or decrease them accordingly based on funding requirements. This increase follows a decrease implemented in 1993.

(11) TIERING: Is tiering applied? Yes. Tiering was applied by excluding permits for water heaters which requires fewer man hours to perform than most other permits involving the entire plumbing system.

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

815 KAR 20:070. Plumbing fixtures.

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. This administrative regulation relates to the kind, type and quality of plumbing fixtures that shall be used in the construction of plumbing systems and identifies the manufacturer's specification number of the material accepted in those installations. This amendment is necessary to bring the administrative regulation into compliance with the mandates of the federal government concerning the amount of water usage of plumbing fixtures. ~~[This amendment is necessary to bring the regulation into compliance with the mandates of the federal government concerning the amount of water usage of plumbing fixtures.]~~

Section 1. Materials. Receptacles used as water closets, urinals, or for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, except as indicated in Section 4 of this administrative regulation.

Section 2. Installation. Plumbing fixtures shall be installed to allow access for cleaning. Where practical, all pipes from fixtures shall be run to the wall and no trap or pipe shall extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. Water closet bowls shall be of one (1) piece construction and hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces, and it shall be provided with an integral flushing rim to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. Plastic water closet bowl and tank shall be constructed with a polypropylene lining inside the one (1) piece bowl and tank. The outer surface of the bowl shall be constructed of PVC material and the filler material between the two (2) surfaces shall be made of polyurethane foam. The bowl shall have a three (3) inch water seal and shall have a two and one-eighth (2 1/8) inch waste opening passage.

Section 5. Frost-proof Closet. A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy. The room shall be tightly enclosed and accessible from the outside only. The soil pipe between the trap and hopper shall be of extra heavy cast-iron, four (4) inches in diameter and shall be light colored porcelain enamel on the inside. The building shall have a nonabsorbent floor. A frost-proof water closet shall have a four (4) inch vent.

Section 6. (1) Floor drains and shower drains. A floor drain or a shower drain shall be considered a plumbing fixture and shall be provided with a strainer.

(2) Shower drain pan construction. Shower pans shall be constructed without seams and shall extend to a minimum height of six (6) inches on all vertical walls. Shower pans shall not be required on a concrete floor before the outside grade level. Shower drain pans shall be constructed as follows:

(a) Of sheet lead weighing not less than four (4) pounds per square foot; or

(b) Of nonplasticized chlorinated polyethylene produced and labeled as ASTM D-412-66, D-1204-54 and D-568-61 and they shall be not less than 0.040 inches thick; or

(c) Of nonplasticized polyvinyl chloride (PVC) sheet material produced and labeled as ASTM D-1004, D-2204, D-412 and D-1790 and they shall be not less than 0.040 inches thick; or

(d) Of other approved material. Copies of ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Fiberglass bathtubs, showers, tub enclosures and shower stalls. Fiberglass bathtubs and tub enclosures shall be produced and labeled as ANSI Z 124.1. Acrylic-faced bathtubs shall be produced and labeled as ASTM E-84B or E-162. Fiberglass shower stalls and shower receptors shall be produced and labeled as ANSI Z 124.2.

(4) Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls. Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, shall be produced and labeled as ANSI Z 124-1, lavatories

shall be produced and labeled as ANSI Z 124-3 and shower stalls shall be produced and labeled as ANSI Z 124-2. Copies of ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 7. Fixture Strainers. Fixtures, other than water closets and pedestal urinals, shall be provided with a strainer. The outlet area of the strainer shall not be less than the interior area of the trap.

Section 8. Fixture Overflow. The overflow from a fixture shall be optional, but if used, the overflow shall be connected to the inlet side of a trap and accessible for cleaning.

Section 9. Fixture Additions. Fixtures added to a plumbing system shall be installed to comply with all applicable sections of the State Plumbing Code.

Section 10. Defective Fixtures. Newly installed fixtures found defective or old fixtures found to be in an unusable condition, shall be repaired, replaced, or removed within thirty (30) days upon written notice from the department.

Section 11. Water Heaters. (1) A water heater designed for use as an appliance for supplying potable hot water for domestic or commercial purposes may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit. Water heaters shall be properly connected to the hot and cold water supply and shall be connected to an adequate size flue or chimney. A water heater shall not be connected to a flue serving a coal burning apparatus. The flue or chimney shall extend two (2) feet above the roof and shall be properly flashed and shall not terminate within six (6) feet of a door or window. A fuel fired water heater, with the exception of those having direct-vent or through the wall vent systems, shall not be placed in any bathroom, toilet room or a room used for sleeping. If a water heater is placed in a closed room or closet, the door shall be a louver door or shall be properly ventilated to provide combustion air and circulation (see 815 KAR 20:120).

(2) Direct venting system location. Residential gas-fired direct vent and through the wall type water heaters shall be vented in accordance with the manufacturer's recommendations and shall be installed in accordance with the National Fire Prevention Association Pamphlet #54 adopted by reference in the Kentucky Fire Prevention Code filed in 815 KAR 10:040. The vent terminal of a direct vent appliance with an input of 50,000 BTU per hour or less shall be located at least nine (9) inches from any opening through which flue gases could enter a building, and an appliance with an input over 50,000 BTU per hour shall require a twelve (12) inch vent termination clearance. The bottom of the vent terminal and the air intake shall be located at least twelve (12) inches above grade" (see 815 KAR 20:120, Section 11).

Section 12. Conservation of Water. (1) Conservation of hot water.

(a) Showers. Showers used for other than safety reasons shall be equipped with approved flow control devices to limit total flow to a maximum of two and one-half (2.5) gpm per shower head.

(b) Lavatories.

1. Lavatories in restrooms of public facilities shall be equipped with outlet devices which limit the flow of domestic hot water to a maximum of 0.75 gpm.

2. Lavatory faucets (other than those in restrooms of public facilities) shall be equipped with flow control devices which limit the flow of domestic hot water to a maximum of two (2.0) gpm.

3. Sink faucets shall be equipped with flow control devices which limit the flow of domestic hot water to a maximum of two and one-half (2.5) gpm.

(2) Conservation of cold water.

(a) Showers. Showers used for other than safety reasons shall be equipped with approved control devices to limit total flow to a maximum of two and one-half (2.5) gpm per shower head.

(b) Lavatory and sink faucets.

1. Lavatory faucets: lavatory faucets shall be equipped with flow control devices which limit the flow of domestic cold water to a maximum of two (2.0) gpm.

2. Sink faucets: sink faucets shall be equipped with flow control devices which limit the flow of domestic cold water to a maximum of two and one-half (2.5) gpm.

(c) Water closets: no water closet shall be installed in any facility or building unless it is of a type designed and manufactured to limit the gallons per flush as required by this subsection: 1. Residential (private use) installations: water closets for private use single family dwellings, duplexes and townhouses, condominiums and apartment units shall not exceed one and six-tenths (1.6) gallons per flush.

2. Commercial (public use) installations: water closets for public use, including commercial buildings, shall not exceed three and one-half (3.5) gallons per flush. [~~water closets shall not exceed three and one-half (3.5) gallons per flush.~~]

(d) Urinals: urinals shall not exceed one (1.0) gallon per flush.

(3) The provisions of this section shall apply to new construction, renovations and replacement in existing structures. Upon satisfactory compliance with the requirements of this section, the Division of Plumbing shall permit the installation of tank type water closets equipped with devices found by the inspector to meet applicable specifications in water closets having a tank capacity in excess of three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters). The Division of Plumbing may also allow the use of standard flush water closets and urinals which do not meet the specific specifications if, in the opinion of the division, the configuration of the building drainage system requires a greater quantity of water to adequately flush the system, or if the owner requests the use of antique fixtures which may not be equipped for reduced flow.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: October 11, 1994
FILED WITH LRC: October 12, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 22, 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 November 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 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: Licensed master and journeyman plumbers; users of the State Plumbing Code.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented: Direct savings to residential consumers because the required water closets will use only 40% of the water necessary for contemporary water closets and direct savings on the corresponding waste water treatment costs. Indirect savings to the public by reducing the need for new or expanded waste water treatment facilities by reducing the waste load.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing fee schedule is adequate. Enforcement of the regulation will not increase agency costs.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Reduction of potable water usage and reduction in the amount of waste water being treated and discharged into streams would have a positive environmental impact.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. This amendment tiers the requirements for water closets in that public water closets have greater flush capacity than private water closets.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:040. Excluded over-the-counter products.

RELATES TO: KRS 218A.020 to 218A.130

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020(4) and 218A.090(4)(i) authorizes the Cabinet for Human Resources to exclude products that may be lawfully sold over the counter (without prescription) from the provisions relating to controlled substances of KRS Chapter 218A. The purpose of this administrative regulation is to exclude certain over-the-counter products from the provisions of KRS Chapter 218A.

Section 1. Excluded Over-the-counter Products. Any compound, mixture, or preparation containing any nonnarcotic substance which shall be excluded from the provisions of the federal controlled substance law as set forth in the April 1, 1994 [~~1993~~] edition of the Code of Federal Regulations (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.22, Excluded Substances, incorporated by reference, shall be excluded from the provisions of KRS Chapter 218A. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.22 shall be [~~is~~] on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky, 40621, and shall be available for public inspection and copying Monday through Friday 8 a.m. - 4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

RICE C. LEACH, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: October 6, 1994

FILED WITH LRC: October 14, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1994, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by November 16, 1994 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 , Office of the counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

1. Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.

2. Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition):

1. First year following implementation: There is no reporting or paperwork required by this regulation.

2. Second and subsequent years: None

3. Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

4. Assessment of anticipated effect on state and local revenues. There will be no effect on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation. The administration of drug regulations is financed by the general fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented. No comments were received.

(b) Kentucky: No comments were received.

7. Assessment of alternative methods; reasons why alternative methods were rejected. Alternatives were rejected because nonconformity with federal regulation would result.

8. Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is conformity with federal regulations and the elimination of recordkeeping requirements for those substances embodied by this regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: If the regulation is not implemented, controls on the substances will be more stringent than federal requirements, which could inhibit their availability to citizens of the Commonwealth.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

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

10. Any additional information or comments:

11. TIERING: Is tiering applied? Tiering was not applied because the exclusion applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242; 21 USC 811(g)(1) and 21 CFR 1308.22.

2. State compliance standards. The criteria for exclusion are set forth in KRS 218A.020(4) and 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be excluded are set forth in 84 Stat. 1241; and 21 USC 811(g)(1).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:045. Exempt prescription products.

RELATES TO: KRS 218A.020 to 218A.130

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Human Resources, the Cabinet for Human Resources may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to [~~delete and~~] exempt certain stimulant or depressant compounds from the provisions of KRS Chapter 218A that have been [~~deleted and~~] exempted pursuant to federal regulation.

Section 1. Exempt Prescription Products. Any compound, mixture, or preparation containing any depressant or stimulant substance exempted from the provisions of the federal controlled substance law as set forth in the April 1, 1994 [~~1993~~], edition of the Code of Federal Regulations, (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.32, Exempted Prescription Products, incorporated by reference, shall be exempted from the provisions of KRS Chapter 218A for administrative purposes only. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.32 shall be on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection and copying Monday through Friday 8 a.m. to 4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

RICE C. LEACH, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: October 6, 1994

FILED WITH LRC: October 14, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1994, at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by November 16, 1994 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 , Office of the counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

1. Type and number of entities affected: 12,000 health professionals (physicians, pharmacists, dentists, veterinarians and drug wholesalers or distributors) are affected by this regulation.

2. Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition):

1. First year following implementation: There is no reporting or paperwork required by this regulation.

2. Second and subsequent years: None

3. Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

4. Assessment of anticipated effect on state and local revenues. There will be no effect on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation. The administration of drug regulations is financed by the general fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented. No comments were received.

(b) Kentucky: No comments were received.

7. Assessment of alternative methods; reasons why alternative methods were rejected. Alternatives were rejected because nonconformity with federal regulation would result.

8. Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is conformity with federal regulations and the elimination of recordkeeping requirements for those substances embodied by this regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: If the regulation is not implemented, controls on the substances will be more stringent than federal requirements, which could inhibit their availability to citizens of the Commonwealth.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

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

10. Any additional information or comments:

11. TIERING: Is tiering applied? Tiering was not applied because the exclusion applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242; and 21 CFR 1308.22.

2. State compliance standards. The criteria for exemption are set forth in KRS 218A.020(3) and 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in 84 Stat. 1241; and 21 CFR 1308.32.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:090. Exempt anabolic steroid products.

RELATES TO: KRS 218A.010 to 218A.030, 218A.080 to 218A.090, 21 CFR 1308.13, 1308.34 [~~Chapter 218A~~]

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020(3) provides that if any controlled substances is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Human Resources, the Cabinet for Human Resources may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain anabolic steroid products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

Section 1. Exempt Anabolic Steroid Products. Any compound, mixture, or preparation containing an anabolic steroid exempted from the provisions of the federal controlled substance law as set forth in the April 1, 1994 [~~November 24, 1992,~~] edition of the Code of Federal Regulations (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.34, Exempt Anabolic Steroid Products, [~~Federal Register Vol. 57, No. 227, Drug Enforcement Administration, Department of Justice, Section 1308.34, Exempt Anabolic Steroid Products, pages 55090 and 55091,~~] incorporated by reference, shall be exempt from the provisions of KRS Chapter 218A, the Controlled Substances Act for administrative purposes only. The Code of Federal Regulations [~~Administrative Register~~] is published by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.34 shall be on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky, 40621, and shall be [~~is~~] available for public inspection and copying Monday through Friday, 8 a.m. - 4:30 p.m. A copy of the CFR [~~Federal Register~~] is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

RICE C. LEACH, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: October 6, 1994

FILED WITH LRC: October 14, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1994, at 9 a.m. in the

Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by November 16, 1994 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 , Office of the counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

1. Type and number of entities affected: 12,000 health professionals (physicians, pharmacists, dentists, veterinarians and drug wholesalers or distributors) are affected by this regulation.

2. Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition):

1. First year following implementation: There is no reporting or paperwork required by this regulation.

2. Second and subsequent years: None

3. Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

4. Assessment of anticipated effect on state and local revenues. There will be no effect on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation. The administration of drug regulations is financed by the general fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented. No comments were received.

(b) Kentucky: No comments were received.

7. Assessment of alternative methods; reasons why alternative methods were rejected. Alternatives were rejected because nonconformity with federal regulation would result.

8. Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefit is conformity with federal regulations and the elimination of recordkeeping requirements for those substances embodied by this regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: If the regulation is not implemented, controls on the substances will be more stringent than federal requirements, which could inhibit their availability to citizens of the Commonwealth.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

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

10. Any additional information or comments:

11. TIERING: Is tiering applied? Tiering was not applied because the exclusion applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 21 USC 802(41)(A)(B), 21 USC 812(c)(e) and 21 CFR 1308.34.

2. State compliance standards. The criteria for exemption are set forth in KRS 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in 21 CFR 1308.33.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, OCTOBER 14, 1994

GENERAL GOVERNMENT CABINET
Executive Branch Ethics Commission

9 KAR 1:050. Approval of outside employment of a public servant.

RELATES TO: KRS 11A.040(9)
STATUTORY AUTHORITY: KRS 11A.040(9)
NECESSITY AND FUNCTION: KRS 11A.040(9) requires the Executive Branch Ethics Commission to promulgate administrative regulations establishing a procedure for approval of outside employment of a public servant.

Section 1. (1) On or after July 15, 1994, a request by a public servant for approval of the Executive Branch Ethics Commission for outside employment shall submit a statement under oath to the appointing authority of his agency.

"I request approval of off-duty employment with (name of outside employer). As a (public servant's job title), I am not involved in the (name of state agency's) decisions concerning (name of outside employer). If the request is approved, I agree that if, in the future, I realize that I will be involved in such decisions, I will immediately notify the (appointing authority) and the Executive Branch Ethics Commission and take steps to avoid any conflict of interest."

(2) The appointing authority shall review the request and consider the following factors:
(a) The degree of separation between the public servant's state duties and decisions concerning the outside employer. Example: whether the public servant is involved with the awarding of contracts to or regulation of the outside employer.
(b) The public servant's level of supervisory or administrative authority, if any. Example: whether the public servant has ultimate responsibility for a decision concerning the outside employer, although he is not involved in the decision-making process.
(c) Whether the outside employment will interfere or conflict with the public servant's state employment duties.
1. A conflict shall exist if a public servant cannot carry out an appropriate course of action for his agency because of responsibilities his outside employment would require.
2. A conflict shall exist if the outside employment will materially interfere with the public servant's independent judgment in considering alternatives or courses of action that reasonably should be pursued in his state employment.
(d) The duration of the outside employment; and
(e) Whether the outside employment would create an appearance of conflict of interest with state duties.
(3)(a) The commission shall consider approval of the outside employment if the public servant's appointing authority submits to the commission the following statement:

"As appointing authority for the (agency), I certify that as a (public servant's job title), (public servant's name) is not involved in this agency's decisions concerning (outside employer); that his off-duty employment by (outside employer), in my opinion, will not create a real or perceived conflict of interest which would damage public confidence in government; and that I approve such off-duty employment."

(b) The appointing authority shall attach to this statement:
1. The public servant's current P-1 personnel form and job description, and the name, title and location of the public servant's immediate supervisor.
2. The name and address of the outside employer; description of its type of business, ownership, and all its business and regulatory relationships with the appointing authority's agency; and a description of the public servant's off-duty job.
3. An explanation of the specific factors which separate the public servant's state job from the agency's decisions concerning the outside employer.

LIVINGSTON TAYLOR, Chairman
APPROVED BY AGENCY: October 13, 1994
FILED WITH LRC: October 13, 1994 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1994, at 10 a.m., in Room 129 of the Capitol Annex. Individuals interested in being heard at this hearing shall notify this agency in writing by November 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: Jill E. LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-7954.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jill LeMaster
(1) Type and number of entities affected: The entities affected are executive branch employees who, in addition, are employed by outside entities which do business with or are regulated by the employee's state agency. The estimated number of these employees is 1,000.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effect upon competition) for the:
1. First year following implementation:
2. Second and subsequent years: It will cost executive branch employees their outside employment if they do not obtain approval for this outside employment.
(3) 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: Additional time will be required by the commission to approve or disapprove the requested outside employment on a case-by-case basis.
(b) Reporting and paperwork requirements: Employees are required to submit a statement to the appointing authority. The appointing authority is required to submit a statement to the commission. These will require additional paperwork by those affected.
(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Fund Budget of commission.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky: None

(7) Assessments of alternative methods; reasons why alternatives were rejected: The alternative considered was to disallow all executive branch employees from holding outside employment with entities which do business with or are regulated by the agency for which the employee works. This alternative was rejected because some low level employees are not in a position to have any influence in their state position over the outside entity. Also, the statute only authorized one method.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) 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 in conflict.

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. All employees seeking or holding outside employment with an entity which does business with or is regulated by his or her state agency must request approval of such.

GENERAL GOVERNMENT CABINET
State Board of Elections

31 KAR 4:080. Preclearance counties.

RELATES TO: 1994 Ky. Acts ch. 394

STATUTORY AUTHORITY: KRS 117.015

NECESSITY AND FUNCTION: This administrative regulation is necessary to ensure that if the State Board of Elections designates a county as a preclearance county, all decisions of the county board of elections are timely reported to and subject to the approval of the State Board of Elections.

Section 1. If a county is designated as a preclearance county, all decisions of the county board of elections are subject to approval by the State Board of Elections. All decisions of the county board of elections of a preclearance county shall be in writing and sent by certified mail to the State Board of Elections no later than three (3) days after the date of the decision.

Section 2. A decision by the county board of elections of a preclearance county is not final until it has been approved by the State Board of Elections and that approval is communicated in writing to the county board of elections.

Section 3. If a decision of the county board of elections of a preclearance county requires approval of the State Board of Elections before the next regularly scheduled meeting of the State Board of Elections, the Executive Director of the State Board of Elections may approve or disapprove the decision of the county board of elections.

BOB BABBAGE, Chairman

APPROVED BY AGENCY: October 13, 1994

FILED WITH LRC: October 13, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1994, at 9 a.m. at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 25, 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 new 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 comment on the new administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the new administrative regulation to the contact person.

CONTACT PERSON: George W. Russell, Executive Director,State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 573-7100.

REGULATORY IMPACT ANALYSIS

Contact person: George Russell

1. Type and number of entities affected: It is impossible to predict the number of counties that may be designated as preclearance counties and thereby affected by this administrative regulation.

2. Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will not apply to any counties at this time since to date, no counties have been designated as preclearance counties. Therefore, there are no direct or indirect costs or savings on the cost of living or employment in Kentucky as a result of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no direct or indirect costs or savings on the cost of doing business in Kentucky as a result of this administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition). This administrative regulation will create minimal additional reporting requirements to counties that may be designated as preclearance counties because such counties are required to report all decisions to the State Board of Elections.

1. First year following implementation:

2. Second and subsequent years:

3. Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the State Board of Elections as a result of this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements for the State Board of Elections as a result of this administrative regulation.

4. Assessment of anticipated effect on state and local revenues. There is no anticipated effect on state and local revenues as a result of this administrative regulation, except for minimal costs associated with additional reporting requirements of preclearance counties.

5. Source of revenue to be used for implementation and enforcement of administrative regulation. There is no additional cost to the counties as a result of this administrative regulation, except for minimal costs associated with additional reporting requirements of

preclearance counties. No source of revenue for implementation or enforcement of this administrative regulation is necessary.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented. This administrative regulation will have no economic effect on the Commonwealth of Kentucky.

(b) Kentucky.

7. Assessment of alternative methods; reasons why alternative methods were rejected. This administrative regulation simply sets forth guidelines for counties designated as preclearance counties. Alternative methods were not considered because it was unnecessary.

8. Assessment of expected benefits: This administrative regulation will provide guidelines to counties designated as preclearance counties.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health or environmental welfare in Kentucky as a result of this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There would not be a detrimental effect on the environment or public health if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect:

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: There are no known statutes, administrative regulations or government policies which overlap or conflict with this 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:

10. Any additional information or comments: None

11. TIERING: Is tiering applied? No. Tiering is unnecessary because this administration regulation must apply uniformly to all counties designated as preclearance counties.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation may impose minimal additional reporting requirements and associated costs to those county boards of elections that are designated as preclearance counties.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to county boards of elections that are designated as preclearance counties.

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. This administrative regulation will have minimal impact, if any, on expenditures of a local government through the minimal additional reporting requirements imposed on county boards of elections which are designated as preclearance counties.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

AUDITOR OF PUBLIC ACCOUNTS

45 KAR 1:080. Standards for Title VI reporting.

RELATES TO: KRS Chapter 344

STATUTORY AUTHORITY: KRS 344.015

NECESSITY AND FUNCTION: The 1994 General Assembly enacted Senate Bill 248 (KRS 344.015) which requires that all state agencies as defined in KRS 12.010 prepare and submit Title VI implementation plans and annual updates to the Auditor of Public Accounts if the agency is subject to Title VI of the Federal Civil Rights Act of 1964.

Section 1. Report Format. Title VI implementation plans and annual updates must follow a uniform format, dated September 2, 1994, which is incorporated by reference. The format may be inspected, obtained or copied at the Office of the Auditor of Public Accounts, 144 Capitol Annex, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 2. State agencies must submit an initial Title VI implementation plan by December 22, 1994 to the Auditor of Public Accounts and the Kentucky Commission on Human Rights. An annual Title VI plan update must be submitted to the Auditor of Public Accounts and the Kentucky Commission on Human Rights by June 15, 1995 and by June 15 each year thereafter.

A. B. CHANDLER III, Chair

APPROVED BY AGENCY: October 5, 1994

FILED WITH LRC: October 14, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 21, 1994, at 9 a.m., at the Auditor of Public Accounts, 2439 Old U.S. 127 South, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 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 the contact person.

Contact Person: JoJuana Leavell-Greene, Auditor of Public Accounts, 2439 Old U.S. 127 South, Frankfort, Kentucky 40601, (502) 564-7494.

REGULATORY IMPACT ANALYSIS

Contact person: JoJuana Leavell-Greene

(1) Type and number of entities affected: All state agencies listed in KRS 12.020.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Minimal, federal requirements have been in place since 1964. The only new requirement

beyond federal law is the plan submittal and publication.

2. Second and subsequent years: Minimal

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of publication of all plans estimated at $2,500.

2. Continuing costs or savings: $2,500 each year for publication.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Each agency will be required to prepare and submit a plain in prescribed format.

(4) Assessment of anticipated effect on state and local revenues: None, however, noncompliance with Title VI would jeopardize federal funds.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: general fund appropriated to Auditor of Public Accounts, unless federal funds are available pursuant to Senate Bill 248.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Senate Bill 248 prescribed provisions.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonized the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: This regulation simply sets forth the format and time schedule for the submission of implementation plans and annual updates. Senate Bill 248 does not create additional requirements to Title VI of the Federal Civil Rights Act.

(11) TIERING: Is tiering applied? Not applicable, federal law is applicable to all recipients and subrecipients of federal funds.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Weights and Measures

302 KAR 79:010. Testing and inspection program.

RELATES TO: KRS Chapter 363

STATUTORY AUTHORITY: KRS 363.900 to 363.908, 16 CFR 306.12

NECESSITY AND FUNCTION: To establish procedures to implement and administer an inspection and testing program for the quality of motor fuels to ensure compliance with HB 135.

Section 1. Definitions. (1) "Gasoline-oxygenate blend" - a fuel consisting primarily of gasoline along with a substantial amount of one (1) or more oxygenates.

(2) "Octane rating" - the rating of the antiknock characteristic of a grade or type of gasoline as determined by dividing by two (2) the sum of the research octane number plus the motor octane number.

Section 2. Standard Specifications. (1) Gasoline offered for sale at a retail facility shall conform to ASTM D-4814, with the following exceptions:

(a) Distillation range (ASTM D-86) of gasoline containing up to ten (10) percent ethanol shall be the same as specified for gasoline except the minimum temperature at fifty (50) percent evaporated shall be 150 degrees Fahrenheit (sixty-six (66) degrees Celsius). For gasoline containing up to ten (10) percent ethanol, the vapor pressure limit for each class shall be increased by one (1) pound per square inch and the ASTM V/L (vapor to liquid ratio) specification is waived.

(2) The test methods used to determine the standards shall conform to ASTM D-4814.

(3) Samples obtained for testing shall be obtained in a manner consistent with ASTM D-4814.

(4) Gasoline shall not be offered for retail sale under the name "premium" gasoline unless the antiknock octane index is greater than or equal to ninety-one (91).

Section 3. General Considerations. (1) Gasoline, diesel fuel, and gasoline oxygenate blends sold in Kentucky shall state on either the bill of lading or invoice the following:

(a) The name of the person transferring the motor fuel.

(b) The name of the person to whom the motor fuel is being transferred.

(c) The date of the transfer.

(d) The octane rating if the motor fuel is gasoline or a gasoline oxygenate blend.

(e) A declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.

(2) Each retail facility selling motor fuel shall retain the bills of lading and invoices at the location to which the motor fuel is shipped for a period of not less than ninety (90) days. In the case of a person selling motor fuels at more than one (1) location, the bills of lading or invoices may be retained at a central location, provided bills of lading or invoices are made available to the inspector upon request.

(3) Retail dispensing devices.

(a) All retail dispensing devices shall post the octane rating of all gasoline sold to consumers. At least one (1) label on each face of the dispenser shall identify the octane rating. If two (2) or more gasolines with different octane ratings are sold from a single dispenser, separate labels for each shall be placed on the face of the dispenser.

(b) The label, or labels, shall be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price.

(c) The label showing the minimum octane rating shall meet the same specifications as required under 16 CFR part 306.12.

Section 4. Diesel Fuel. (1) Diesel fuel offered for sale at a retail facility for use as a motor fuel shall conform to ASTM D-975-93.

(2) Each retail dispenser dispensing diesel fuel to be used as a motor fuel shall be labeled with a name or grade containing the word "diesel". Such name shall be placed conspicuously on the dispenser so as to be in full view of consumers.

Section 5. Product Storage Identification. The fill connection for any petroleum product storage tank or vessel at the retail level shall be permanently, plainly, and visibly marked in accordance with the American Petroleum Institute color codes as specified and published in the API Recommended Practice 1637.

Section 6. Condemned Product. (1) Any person who removes product from storage because of condemnation shall provide documentation to the department outlining the final disposition process taken within ten (10) days.

(2) If the condemned product is upgraded to meet standards specified by law, the retail facility shall certify that the fuel meets all standards required. The Department of Agriculture may require that additional samples be obtained by the department for tests to certify

the fuel.

Section 7. Inspection of Premises. (1) The department shall have access during normal business hours to all distributor and retailer records relating to the distribution or sale of motor fuel.

(2) The department shall have access to all motor fuel for the purpose of examination, inspection, taking of samples and investigation of a retailer or distributor. If access is denied by the owner or person representing a retailer or distributor, the department may obtain a search warrant or an injunction from a court of the appropriate jurisdiction.

(3) Samples of not more than one (1) gallon per grade per inspection may be collected from any distributor or retail outlet without cost to the state. The department shall present proper identification to the employee in charge prior to obtaining samples.

(4) The department may issue a stop-sale order for any motor fuel found not to be in compliance with any provision of this Act. The retailer shall be notified immediately of the stop-sale order. The order shall be in writing and contain an explanation for its failure to meet specifications. A stop-sale order shall be rescinded by the director upon resolution of the violation. The stop-sale shall apply only to the location where sample analysis indicates specification violation.

Section 8. Administrative Penalties. (1) When a violation is found of this chapter, the department, Division of Weights and Measures, shall issue a notice of violation.

(2) The department may enter an order imposing one (1) or more of the following penalties against any person who violates any of the provisions of this chapter or impedes, obstructs, or hinders the department in the performance of its duty in connection with the provisions of this chapter:

(a) Issuance of a warning letter.

(b) Imposition of an administrative fine of not more than $1,000 per violation for a first-time offender. For a second-time or repeat offender, the administrative fine shall not exceed $5,000 per violation occurrence. When imposing any fine under this section, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefitted from by noncompliance, whether the violation was committed willfully, and the compliance record of the violator.

(3) The fine is due within thirty (30) days receipt of the violation unless an appeal is requested in accordance with subsection (4) of this section. Failure to pay a fine within thirty (30) days after receipt of the violation shall result in a stop-sale order issued by the department, Division of Weights and Measures.

(4) Any person aggrieved by a fine imposed by the department may request an administrative hearing within thirty (30) days receipt of the violation. The hearings will be conducted in accordance with the state uniform procedures of administrative hearings as set forth in KRS Chapter 13B.

(5) Any fine collected by the department shall be paid into an interest-bearing account established in the State Treasury.

(6) Any administrative fine collected is in lieu of any civil penalties sought pursuant to KRS Chapter 363.

Section 9. Incorporation By Reference. (1) The following documents are incorporated by reference:

(a) ASTM D-4814, Standard Specifications for Automotive Spark Ignition Engine Fuel, January 1993 edition;

(b) ASTM D 975-93, Standard Specification for Diesel Fuel Oils, December 1993 edition;

(c) American Petroleum Institute color codes as specified and published in API Recommended Practice 1637, July 1994 edition;

(d) 16 CFR 306.12 (as amended by 58 Federal Register 41375, August 3, 1993).

(2) The documents referred to in subsection (1) of this section may be inspected, copied or obtained at the office of the Department of Agriculture, Commissioner's Office, Capital Plaza Tower, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: October 12, 1994

FILED WITH LRC: October 12, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, November 28, 1994 at 1 p.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 23, 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: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Vicki Searcy and Donna Dutton

(1) Type and number of entities affected: 6,000 retail outlets.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the from the public comments received: No public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is a $50 fee for the purpose of funding the administration of the motor fuels quality program. Additionally, this regulation requires that all gasoline sold in Kentucky state on the bill of lading or invoice the name of the person transferring the motor fuel, the name of the person to whom the motor fuel is being transferred, the date of transfer, the octane rating if the motor fuel is gasoline or gasoline-oxygenate blend, a declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.

2. Second and subsequent years: There is a $50 fee for the purpose of funding the administration of the motor fuels quality program.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation does not provide for any new employees. Current employees with the Division of Weights & Measures will be responsible for this program. The $50 fee will help defray any costs incurred. There is a start-up cost of approximately $70,000 for equipment.

2. Continuing costs or savings: After the first year, there will no longer be start-up costs.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be increased reporting and paperwork by the Division of Weights & Measures due to the fact the department will be inspecting and

testing motor fuels which has never been done before.

(4) Assessment of anticipated effect on state and local revenues: Any fees collected will be used to defray cost of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The $50 fee will be used to defray costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: After years of discussion, this program seems to be most effective with the least cost.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation tests for the quality of motor fuel throughout the state of Kentucky which will reduce any effects on the health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The state has never tested for the quality of motor fuel. The effects of this regulation are not detrimental but do have an impact on the environment and public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 16 CFR, subsection 80. In order to qualify for the 1 pound waiver in Section 2(1)(a), ASTM states that for the period from June 1 through September 1, the concentration of ethanol must be at least 9 percent and no more than 10 percent by volume of the gasoline. This regulation allows up to 10 percent ethanol for the waiver. Therefore, the department recognizes that for the period from June 1 through September 1, ASTM guidelines will be followed.

(a) Necessity of proposed regulation if in conflict: This is not a direct conflict and is easily reconciled as stated above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: In order to harmonize, KRS Chapter 363 will need to be amended during the next legislative session.

(10) Any additional information or comments: This program has been discussed for years and is being implemented to the satisfaction of all persons affected.

(11) Tiering: Is tiering applied? Yes. This administrative regulation provides for administrative fines from $1,000 to $5,000 based upon the degree and extent of harm caused, the cost of rectifying the damage, the amount of money the violator benefitted, whether the violation was willful or not, and the compliance record of the violator.

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:010. Temporary licensure.

RELATES TO: KRS 238.525

STATUTORY AUTHORITY: KRS 238.515(9), 238.525(4), 238.530(1), (2), 238.535(11), 238.555(1)

NECESSITY AND FUNCTION: If the processing of the application for licensure is unduly delayed, the Division of Charitable Gaming will have procedures by which it may issue temporary licenses to those qualifying charitable organizations, manufacturers, distributors and charitable gaming facilities who have substantially complied with the licensure requirements.

Section 1. Application for Temporary Licensure. A temporary license may be issued by the Division of Charitable Gaming to a charitable organization, manufacturer, distributor or charitable gaming facility if:

(1) There exists an undue delay in completing background checks or otherwise processing the application for regular licensure; and

(2) The applicant has exhibited substantial compliance with licensure requirements by completing and supplying the information requested on the appropriate licensure application form prescribed by the Division of Charitable Gaming.

Section 2. Form of Temporary Licenses. A temporary license issued by the Division of Charitable Gaming shall clearly state the:

(1) Name of the licensee;

(2) Address of the licensee;

(3) Date of issuance of the temporary license;

(4) Expiration date of the temporary license;

(5) Premises or location at which the charitable gaming will be conducted, if the temporary license is for a charitable organization or a charitable gaming facility;

(6) Type of temporary license issued; and

(7) Address of the Division of Charitable Gaming.

Section 3. Processing Fee. (1) A processing fee of twenty-five (25) dollars shall accompany each application for temporary licensure.

(2) The twenty-five (25) dollar processing fee shall be credited to any balance due on the regular license at the time it is issued.

Section 4. Incorporation by Reference. (1) The following temporary application forms and materials are incorporated by reference:

(a) Form CG-T-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky (8/94)".

(b) Form CG-T-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment (8/94)".

(c) Form CG-T-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment (8/94)".

(d) Form CG-T-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky (8/94)".

(e) Form CG-T-Schedule A, "Application to Conduct Special Limited Charitable Game(s) (For Use With Form CG-T-1) (8/94)".

(f) Form CG-T-Schedule B, "Notice of Intent of Suborganization or Subordinate Organization of a Licensed Charitable Organization to Conduct Charitable Gaming (For Use With Form CG-T-1) (8/94)".

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690, 8 a.m. to 4:30 p.m., Monday through Friday.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: October 4, 1994

FILED WITH LRC: October 4, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1994, at 9 a.m. at 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 17, 1994, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit written or oral comments

on this administrative regulation by November 17, 1994. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690, (502) 564-5528, FAX: (502) 564-4840.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson

(1) Type and number of entities affected: All applicants (manufacturers, distributors, charitable gaming facilities and charitable gaming organizations) seeking licensure with the division during start-up phase (estimate 1000 licensees initially), and first-time applicants after start-up phase which substantially meet licensure requirements.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Any applicant (manufacturer, distributor, charitable gaming facility and charitable gaming organization) will incur initial cost of doing business of temporary licensure processing fee ($25) to be applied/credited towards permanent licensing fee.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Extensive application forms with information necessary to compile requisite background checks will be required of each licensee.

2. Second and subsequent years: Renewal applications will be required in subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the temporary license applications will be the only significant cost incurred by the division.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the application forms themselves, it is anticipated that the division will establish various self-imposed reporting and paperwork requirements as to types and classes of applicants, locations (by county) of licensees, monies generated/received by categories of licensees, monies due from each licensee on receiving permanent license, and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: To the extent the processing fees charged do not cover the cost of implementation, funds from the Charitable Gaming Regulatory Account (KRS 238.570(2)) will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to question #11.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? All applicants for temporary licensure during start-up phase of the division, or in the temporary licensure process, are charged the same processing fee of $25 despite the fact that permanent licensure fees will vary among groups/types of applicants. The uniform processing fee was designed to speed up start-up processing of initial applications and subsequent temporary licensure applications, and the processing fee will be credited towards the permanent licensure fee due.

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:020. Conduct of hearings.

RELATES TO: KRS 13B.010, 13B.170, 238.565

STATUTORY AUTHORITY: KRS 13B.010, 13B.170, 238.515(9), 238.565(2)

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures to be followed by the Division of Charitable Gaming in conducting hearings following notification to a licensee of an action to be taken against the licensee.

Section 1. Conduct of Hearings. (1) Except as provided in subsection (2) of this section, the provisions of KRS 13B.010 through 13B.170 shall govern all hearings conducted pursuant to KRS 238.565.

(2) The deadline for action by the secretary of the cabinet relating to a recommended order following a hearing shall be governed by KRS 238.565(3).

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: October 4, 1994

FILED WITH LRC: October 4, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1994, at 9 a.m. at 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 17, 1994, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit written or oral comments on this administrative regulation by November 17, 1994. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690, (502) 564-5528, FAX: (502) 564-4840.

REGULATORY IMPACT ANALYSIS

Contact person: Christopher W. Johnson

(1) Type and number of entities affected: All licensees who

request hearings following notification of action to be taken adverse to license.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No costs or savings.

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No costs or savings.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account. KRS 238.570(2).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected:

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Regulation applies equally to all licensees.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services

702 KAR 3:275. School district tax rate formulas.

RELATES TO: KRS 132.010, 134.590, 157.440, 157.620, 157.621, 160.470, 160.473, 160.476, 160.477

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.070 sets forth the State Board for Elementary and Secondary Education's plenary powers over the management and control of local school districts. KRS 156.160 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations deemed necessary for the management of the school districts under its control. This administrative regulation is necessary to provide guidelines for the calculation of the tax rates certified to the school districts by the Department of Education.

Section 1. Definitions. (1) "Current year total valuation of adjusted property at full rates" means the prior year assessment of adjusted property at full rates minus current year homestead exemptions plus current year net assessment growth all as certified by the Revenue Cabinet.

(2) "Current year total valuation of personal property" means the sum of tangible personal property, effective public service company tangible property and distilled spirits property all as certified by the Revenue Cabinet.

(3) "Current year total valuation of real property" means real estate plus effective public service company real estate property minus net new real estate and new effective public service company real estate property all as certified by the Revenue Cabinet.

(4) "Effective public service company property" means assessments which may be adjusted by the Revenue Cabinet for apportioned property not subject to full taxation.

(5) "Maximum revenue collectible" means the prior year's permissive tax revenue plus the levied tax rates per $100 of assessed value for real and tangible property times the prior year assessment of real and tangible property as certified by the Revenue Cabinet and the maximum motor vehicle revenue collectible.

(6) "Maximum motor vehicle revenue collectible" means seven (7) times the prior year levied motor vehicle tax rate plus five (5) times the current year levied motor vehicle tax rate divided by twelve (12) times the prior year assessment of motor vehicles as certified by the Revenue Cabinet.

(7) "Prior year adjusted tax base" means the prior year assessment of adjusted property at full rates minus current year homestead exemptions both as certified by the Revenue Cabinet.

(8) "Prior year revenue from real property" means the prior year real estate tax rate levy times the prior year total valuation of real property as certified by the Revenue Cabinet.

(9) "Prior year revenue from personal property" means the prior year personal property tax rate levy times the prior year total valuation of personal property as certified by the Revenue Cabinet.

(10) "Prior year total valuation of personal property" means the sum of prior year tangible personal property, prior year effective public service company tangible personal property and prior year distilled spirits property all as certified by the Revenue Cabinet.

(11) "Prior year total valuation of real property" means prior year real estate property plus prior year effective public service company real estate property both as certified by the Revenue Cabinet.

(12) "Current year projection for permissive taxes" means prior year permissive tax collections divided by prior year total valuation of property and motor vehicles times the current year total valuation of property and motor vehicles all as certified by the Revenue Cabinet or as estimated by the school district.

Section 2. Required Data. Required data for school district tax rate and related calculations shall include:

(1) Property assessments from the Department of Property Taxation, Revenue Cabinet provided pursuant to KRS 160.470(5);

(2) Tax rates levied by school districts;

(3) Average daily attendance (ADA) as calculated pursuant to 702 KAR 3:270, Section 2(3)(a);

(4) Estimated growth ADA;

(5) The state equalization amount as defined in 702 KAR 3:270, Section 1(11);

(6) Calculated base SEEK funding as defined in 702 KAR 3:270, Section 1(2);

(7) Tax receipts collected based on prior year tax levies which may be adjusted for unusual circumstances as determined by the local school district and the Division of Finance, Department of Education;

(8) Collection rates as defined in 702 KAR 3:270, Section 1(3);

and

(9) The annual report of tax collections as prepared by the school district's tax collector pursuant to KRS 160.510.

Section 3. Compensating, Four (4) Percent Increase and Subsection (2) Tax Rate Formulas. (1) Compensating tax rate. The compensating tax rate defined in KRS 132.010(6) and certified to the school district by the Department of Education pursuant to KRS 160.470(4)(b) shall be calculated as follows:

(a) Compensating Tax Rate I. The Compensating Tax Rate I formula shall be as follows:

1. Prior year revenue from real property;
2. Divided by the current year total valuation of real property;
3. Rounded to the next higher one-tenth (1/10) cent;
4. Equals the Compensating Tax Rate I.

(b) Compensating Tax Rate II. The Compensating Tax Rate II formula shall be as follows:

1. Prior year revenue from real property plus prior year revenue from personal property;
2. Divided by the current year total valuation of adjusted property at full rates;
3. Rounded to the next higher one-tenth (1/10) cent;
4. Equals the Compensating Tax Rate II.

(c) The Compensating Tax Rate shall be the higher of the Compensating Tax Rate I and the Compensating Tax Rate II.

(2) Four (4) percent increase rate. The four (4) percent increase rate certified to the school district by the Department of Education pursuant to KRS 160.470(c) shall be calculated as follows:

(a) Compensating tax rate as calculated pursuant to subsection (1) of this section;
(b) Times current year total valuation of real property;
(c) Times 104 percent;
(d) Divided by current year total valuation of real property;
(e) Rounded to the next lower one-tenth (1/10)_cent;
(f) Equals the four (4) percent increase rate.

(3) Subsection (2) rate. The Subsection (2) rate certified to the school district by the Department of Education pursuant to KRS 160.470(4)(a) shall be calculated as follows:

(a) Prior year maximum real estate property tax rate;
(b) Times prior year total valuation of real property;
(c) Plus prior year maximum personal property tax rate;
(d) Times prior year total valuation of personal property;
(e) Divided by the prior year adjusted tax base;
(f) Rounded to the next lower one-tenth (1/10) cent;
(g) Equals the Subsection (2) rate.

(4) If the percentage increase in revenue from real property produced by the compensating, four (4) percent increase and Subsection (2) tax rates is less than the percentage increase in revenue from personal property based on the same rates, then equal tax rates as calculated pursuant to this section for the compensating, four (4) percent increase and Subsection (2) tax rates shall be certified for both real estate and personal property.

Section 4. Limits on Personal Property Tax Rates. If the percentage increase in revenue from real property produced by the compensating, four (4) percent increase or Subsection (2) tax rates is more than the percentage increase in revenue from personal property based on the same rates, then personal property tax rates shall be the lower of the prior year personal property tax levy or the tax rates calculated as follows:

(1) Personal property compensating tax rate.
(a) Prior year revenue from personal property,
(b) Times 100 percent plus the percent increase in real property revenue based on the compensating tax rate as calculated pursuant to Section 3(1) of this administrative regulation;
(c) Divided by the current year total valuation of personal property;
(d) Rounded to the next higher one-tenth (1/10) cent;
(e) Equals the personal property compensating tax rate.

(2) Personal property four (4) percent increase rate.
(a) Prior year revenue from personal property;
(b) Times 100 percent plus the percent increase in real property revenue based on the four (4) percent increase tax rate as calculated pursuant to Section 3(2) of this administrative regulation;
(c) Divided by the current year total valuation of personal property;
(d) Rounded to the next higher one-tenth (1/10) cent;
(e) Equals the personal property four (4) percent increase tax rate.

(3) Personal property Subsection (2) tax rate.
(a) Prior year revenue from personal property;
(b) Times 100 percent plus the percent increase in real property revenue based on the Subsection (2) tax rate as calculated pursuant to Section 3(3) of this administrative regulation;
(c) Divided by the current year total valuation of personal property;
(d) Rounded to the next higher one-tenth (1/10) cent;
(e) Equals the personal property Subsection (2) tax rate.

(4) The personal property compensating, four (4) percent increase and Subsection (2) tax rates certified to the school district based on the calculations pursuant to subsection (1)) of this section shall be the higher of the respective tax rates calculated per Section 3 of this administrative regulation and the compensating, four (4) percent increase and Subsection (2) tax rates calculated pursuant to Section 3 of this administrative regulation.

Section 5. Maximum Equivalent Tax Rate Allowed Pursuant to KRS 157.440(1)(a). The maximum equivalent tax rate allowed pursuant to KRS 157.440(1)(a) shall be the higher of the 1989-90 equivalent and the maximum Tier I equivalent tax rate calculated as follows:

(1) Calculated base SEEK funding as defined in 702 KAR 3:270, Section 1(2);
(2) Times fifteen (15) percent;
(3) Divided by average daily attendance;
(4) Equals maximum per pupil Tier I revenue;
(5) Divided by the greater of the current year total valuation of property and motor vehicles divided by the average daily attendance and the statewide equalization amount as defined in 702 KAR 3:270, Section 1(9);
(6) Rounded to the next higher one-tenth (1/10) cent;
(7) Plus the required minimum thirty (30) cent equivalent tax rate pursuant to KRS 160.470(12)(a) and the five (5) cent levy pursuant to KRS 157.620(1)(a);
(8) Equals the maximum Tier I equivalent tax rate.

Section 6. Maximum Equivalent Tax Rate Allowed Pursuant to KRS 157.440(2). The maximum Tier II equivalent tax rate allowed pursuant to KRS 157.440(2) shall be calculated as follows:

(1) Calculated base SEEK funding as defined in 702 KAR 3:270, Section 1(2);
(2) Times thirty-four and one-half (34.5) percent;
(3) Divided by average daily attendance;
(4) Equals maximum per pupil Tier II revenue;
(5) Divided by the current year total valuation of property and motor vehicles divided by the average daily attendance;
(6) Plus the maximum Tier I equivalent tax rate as calculated pursuant to Section 5 above minus five(5);
(7) Rounded to the next higher one-tenth (1/10) cent;
(8) Equals the maximum Tier II equivalent tax rate.

Section 7. Motor Vehicle Tax Rates. (1) Motor vehicle tax rates may be raised to the maximum Tier I equivalent tax rate allowable pursuant to KRS 157.440(1)(a).

(2) Motor vehicle tax rates levied pursuant to KRS 132.487 which

are higher than those allowed pursuant to KRS 157.440(1)(a) shall not be lowered.

Section 8. (1) The Exonerations Tax Rate allowable pursuant to KRS 134.590(7) shall be calculated as follows:

(a) Exonerations Recovery Rate I. The Exonerations Recovery Rate I shall be calculated as follows:

1. Prior year real estate property tax levy;

2. Times prior year total valuation of real property plus prior year real exonerations both as certified by the Revenue Cabinet;

3. Divided by current year total valuation of real property;

4. Rounded to the next higher one-tenth (1/10) cent;

5. Equals the Exonerations Recovery Rate I.

(b) Exonerations Recovery Rate II. The Exonerations Recovery Rate II shall be calculated as follows:

1. Prior year real estate property tax levy;

2. Times prior year total valuation of real property plus prior year real exonerations both as certified by the Revenue Cabinet;

3. Plus prior year personal property tax levy;

4. Times prior year total valuation of personal property plus current year tangible exonerations both as certified by the Revenue Cabinet;

5. Divided by current year total valuation of adjusted property at full rates;

6. Rounded to the next higher one-tenth (1/10) cent;

7. Equals the exonerations recovery Rate II.

(2) The exonerations tax rate certified to the school district by the Department of Education shall equal the difference between the higher of the exonerations recovery Rates I and II and the compensating rate as calculated pursuant to Section 3(c) of this administrative regulation.

Section 9. SEEK Rates Calculations. SEEK rates calculations to determine the property tax rates necessary to achieve the required minimum thirty (30) cent equivalent rate, maximum Tier I and maximum Tier II equivalent tax rates and a five (5) cent equivalent rate shall be as follows:

(1) Minimum thirty (30) cent equivalent rate. The property tax rate required to achieve the minimum thirty (30) cent equivalent rate required pursuant to KRS 160.470(12)(a) shall be calculated as follows:

(a) Thirty (30) divided by 10,000;

(b) Times the current year total valuation of property and motor vehicles as certified by the Revenue Cabinet;

(c) Divided by the collection rate as defined in 702 KAR 3:270, Section 1(3);

(d) Minus the current year projection for permissive taxes;

(e) Minus the prior year levied motor vehicle tax rate times the current year motor vehicle assessment as certified by the Revenue Cabinet time ninety-six (96) percent;

(f) Divided by the current year property assessment as certified by the Revenue Cabinet;

(g) Rounded to the next higher one-tenth (1/10) cent;

(h) Equals the property tax rate required to achieve the required minimum thirty (30) cent equivalent rate.

(2) Maximum Tier I property tax rate. The property tax rate required to achieve the maximum Tier I equivalent rate allowable pursuant to KRS 157.440(1)(a) shall be calculated as follows:

(a) Maximum Tier I equivalent tax rate as calculated pursuant to Section 5 of this administrative regulation divided by 10,000;

(b) Times the current year total valuation of property and motor vehicles as certified by the Revenue Cabinet;

(c) Divided by the collection rate as defined in 702 KAR 3:270, Section 1(3);

(d) Minus the current year projection for permissive taxes,

(e) Minus the prior year levied motor vehicle tax rate times the current year motor vehicle assessment as certified by the Revenue Cabinet times ninety-six (96) percent;

(f) Divided by the current year property assessment as certified by the Revenue Cabinet;

(g) Rounded to the next lower one-tenth (1/10) cent;

(h) Equals the property tax rate required to achieve the maximum Tier I equivalent tax rate allowable.

(3) The property tax rate required to produce a five (5) cent equivalent tax rate shall be calculated as follows:

(a) Five(5) divided by 10,000;

(b) Times the current year total valuation of property and motor vehicles as certified by the Revenue Cabinet;

(c) Divided by the collection rate as defined in 702 KAR 3:270, Section 1(3);

(d) Divided by the current year property assessment as certified by the Revenue Cabinet;

(e) Rounded to the next higher one-tenth (1/10) cent;

(f) Equals the property tax rate required to produce a five (5) cent equivalent tax rate.

(4) Maximum Tier II property tax rate. The property tax rate required to achieve the maximum Tier II equivalent rate allowable pursuant to KRS 157.440(2) shall be calculated as follows:

(a) Maximum Tier II equivalent tax rate as calculated pursuant to Section 6 of this administrative regulation divided by 10,000;

(b) Times the current year total valuation of property and motor vehicles as certified by the Revenue Cabinet;

(c) Divided by the collection rate as defined in 702 KAR 3:270, Section 1(3);

(d) Minus the current year projection for permissive taxes;

(e) Minus the prior year levied motor vehicle tax rate times the current year motor vehicle assessment as certified by the Revenue Cabinet times ninety-six (96) percent;

(f) Divided by the current year property assessment as certified by the Revenue Cabinet;

(g) Rounded to the next lower one-tenth (1/10) cent;

(h) Equals the property tax rate required to achieve the maximum Tier II equivalent tax rate allowable.

Section 10. Equivalent Tax Rates. (1) The levied equivalent tax rate used to determine eligibility for Tier I and Facility Support Program of Kentucky (FSPK) state equalization shall be calculated as follows:

(a) Current year real estate tax levy times current year total valuation of real property as certified by the Revenue Cabinet;

(b) Plus the current year personal property tax levy times the current year total valuation of personal property as certified by the Revenue Cabinet;

(c) Plus the current year motor vehicle tax levy times the current year total valuation of motor vehicles as certified by the Revenue Cabinet;

(d) Plus current year projected permissive tax collections;

(e) Times the collection rate as defined in 702 KAR 3:270, Section 1(3);

(f) Divided by the current year total valuation of property and motor vehicles as certified by the Revenue Cabinet;

(g) Rounded to the next lower one-tenth (1/10) cent;

(h) Equals the levied equivalent tax rate.

(2) The collected equivalent tax rate used for comparison to the prior year's levied equivalent tax rate to determine if the tax receipts as submitted are reasonable shall be calculated as follows:

(a) Total prior year tax receipts;

(b) Divided by the prior year total valuation of property and motor vehicles as certified by the Revenue Cabinet;

(c) Equals the collected equivalent tax rate.

Section 11. Five (5) Cent Tax Rate for Growth. (1) To meet the eligibility requirements to levy the five (5) cent tax rate for growth pursuant to House Bill 810 of the 1994 General Assembly, the

pursuant to House Bill 810 of the 1994 General Assembly, the following shall apply:

(a) Adjusted average daily attendance (AADA) as calculated pursuant to 702 KAR 3:270(3) shall be used to calculate the required growth in ADA as follows:

1. Prior year end of year AADA;
2. Minus the fifth previous year end of year AADA;
3. Equals the growth in ADA used to calculate eligibility to levy the five (5) cent tax rate for growth;

(b) Districts qualifying to levy the five (5) cent tax rate for growth shall certify to the Division of Finance, Department of Education that current student enrollment exceeds available classroom space; and

(c) Qualifying debt service shall be in place at the time of the levy of the five (5) cent tax rate for growth.

(2) The property tax levy required to achieve the five (5) cent tax rate for growth shall be calculated pursuant to Section 9(1)(c) of this administrative regulation.

Section 12. Tax Rate Certification. (1) Tax rates shall be certified to the school district by the Department of Education upon receipt of the assessment from the Revenue Cabinet, a listing of tax receipts collected based on the prior year tax levy as provided by the school district and an annual tax collector's report as provided by the school district to verify prior year tax collections.

(2) Pursuant to House Bill 81 of the 1994 General Assembly, school districts shall levy tax rates within forty-five (45) days of the Revenue Cabinet's assessment certification. Failure to meet this deadline shall require the use of the compensating tax rate as calculated pursuant to Sections 3(1) or 4(1)(a) of this administrative regulation for that year's tax bills. Levies which are subject to recall shall follow the provisions of KRS 132.017.

(3) Unusual circumstances as determined by the local school district and the Division of Finance, Department of Education may allow a school district's tax rates to be revised and recertified by the Department of Education.

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

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: October 12, 1994

FILED WITH LRC: October 14, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 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 November 25, 1994, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 districts.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None. This regulation provides clarification of calculations already being performed.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None other than what is already required by statute.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None. This regulation provides clarification of calculations already being performed.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives. These calculations are required by statute.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: 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:

(10) 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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board

704 KAR 20:021. Planned Fifth Year Program for certificate renewal and for Rank II.

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: KRS 161.030 vests authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative

regulation defines an equivalency for the Rank II salary classification and the Fifth Year Program acceptable for certificate renewal.

Section 1. The preparation program required for the renewal of teaching certificates and for a Rank II classification shall require completion of one (1) of the plans described in the following sections.

Section 2. Plan I Fifth Year Program shall be the completion of a master's degree from a regionally accredited college or university and shall be in a field related to classroom teaching.

Section 3. Plan II Fifth Year Program shall consist of thirty-two (32) semester hours of graduate level coursework earned beyond the bachelor's degree and the four (4) year program of teacher preparation in accordance with the following guidelines:

(1) The Fifth Year Program shall be planned individually with each candidate by a teacher education institution approved for offering graduate programs of teacher preparation.

(2) The Fifth Year Program shall be a major component of the candidate's professional growth plan and shall be consistent with the experienced teacher standards established by the Education Professional Standards Board in Section 4 of this administrative regulation.

(3) The Fifth Year Program shall relate to the initial classroom teaching certificate or to an additional classroom teaching certificate.

(4) The grade point standing for the thirty-two (32) semester hour program shall be no less than is required at the planning institution for teacher education graduates.

(5) Professional development in lieu of up to twelve (12) semester hours of college credit shall be approved as part of Plan II Fifth Year Program if requested by the applicant using the following guidelines:

(a) Twenty-four (24) clock hours of professional development shall equal one (1) semester hour.

(b) The candidate shall seek and obtain prior approval of the institution for the professional development activities.

(c) The application for approval shall identify the specific professional development activities, and the action plan to achieve one (1) or more goals of the professional growth plan identified in subsection (2) of this section.

(d) Upon completion of the professional development activities the candidate shall submit to the institution a report of the activities which shall include an evaluation of the experiences and a follow-up plan for implementing the professional development.

(e) The institution shall keep a record of the professional development completed by each candidate for the Fifth Year Program.

(6) The institution at which the candidate satisfactorily completes the Fifth Year Program shall verify the completion and recommend the candidate for renewal of certificate and Rank II to the Division of Certification.

Section 4. Experienced Teacher Standards. The Plan II Fifth Year Program shall be consistent with the following experienced teacher standards:

(1) Experienced Teacher Standard I, demonstrates professional leadership. The teacher provides professional leadership within the school, community, and education profession to improve student learning and well-being.

(2) Experienced Teacher Standard II, demonstrates knowledge of content. The teacher demonstrates content knowledge within own discipline(s) and in application(s) to other disciplines.

(3) Experienced Teacher Standard III, designs and plans instruction. The teacher designs and plans instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(4) Experienced Teacher Standard IV, creates and maintains learning climate. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(5) Experienced Teacher Standard V, implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(6) Experienced Teacher Standard VI, Assesses and Communicates Learning Results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(7) Experienced Teacher Standard VII, reflects and evaluates teaching and learning. The teacher reflects on and evaluates teaching and learning.

(8) Experienced Teacher Standard VIII, collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(9) Experienced Teacher Standard IX, engages in professional development. The teacher evaluates own overall performance in relation to Kentucky's learner goals as established in KRS 158.6451 and implements a professional development plan.

DANIEL GREENE, Chair

APPROVED BY AGENCY: October 3, 1994

FILED WITH LRC: October 11, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 29, 1994, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 24, 1994, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Roland Goddu, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4606.

REGULATORY IMPACT ANALYSIS

Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Approximately 1,800 individuals complete requirements for a Fifth Year Program annually and twelve institutions of higher education which offer approved fifty-year program.

(2) Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comments received: Cost of tuition and/or professional development required for completing the Fifth Year Program.

b. Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comments received: Teachers who complete the Fifth Year Program are eligible for a higher salary established for Rank II on the state salary schedule.

c. Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Individuals must present evidence of completion of the Fifth Year Program to the Education Professional Standards Board in order to be eligible for certificate renewal and Rank II. Institution must file eligible Fifth Year Programs for approval by the Education Professional Standards Board.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on promulgating administrative body: Office of Teacher Education and Certification must approve Fifth Year Programs offered by institutions of higher education, review applications from candidates who have completed programs and issuing renewal certificates and maintaining records.

a. Direct and indirect costs or savings:

1. First year: Costs associated with disseminating program requirements, approving programs, issuing certificates, and maintaining the records.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: Office of Teacher Education and Certification must maintain records on all approved programs of preparation and maintain records and issue certificates.

(4) Assessment of anticipated effect on state and local revenues: No impact on state or local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No comments received.

a. Geographical area in which administrative regulation will be implemented:

b. Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Qualified instructional personnel are required for the educational, emotional, and physical welfare of public school children. The Fifth Year Program is required for education professional to upgrade knowledge and skills.

(8) Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: No direct impact on public health and environment.

b. State whether a detrimental effect on environment and public health would result if not implemented: None

c. If detrimental effect would result, explain detrimental effect: None

(9) 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Certificate renewal and Rank II requirements are applied uniformly to all applicants.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board

704 KAR 20:084. Interdisciplinary early childhood education, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028

NECESSITY AND FUNCTION: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, the statute requires teacher education institutions to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the professional certificate for interdisciplinary early childhood education, birth to primary; the teacher standards; and the standards for approval of programs leading to such a certificate.

Section 1. Definitions. The following definitions shall apply for purposes of this administrative regulation:

(1) "Interdisciplinary" means a preparation program that includes child development, family studies, early childhood education, and early childhood special education.

(2) "Teacher performance standard" means a set of teaching and managing tasks that an early childhood educator shall be able to demonstrate in early childhood programs. Each teacher standard statement describes the general set of teaching or managing tasks that an early childhood educator shall perform and the contexts for performance of these tasks.

(3) "Cultural diversity" means the wide range of differences among individuals that result from cultural and ethnic backgrounds, socio-economic status, gender, personality traits, physical abilities and disabilities, and the interaction of factors of variability.

Section 2. (1) The professional certificate for interdisciplinary early childhood education, birth to primary, shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who has completed a bachelor's degree and the approved program of preparation for this certificate as described in Sections 7, 8, and 9 of this administrative regulation at a teacher education institution approved by the Education Professional Standards Board. In addition, the applicant shall complete the written tests and a one (1) year internship as provided in this administrative regulation.

(2)(a) In order to satisfy the testing prerequisites for teacher certification as required by KRS 161.030, the applicant shall score at least the following minimum passing scores on the tests identified below:

1. The NTE Core Battery tests:

a. Communication skills, 646;

b. General knowledge, 643; and

c. Professional knowledge, 644.

2. Applicants shall successfully complete a test of knowledge specific to interdisciplinary early childhood teaching which shall be identified by the Education Professional Standards Board pursuant to KRS 161.030.

(b) The tests may be waived for out-of-state teachers who have two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program on at least a half-time basis and whose preparation corresponds to the interdisciplinary early childhood education outlined in this administrative regulation.

(3) Upon successful completion of an approved program of preparation and testing, the Education Professional Standards Board shall issue a statement of eligibility in accordance with KRS 161.030.

(4) The Education Professional Standards Board shall issue the one (1) year certificate for the beginning teacher internship as provided in KRS 161.030 and 704 KAR 20:320 upon applicant's confirmation of employment in a position teaching children from birth to entry into a primary program on at least a half-time basis in a school which meets the criteria identified in KRS 161.030.

(5)(a) The beginning teacher internship may be waived for out-of-state applicants who have completed two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program.

(b) The beginning teacher internship may be waived for applicants who have completed two (2) or more years of successful experience in a position teaching children from birth to entry into a primary program on at least a half-time basis in Kentucky while holding one (1) of the following credentials:

1. Baccalaureate or higher degree in child development or early childhood education or early childhood special education;
2. Certification valid for kindergarten; or
3. Special education certification valid for primary grades.

Section 3. The professional certificate for interdisciplinary early childhood education, birth to primary, shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

Section 4. The professional certificate for interdisciplinary early childhood education, birth to primary, shall be valid for teaching children from birth to entry into the primary program. This includes teaching children in kindergarten or other programs for five (5) year old children where these programs are operated separately from the primary program. Persons holding this certificate shall serve as primary developers and implementers of individual programs for children with and without disabilities including individual education plans (IEP's) and individual family service plans (IFSP's) with consultation and support from specialists according to the needs of the child (e.g., speech-language pathologists, occupational and physical therapists, nurses, educators of the hearing impaired or vision impaired, and others).

Section 5. Teachers serving in positions identified in Section 4 of this administrative regulation as early childhood teachers during the 1994-95 school year in districts with approved preschool programs shall be eligible to continue serving in the same position without any additional certification. Upon application to the Education Professional Standards Board, these teachers shall receive letters certifying eligibility.

Section 6. All teacher preparation institutions offering approved programs of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall establish an assessment system to judge the performance of candidates on the teacher performance standards identified for this certificate.

Section 7. Standards for Program of Preparation. In order to receive approval of the Education Professional Standards Board, a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall meet the following standards:

(1) The program shall be designed to prepare candidates to teach and manage tasks as identified in the teacher standards listed in Section 9 of this administrative regulation.

(2) The program shall include a system of continuous assessment to evaluate the candidate's progress and level of attainment on the teacher standards. The assessments shall include performance on authentic teaching and managing tasks in settings that are inclusive of children across abilities and contexts. Candidates shall be evaluated by paper and pencil tests and authentic assessments of performance.

(3) The program of preparation shall ensure that candidates from culturally diverse backgrounds are recruited and retained in the program.

(4) The program of preparation shall provide the candidate with knowledge and experiences to perform teaching and managing tasks identified in the teacher standards with children from culturally diverse backgrounds.

Section 8. Application for Program Approval. (1) A teacher education institution which proposes to offer a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall make application for approval to the Education Professional Standards Board. The application for approval shall include a program description which includes the following:

(a) Program outcomes: include teacher standards for interdisciplinary early childhood education.

(b) Program components: provide list of coursework, clinical and field experiences, and student teaching related to general education, interdisciplinary specialty studies, and professional studies.

(c) Faculty: provide list of faculty responsible for and involved with the conduct of the specific program and their qualifications.

(d) Students: describe admission and retention policies and procedures that are specific to this program.

(e) Plan for assessment: description of the system of continuous assessment of teacher standards.

(2) Institutions may receive interim program approval for a one (1) year period which may be extended for one (1) additional year while the institution develops the assessments identified in Section 7(2) of this administrative regulation. At the end of the period of interim approval the institution shall apply for full approval to the Education Professional Standards Board.

Section 9. Teacher Standards. (1) Teacher Standard I. The early childhood educator shall design and organize learning environments, experiences, and instruction that address the developmental needs of infants, toddlers, preschool children, and kindergarten children and goals established by KRS 158.6451. The early childhood educator shall develop plans for:

(a) Implementation in a classroom setting;

(b) Implementation in a home or other settings;

(c) Implementation by teaching assistants and other staff in a variety of settings; and

(d) Training teaching assistants, other staff, and parents.

These plans shall include individual family service plans (IFSP's), individual education programs (IEP's), and transition plans for children across disabilities developed in partnership with family members.

(2) Teacher Standard II. The early childhood educator shall create appropriate learning environments for infants, toddlers, preschool children, and kindergarten children that are supportive of developmental needs of the age group and goals established by KRS 158.6451. The early childhood educator shall provide developmental and learning activities in classroom and home settings, and in other settings, such as other preschools, child care programs, and hospitals. Within these settings, the learning context may include individual child activities, parent-child activities, small groups, and large groups. The early childhood educator shall create appropriate learning environments for children with diverse abilities including children with and without disabilities.

(3) Teacher Standard III. The early childhood educator shall introduce, implement, facilitate, and manage development and learning for infants, toddlers, preschool children, and kindergarten children to promote growth toward developmental needs of the age group and goals established by KRS 158.6451. The early childhood educator shall implement instruction in classroom and home settings, through itinerant services, and in other settings such as day care,

other preschools, and hospitals. The early childhood educator shall implement instruction for young children with diverse abilities including children with and without disabilities.

(4) Teacher Standard IV. The early childhood educator shall assess children's cognitive, emotional, social, communicative, adaptive, and physical development; organize assessment information; and communicate the results appropriate to the purpose of the assessment. Assessment purposes shall include:

(a) Determining learning results;

(b) Developmental screening;

(c) Program planning;

(d) Eligibility for disability services;

(e) Program evaluation;

(f) Progress on IFSP's and IEP's; and

(g) Needs for transition to the next educational setting or program.

(5) Teacher Standard V. The early childhood educator shall reflect on and evaluate teaching and learning situations, learning environments, and programs for infants, toddlers, preschool children, kindergarten children, and their families. This shall include learning situations and programs that are provided in relation to an IFSP or an IEP and by the early childhood educator, a teaching assistant or other staff member, the family, or other caregiver.

(6) Teacher Standard VI. The early childhood educator shall collaborate and consult with the following to design, implement, and support learning programs for children:

(a) Staff in a team effort;

(b) Volunteers;

(c) Families and primary caregivers;

(d) Other educational, child care, health and social services providers in an interagency and interdisciplinary team; and

(e) Local, state, and federal agencies.

(7) Teacher Standard VII. The early childhood educator shall engage in self-evaluation of teaching and management skills and participate in professional development to improve performance. This shall include the following performance areas:

(a) Designing and planning developmental and learning activities;

(b) Creating learning environments;

(c) Implementing and managing activities;

(d) Assessing children's learning development;

(e) Evaluating learning situations and environmental programs; and

(f) Collaborating with colleagues, parents, and others.

(8) Teacher Standard VIII. The early childhood educator shall support and promote the self-sufficiency of families as they care for and provide safe, healthy, stimulating, and nurturing environments for young children.

DANIEL GREENE, Chair

APPROVED BY AGENCY: October 3, 1994

FILED WITH LRC: October 10, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 29, 1994, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 24, 1994, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Roland Goddu, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 502 564-4606.

REGULATORY IMPACT ANALYSIS

Contact person: Akeel Zaheer

(1) Type and number of entities affected: 176 school districts and approximately 300 prospective early childhood teachers will be impacted. Candidates for this certificate will be required to meet certification standards outlined in this regulation. Institutions of higher education which offer teacher preparation programs leading to early childhood certification will have to meet program approval standards.

(2) Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Cost of tuition and assessment for candidates preparing to receive certification. Cost of establishing and providing preparation programs at approved institutions of higher education.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

c. Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Candidates must file appropriate applications and local district maintain records on personnel qualifications. Institutions of higher education must seek approval for offering certification programs.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body: Office of Teacher Education and Certification must approve certification programs being offered by institutions of higher education and Division of Certification must review applications, issue or deny certificate, and maintain records on all transactions. Individuals teaching in early childhood assignments for the 1994-95 school year must apply for approval to be exempt from certification requirements.

a. Direct and indirect costs or savings:

1. First year: Costs associated with disseminating program requirements, approving programs, issuing certificates, and maintaining records.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: Office of Teacher Education and Certification must maintain records on all approved programs of preparation and maintain records and issue certificates.

(4) Assessment of anticipated effect on state and local revenues: No impact on state or local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No comments received.

a. Geographical area in which administrative regulation will be implemented:

b. Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Qualified instructional personnel are required for the educational, emotional, and physical welfare of public school children.

(8) Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: No direct impact on public health and environment.

b. State whether a detrimental effect on environment and public health would result if not implemented: None

c. If detrimental effect would result, explain detrimental effect: None

(9) 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Certification requirements are uniformly applicable to all individuals except that individuals in early childhood teaching positions for 1994-95 school year will not be required to meet certification requirements.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the October 5, 1994 Meeting

The September meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, October 5, 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 September 7, 1994 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators John David Preston, Tom Smith, Nick Kafoglis; Representatives Woody Alllen, Jim Bruce and Tommy Lee.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines.

Guests: Frank Leidermann, Treasury; Matthew L. Mooney, David R. Vandeventer, Jerri H. Robinson, Michael S. Schwendeman, Wanda R. Delaplane, Attorney General's Office; Dave Nicholas, Board of Opthalmic Dispensers, Board of Respiratory Care, and Board of Social Work; Ion Durkin, Granville Smith, Board of Opthalmic Dispensers; James Hale, Linda Stacy, Dr. David W. Morgan, George Gilbert, Carl E. Campbell, George Risk, Dave Rosenbaum, Roy McQueary, Natural Resources and Environmental Cabinet; Sarah M. Jackson, Justice Cabinet; Sandra G. Pullen, Kenneth C. Wood, Transportation Cabinet; George Parsons, Department of Vocational Rehabilitation; Sue Simon, Workforce Development Cabinet; Valerie Salven, Walter Turner, Department of Workers' Claims; Karen Doyle, Robert Nelson, David Crane, Kenneth Wade, Mark Hooks, Ralph Von Derau, Joel Griffith, Stan Thompson, Kim Moore, Peggy Wallace, Ked Fitzpatrick, Anita Moore, Karen Thomas; Cabinet for Human Resources; Libby Harvey, Kentucky School Boards Association; Barbara Dermody, Kentucky Nurses Association; Robert B. Milam, Curt Duff, Society of Dispensing Opticians of Kentucky; Don Cooke, Carl Burge Clay Company and Messer Clay Company; Walton H. Clevenger, Vernon Messer, Messer Clay Company; Bruce Trout, Kentucky-Tennessee Clay Company; Dandridge F. Walton, Laidlaw Waste Systems; Terry Brown, Kentucky Physical Therapy Association; Judith Taylor, Kentucky Chapter Physical Therapy; Jim Carloss, Physical Therapists, Opticians; Barbara Dermody, Kentucky Nurses Association; Sharon Sheahan, Coalition of Nurse Practicitioners & Nurse Midwives; Sara S. Nicholson, Kentucky Hospital Association; Mike Ridenour, John Brazel, Kentucky Chamber of Commerce; Sam Crawford, Kentucky Farm Bureau; Jill Robinson, The Prichard Committee; Donna Shedd, Eagel Forum; Gordon Boyd, Steve Moss, WKYT-TV; Lucy May, Lexington Herald-Leader; Tom Ashby, Families United for Morals in Education; Melissa Lawson, Children's Alliance; Martin Cothran, The Family Foundation of Kentucky; Patricia J. Kannapel, Appalachia Educational Laboratory; Jim and Nancy Neukam; Richard Innes; Patty Walton; Iona Adams; Marti McKenney; Cindy Rausch; Peg Jones; Renee Kelley; Laura Luther; Mary Elaine Cecil; George K. Cunningham; Larry Jones; James S. Robb; Kathy Darbro; Dina Fallon; Victoria Webb; Linda Helton; Laura Helton; Sarah Helton; Camille Wagner, PPIE.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Treasury

Each of the following six administrative regulations was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to provide the correct statutory citations; (2) the NECESSITY AND FUNCTION paragraph and various sections were amended to conform to the language requirements of KRS 13A.222(4). 20 KAR 1:020 and 20 KAR 1:030 were also amended to delete sections that repeated or summarized statutory language, pursuant to KRS 13A.120(2)(e),(f). 20 KAR 1:020 was also amended to correct the deadlines to conform to the deadlines established by KRS Chapter 393.

20 KAR 1:020. Unclaimed property; definitions; location of owners.

20 KAR 1:030. Unclaimed property; escheating.

20 KAR 1:040. Unclaimed properties; claims.

20 KAR 1:050. Unclaimed property; examination of holder records.

20 KAR 1:060. Unclaimed property; safe deposit boxes or other safekeeping repositories.

20 KAR 1:070. Unclaimed property; administrative hearing, appeals process.

Department of Law: Division of Consumer Protection

40 KAR 2:061. Repeal of 40 KAR 2:060, Business opportunities. This administrative regulation was amended to: (1) Delete an incorrect statutory reference pursuant to KRS 13A.222(4)(l); and (2) amend the NECESSITY AND FUNCTION section to state that KRS 367.803 had been repealed pursuant to KRS 13A.222(4)(a).

40 KAR 2:070. Procedure for registration of telephone solicitation merchants. This administrative regulation was amended to: (1) correct statutory citations pursuant to KRS 13A.222(4)(l); (2) delete various sections, pursuant to KRS 13A.120(2)(e), that repeat statutory language ; (3) add language relating to where copies of the incorporated form may be inspected, copied or obtained pursuant to KRS 13A.2251(1)(b); (4) include a summary of incorporated material pursuant to KRS 13A.2251(2); and (5) correct and delete various portions of the form in response to the initial staff review. In response to a question by Senator Preston, Subcommittee staff stated that the substantive issues raised by the initial staff review had been addressed by the amendments.

40 KAR 2:080. Prehearing procedure for revocation, suspension of registration or refusal to renew certification of professional solicitors or fundraising consultants. This administrative regulation was amended to: (1) delete the reference to "rejection" from the title and various sections in the administrative regulation pursuant to KRS 13A.222(4)(a); (2) correct the statutory citation in the RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l); and (3) delete the language in Section 1 of the administrative regulation, pursuant to KRS 13A.120(2)(e) prohibiting the repetition of statutory language.

40 KAR 2:090. Hearing for revocation, suspension of registration or refusal to renew registration of professional solicitor or fundraising consultant. This administrative regulation was amended to: (1) delete the word "rejection" from the title of the administrative regulation pursuant to KRS 13A.222(4)(a); (2) correct the statutory citation in the RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l); (3) delete the last sentence in Section 8(4) because it was unclear pursuant to KRS 13A.222(4)(a); (4) delete Section 9, pursuant to KRS 13A.120(2)(e) because it repeated statutory language; and (5) insert a reference to the appropriate statutory citation in Section 9 pursuant to KRS 13A.222(4)(l).

40 KAR 2:100. Notice of requested disclosure of percentage of gross revenue going to charitable organization. This administrative regulation was amended to correct the statutory citations in the RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l).

40 KAR 2:110. Notice of intent to solicit forms. This administrative regulation was amended to: (1) set out requirements for forms in the body of the administrative regulation pursuant to KRS 13A.100(2); and (2) include a summary of incorporated material pursuant to KRS

13A.2251(1)(b).

40 KAR 2:120. Business opportunity forms. This administrative regulation was amended to: (1) change the title of the administrative regulation to "Business opportunity forms" pursuant to KRS 13A.222(4)(a); (2) correct a statutory citation in the RELATES TO section pursuant to KRS 13A.222(4)(l); (3) amend the NECESSITY AND FUNCTION section to clarify that the forms are required to be filled out by prospective sellers of business opportunities and those required to register pursuant to KRS 13A.222(4)(a); (4) set out substantive requirements for forms in the body of the administrative regulation pursuant to KRS 13A.100(2); (5) correct the title of the forms pursuant to KRS 13A.222(4)(a) and KRS 13A.220(4); and (6) include a summary of incorporated material pursuant to KRS 13A.2251(1)(b).

40 KAR 2:130. Hearings for revocation, suspension of refusal to renew registration for business opportunities. This administrative regulation was amended to: (1) delete the reference to rejection in the title and body of the administrative regulation pursuant to KRS 13A.222(4)(a); (2) correct statutory citations in the RELATES TO, and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l); (3) delete the reference to "rules" in the NECESSITY AND FUNCTION section 13A.120(5); (4) delete the reference to "he/she" in the body of the administrative regulation pursuant to KRS 13A.222(4)(j); and (5) clarify section 8(4) relating to the filing of a notice of appeal in the Circuit Court within 30 days after mailing a final order to the aggrieved party pursuant to KRS 13A.222(4)(a).

40 KAR 2:140. Prehearing procedure for rejection, revocation, suspension or refusal to renew for business opportunities. This administrative regulation was amended to: (1) correct an improper reference to the "FUNCTION AND NECESSITY" section pursuant to KRS 13A.220(3)(f); (2) delete the reference to "rules" in the NECESSITY AND FUNCTION section pursuant to KRS 13A.120(5); and (3) delete the improper reference to "he/she" in the administrative regulation pursuant to KRS 13A.222(4)(j).

40 KAR 2:150. Cremation authorization forms. This administrative regulation was amended to: (1) correct statutory citations in the RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l); (2) set out substantive requirements for the form in the body of the administrative regulation pursuant to KRS 13A.100(2); (3) clarify requirements in the form; and (4) include a summary of incorporated material pursuant to KRS 13A.2251(1)(b).

40 KAR 2:160. Crematory annual report form. This administrative regulation was amended to: (1) correct statutory citations in the RELATES TO, STATUTORY AUTHORITY and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l); (2) set out substantive requirements for the form in the body of the administrative regulation pursuant to KRS 13A.100(2); (3) clarify requirements in the form; and (4) include a summary of incorporated material pursuant to KRS 13A. 2251(1)(b).

40 KAR 2:170. Preneed cremation authorization forms. This administrative regulation was amended to: (1) correct statutory citations in the RELATES TO, STATUTORY AUTHORITY and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l); (2) set out substantive requirements for the form in the body of the administrative regulation pursuant to KRS 13A.100(2); (3) clarify requirements in the form; and (4) include a summary of incorporated material pursuant to KRS 13A.2251(1)(b).

40 KAR 2:180. Statement of training for crematory operators forms. This administrative regulation was amended to: (1) correct statutory citations in the RELATES TO, STATUTORY AUTHORITY and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l); (2) set out substantive requirements for the form in the body of the administrative regulation pursuant to KRS 13A.100(2); (3) clarify requirements in the form; and (4) include a summary of incorporated material pursuant to KRS 13A.2251(1)(b).

40 KAR 2:190. Crematory authority license application forms. This administrative regulation was amended to: (1) correct statutory citations in the RELATES TO, STATUTORY AUTHORITY and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l); (2) set out substantive requirements for the form in the body of the administrative regulation pursuant to KRS 13A.100(2); (3) clarify requirements in the form; and (4) include a summary of incorporated material KRS 13A.2251(1)(b).

40 KAR 2:200. Application for removal sale permit form. This administrative regulation was amended to: (1) delete "permit" and insert "license" in the title pursuant to KRS 13A.222(4)(a); (2) set out substantive requirements for the form in the body of the administrative regulation pursuant to KRS 13A.100(2); (3) include a copy of the form incorporated by reference pursuant to KRS 13A.2251(3); and (4) include a summary of incorporated material pursuant to KRS 13A.2251(1)(b).

40 KAR 2:210. Application for conducting more than two (2) going-out-of-business sales in four (4) years form. This administrative regulation was amended to: (1) set out substantive requirements for the form in the body of the administrative regulation pursuant to KRS 13A.100(2); (2) include a copy of the form incorporated by reference pursuant to KRS 13A.2251(3); and (3) include a summary of incorporated material pursuant to KRS 13A.2251(3).

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. This administrative regulation was amended to correct the statutory citations in the RELATES TO, STATUTORY AUTHORITY and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l).

40 KAR 2:240. Hearing for denial of application for more than two (2) going-out-of-business sales during a four (4) year period. This administrative regulation was amended to: (1) correct statutory citations in the RELATES TO, STATUTORY AUTHORITY and NECESSITY AND FUNCTION section pursuant to KRS 13A.222(4)(l); and (2) correct statutory citations in Sections 1 and 3 pursuant to KRS 13A.222(4)(l).

Board of Respiratory Care

201 KAR 29:070. Scope of practice. This administrative regulation was amended as follows: (1) Section 1(2) was deleted because: (a) Section 1 is a definitions section and, since Section 1(2) was a prohibition rather than a definition, it violated KRS 13A.222(4)(e)(2) which provides that a definitions section shall contain only definitions; (b) it repeated or summarized applicable statutes, in violation of KRS 13A.120(2)(e),(f); and (c) it appeared to regulate matters not within the jurisdiction of the Board; and (2) Sections 3(1),(2)(a),(c) were amended to comply with the requirements of KRS 13A.222 relating to language; and (2) Section 3(2)(c) was deleted because it: (a) repeated or summarized applicable statutes, in violation of KRS 13A.120(2)(e),(f); and (b) appeared to regulate matters not within the jurisdiction of the Board.

Barbara Dermody, Kentucky Nurses Association, had submitted a hospital's "job description", or facility policy, for respiratory care practitioners that appeared to permit a respiratory care practitioner to perform actions for which they were not licensed or trained. She stated that the Association: (1) supported the administrative regulation as amended; and (2) had objected to the original language because it appeared to permit a respiratory care practitioner to perform actions for which they were not licensed or trained.

Transportation Cabinet: Department of Vehicle Regulation: Commissioned Employees

601 KAR 15:010. Disciplinary actions relating to employees commissioned pursuant to the provisions of KRS 281.770. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) by: (a) deleting prohibited language; and (b) correcting statutory citations; and (2) KRS 13A.120(2)(e) by deleting language in Section 12(14) that repeated or summarized statutory language.

Cabinet for Human Resources: Department for Health Services: Local Health Departments

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky. This administrative regulation was amended to correct statutory citations in the STATUTORY AUTHORITY and NECESSITY FUNCTION paragraphs.

Sanitation

902 KAR 10:150. Domestic septage disposal site approval procedures. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) by deleting prohibited words in Section 1(2), Section 2(1) and Section 3(1); (2) KRS 13A.220(4) format requirements ; (3) KRS 13A.120(2)(e) by deleting the statutory definition for "grease" found in KRS 211.970(3); and (4) KRS 13A.110 and KRS 13A.2251(1), which requires the agency to incorporate by reference the form entitled, "Request for Hearing".

902 KAR 10:160. Domestic septage disposal site operation. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) by deleting prohibited words in Sections 1(3), 7 and 8; (2) KRS 13A.220(4) format requirements; (3) KRS 13A.120(2)(e) by deleting the statutory definition for "grease" found in KRS 211.970(3); and (4) deleting language in Section 6, and inserting language that clarifies that application for approval to utilize experimental disposal methods shall be considered by the Natural Resources and Environmental Protection Cabinet.

902 KAR 10:170. Septic tank servicing. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) by deleting prohibited words in Section 1(2); (2) KRS 13A.220(4) format requirements by dividing into paragraphs Section 1(2); and (3) KRS 13A.120(2)(e) deleting a definition that repeated the statutory definition for "grease" found in KRS 211.970(3). Senator Smith thanked Cabinet representatives for their efforts to promulgate an effective group of administrative regulations.

Health Services and Facilities

902 KAR 20:016. Hospitals; operation and services. This administrative regulation was amended by the Cabinet to address issues raised at the Subcommittee's September meeting by representatives from the Kentucky Hospital Association, Kentucky Nurses Association, Kentucky Coalition of Nurse Practitioners/Nurse Midwives, and Kentucky Psychologists Association. It was also amended to add language referring to "allied health professionals".

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Board of Ophthalmic Dispensers

201 KAR 13:040. Licensing; application, examination; temporary permit; inactive status.

201 KAR 13:050. Apprentices.

201 KAR 13:055. Continuing education requirements.

Board of Examiners of Social Work

201 KAR 23:070. Specialty certification.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Standards for Solid Waste Facilities

Representative Bruce asked: (1) what changes have been made in the solid waste administrative regulations? and (2) will individuals have to apply for new permits?

Cabinet personnel responded that: (1) a new definitions administrative regulation has been filed as requested by this subcommittee; (2) the other amendments to these administrative regulations have been promulgated in response to the new federal subtitle D requirements from EPA; (3) Kentucky was the first state in the country to be authorized for subtitle D, however, there were some additional conditions required by EPA; (5) these amendments bring the state administrative regulations into compliance with federal law; (6) airports must now be notified anytime a landfill is expanding in the area; (7) groundwater standards have been updated to comply with federal law; (8) the list of prohibited chemicals in groundwater has been updated to comply with the federal list of chemicals; (9) 19 chemicals have been dropped from Kentucky's prohibited chemical list and 19 chemicals have been added.

Senator Smith pointed out that governmental agencies will now be required to obtain bonds.

In response to a question by Senator Smith, cabinet personnel responded that: (1) trust funds, and insurance policies can now be used in lieu of bonds; and (2) complying with the cabinet's administrative regulations will be easier as a result of this amendment.

Representative Lee asked: (1) what changes were made in 401 KAR 48:090; and (2) does this alter any of the time constraints on pending applications.

Cabinet personnel responded that: (1) soils from contaminated underground storage tank sites can now be used for daily cover; (2) the soil cannot have benzene contamination larger than 1 part per million; (3) use of this soil was discussed during the last session of the General Assembly; and (4) this administrative regulation in no way changes deadlines or time constraints on pending applications.

Senator Smith stated that: (1) the 1 part per million benzene figure was too low to be a useful; and (2) the issue needs to be looked at again in a year.

Cabinet personnel responded that: (1) benzene contamination is the most troublesome component in the soil from underground storage tanks; (2) lead contamination is not be a problem as long as the benzene is under control; and (3) the cabinet: (a) is expanding the ability of the regulated community to meet regulatory requirements because it makes good sense; (b) must still protect the environment; and (c) would be happy to look at the entire issue again in a year.

401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

401 KAR 48:050. Siting requirements for solid waste landfills.

401 KAR 48:090. Operating requirements for containing landfills.

401 KAR 48:300. Surface and groundwater monitoring and corrective action.

401 KAR 48:310. Financial requirements and bonds.

Justice Cabinet: Charitable Gaming

500 KAR 11:010E. Temporary licensing.

500 KAR 11:020E. Conduct of hearings.

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

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

Labor Cabinet: Department of Workers' Claims: Workers' Compensation

803 KAR 25:089E. Workers' compensation medical fee schedule for physicians. Terry Brown, Physical Therapy Association, stated that the Association is concerned about the medical fee schedule, and is working with the Commissioner to resolve issues relating to physical therapy reimbursement.

Senator Preston stated that he had received complaints that the reductions in physical therapist reimbursement were greater than that for other providers.

Agency personnel stated that: (1) only the emergency administrative regulation was before the Subcommittee; and (2) the agency would consider the comments made by the physical therapists at the agency's public hearing on the ordinary administrative regulation that will replace the emergency administrative regulation being considered today.

In response to a question by Senator Smith, agency personnel stated that the reports considered by the agency would consider the rates effective in other states.

803 KAR 25:091E. Workers' compensation hospital fee schedule.

803 KAR 25:101. Provision of Workers' Compensation Rehabilita-

tion Services.

803 KAR 25:110E. Workers' compensation managed health care plans.

Cabinet for Human Resources: Department for Medicaid Services

907 KAR 1:022. Nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:635. Conditions of coverage for the Kentucky Hospital Care Program (KHCP).

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:

Executive Branch Ethics Commission

9 KAR 1:050E. Approval of outside employment of a public servant.

Department of Law: Division of Consumer Protection

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. Senator Smith asked if the Attorney General intended to conduct an investigation any time a business decided to have a going-out-of-business sale. Attorney General staff responded that: (1) the original law relating to these type of sales placed no restriction on the number of times a business could conduct a going-out-of-business sale; (2) the statute places no restriction on whether a business can close its doors but attempts to address those individuals that conduct many going-out-of-business sales in the period of a year; (3) some individuals seem to make a career out of conducting going-out-of-business sales; (4) this statute addresses how a sale is presented to the public; (5) a person can conduct a sale without restriction if he calls the sale something other than a going out of business sale; (6) multiple going-out-of-business sales have become more of a problem in recent years with the increase in multistate business operations; (7) typically a multistate operator will: (a) contact a small mom and pop business; (b) buy into the store; (c) bring in a great quantity of merchandise; and (d) sell the business off; and (8) this hurts the other businesses in the area because: (a) they must compete against someone who is conducting a going-out-of-business sale; and (b) who is offering great bargains, at least in theory.

Senator Smith stated that: (1) he disagrees with the idea of asking the Attorney General's permission before conducting a going-out-of-business sale; (2) this is no different than an individual bringing furniture items to a flea market; and (3) engaging in business in the Commonwealth is a freedom that must be protected.

In response to a question by Senator Smith, the Attorney General's staff stated: (1) there have been a number of complaints in Kentucky relating to going-out-of-business sales by both consumers and competing businesses; (2) the Attorney General's office receives approximately 8 or 9 complaints a year; (3) these complaints are mainly a problem in the larger cities; (4) the types of sales are especially a problem in the furniture industry; and (6) the statute that is the basis for these administrative regulations specifically states that it is for the merchants and consumers of Kentucky.

Representative Allen stated that: (1) this program is an improper attempt to regulate free enterprise; (2) the consumer is looking for someone who can sell products cheaper; and (3) government should not be involved in these types of programs.

The Attorney General's staff responded that: (1) much of this merchandise is not really a bargain; (2) the prices really are not lower than prices charged by other stores; (3) this going-out-of-business proposition is partly a marketing trick; and (4) this program was passed by General Assembly in 1994 and the Attorney General is obligated to promulgate administrative regulations consistent with the statute.

Representative Bruce stated that he has seen several businesses with signs that say "going-out-for-business."

Senator Smith stated that: (1) the press needs someone looking at their news articles for truth and accuracy; and (2) perhaps the Attorney General should regulate the media.

Board of Medical Licensure

201 KAR 9:005. Ethical conduct.

Economic Development cabinet: Department of Agriculture: Weights and Measures; Motor Fuel

302 KAR 79:010E. Testing and inspection program.

Natural Resources and Environmental Protection Cabinet: Administration

400 KAR 1:001. Definitions for 400 KAR Chapter 1.

400 KAR 1:030. Administrative service of process, computation of time and filing of documents.

400 KAR 1:040. Administrative discovery.

400 KAR 1:090. Administrative hearings practice provisions.

Division of Air Quality: New Source Performance Standards

401 KAR 60:100. Standards of performance for petroleum refineries.

401 KAR 60:110. Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978.

401 KAR 60:111. Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984.

401 KAR 60:150. Standards of performance for sewage treatment plants.

401 KAR 60:160. Standards of performance for primary copper smelters.

401 KAR 60:170. Standards of performance for primary zinc smelters.

401 KAR 60:180. Standards of performance for primary lead smelters.

401 KAR 60:190. Standards of performance for primary aluminum reduction plants.

401 KAR 60:250. Standards of performance for coal preparation plants.

401 KAR 60:260. Standards of performance for ferroalloy production facilities.

401 KAR 60:330. Standards of performance for stationary gas turbines.

401 KAR 60:340. Standards of performance for lime manufacturing plants.

401 KAR 60:370.Standards of performance for lead-acid battery manufacturing plants.

401 KAR 60:380. Standards of performance for metallic mineral processing plants.

401 KAR 60:390. Standards of performance for automobile and light-duty truck surface coating operations.

401 KAR 60:400. Standards of performance for phosphate rock plants.

401 KAR 60:420. Standards of performance for ammonium sulfate manufacture.

401 KAR 60:440. Standards of performance for pressure sensitive tape and label surface coating operations.

401 KAR 60:450. Standards of performance for industrial surface coating: large appliances.

401 KAR 60:460. Standards of performance for metal coil surface coating.

401 KAR 60:470. Standards of performance for asphalt processing and asphalt roofing manufacture.

401 KAR 60:480. Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry.

401 KAR 60:490. Standards of performance for the beverage can surface coating industry.

401 KAR 60:500. Standards of performance for bulk gasoline terminals.

401 KAR 60:540. Standards of performance for the rubber tire manufacturing industry.

401 KAR 60:560. Standards of performance for volatile organic compound (VOC) emissions from the polymer manufacturing industry.

401 KAR 60:580. Standards of performance for flexible vinyl and urethane coating and printing.

401 KAR 60:590. Standards of performance for equipment leaks of VOC in petroleum refineries.

401 KAR 60:600. Standards of performance for synthetic fiber production facilities.

401 KAR 60:620. Standards of performance for petroleum dry cleaners.

401 KAR 60:630. Standards of performance for equipment leaks of VOC from on-shore natural gas processing plants.

401 KAR 60:640. Standards of performance for on-shore natural gas processing: SO_2 emissions.

401 KAR 60:680. Standards of performance for wool fiberglass insulation manufacturing plants.

401 KAR 60:700. Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.

401 KAR 60:730. Standards of performance for calciners and dryers in mineral industries.

General Standards of Performance

401 KAR 63:100. General provisions.

401 KAR 63:300. National emission standards for coke oven batteries.

401 KAR 63:320. National perchloroethylene air emission standards for dry cleaning facilities.

Environmental Protection

401 KAR 100:010. General administrative hearing practice provisions.

Department for Surface Mining Reclamation and Enforcement: Surface Effects of Noncoal Mining

Bruce Trout, Kentucky Tennessee Clay Company, stated that: (1) he would have preferred the existing administrative regulations not be amended or repealed because they had adequately regulated the noncoal mining industry; and, (2) after commenting on three drafts, although he objected to certain provisions, could accept most of the provisions of the new administrative regulations.

Vernon Messer, Messer Clay Company, submitted a statement of objections to the administrative regulations, and stated that: (1) he opposed the administrative regulations because the existing administrative regulations had adequately regulated the industry and protected the environment for over 30 years; and (2) under the regulatory scheme of the existing administrative regulations, neither the environment nor landowners had been adversely affected, nor had the state been required to expend funds because of industry activity.

Don Cook stated that: (1) he was a registered professional engineer in Kentucky, Indiana, and West Virginia, and a registered land surveyor in Kentucky; (2) had worked for the Department of Surface Mining for 7 years; (3) is the owner of a consulting firm, an engineer for a coal company, and has had over 16 years experience in mining; (4) after his review of the administrative regulations, he had concluded that: (a) some changes were required, but that the administrative regulations are based on the erroneous presumption that noncoal mining and coal mining are identical in their operation and effect on the environment and require identical restrictions; (b) in the development of these administrative regulations, the Cabinet had failed to consult those with experience in clay and other noncoal mining industries; (5) administrative regulations that impose restrictions that are unnecessary and unrelated to noncoal mining industries. and valid only with regard to the mining of coal, will destroy the industry; and (6) these administrative regulations still need additional revision.

In response to a question by Chairman Kerr, Mr. Cook stated that: (1) he had specified objections to specific questions; (2) while some amendments had been made, the Cabinet had not responded to some objections or made all the changes requested;(3) his objections related to all noncoal mining operations and were not restricted to clay mining operations; and (4) the administrative regulations were based on the premise that coal and noncoal mining operations were identical. Mr. Clay added that the administrative regulations were based on statutes granting authority for the regulation of coal mining.

Subcommittee staff stated that the: (1) Statement of Consideration indicated that the Cabinet had failed to tier the administrative regulations, which requires that the administrative regulations be written to address the specific problems raised by noncoal mining; (2) the Cabinet failed to respond specifically to questions raised at the public hearing; (3) the Cabinet may have violated KRS Chapter 13A by: (a) refusing to delete certain provisions governing matters that statutes had place under the regulatory authority of other administrative bodies because it believed it needed to inform the public of the requirements; and (b) failing to specifically answer objections raised; and (4) it was impossible to determine whether KRS Chapter 13A had been violated because of a lack of specific citations to other agencies' regulatory authority, in the administrative regulations or the material filed in opposition to them. Mr. Cook stated that the administrative regulations contained requirements, such as the information relating to withdrawal permit that statutes authorize the Division of Water to impose.

Cabinet personnel stated that: (1) there is little legislative guidance regarding noncoal mining; (2) these administrative regulations were promulgated in 1975, and that the noncoal mining industry had changed methods of operation since then; (3) KRS Chapter 13A requires the promulgation of administrative regulations to regulate an industry; (4) the initial drafts were similar in form and content of coal mining regulations; (5) differences between coal and noncoal mining industries include: (a) lack of reclamation bonding requirements for many noncoal mining industries; (b) less exhibition of restoration of post-mining land use (c) sediment control is necessarily patterned after requirements applicable to sediment control with regard to coal mining; (6) new requirements, based on coal mining requirement, include controls over operations, such as blasting, in the vicinity of occupied dwellings; and (7) these types of requirements are imposed because the problems raised, and the method to alleviate them, are similar to both coal and noncoal mining.

Senator Preston stated that: 405 KAR 5:015 included sand, gravel, dolomite, sand, clay and florspar operations as operations subject to the administrative regulations, and asked Cabinet personnel for the statutory authority for the regulation of these operations. Cabinet personnel stated that the general authority for regulating all mining is KRS 350.010(2) and KRS 350.300.

In response to a question by Senator Smith, industry representatives stated that there were duplicative sets of administrative regulations to which the industry had to comply; for example, compliance with similar requirements relating to blasting that are imposed by both the Natural Resources Cabinet and the Department of Mines and Minerals. Senator Smith stated that, while the environment should be protected, such duplication was unnecessary, made compliance difficult if not impossible, and could irreparably damage the industry.

Senator Preston stated that: (1) under the provisions of KRS 350.010(2), strip mining is defined as the breaking of surface soil to remove minerals and ores; (2) KRS 350.010(28)(1) provides for the

adoption of administrative regulations pertaining to surface coal mining regulations, including strip mining; (3) while the definition section of KRS Chapter 350 includes noncoal mining, KRS 350.010(28)(1), the powers section, limits the Cabinet's jurisdiction to surface coal mining operations. He requested that these sections be reviewed to determine the actual statutory authority granted.

Industry and Cabinet personnel, and the Subcommittee, agreed to meet and attempt to resolve the remaining issues, and to inform Subcommittee staff of the unresolved issues, the citations to duplicative administrative regulations, and provisions that appear to be an exercise or authority granted by statute to other administrative bodies.

The Subcommittee approved a motion to defer the following 405 administrative regulations to the November, 1994 meeting.

405 KAR 5:001. Definitions for 405 KAR Chapter 5.

405 KAR 5:015. General provisions.

405 KAR 5:021. Permit and license fees.

405 KAR 5:025. License requirements.

405 KAR 5:030. Permit requirements.

405 KAR 5:035. Signs and markers.

405 KAR 5:038. Blasting.

405 KAR 5:040. Access roads and haul roads.

405 KAR 5:045. Protection of cultural and environmental resources.

405 KAR 5:050. Protection of the hydrologic balance.

405 KAR 5:055. Permanent and temporary impoundments.

405 KAR 5:060. Handling of materials.

405 KAR 5:065. Premining and postmining land use.

405 KAR 5:070. Revegetation.

405 KAR 5:075. Contemporaneous reclamation.

405 KAR 5:080. Reclamation bond.

405 KAR 5:085. Enforcement.

405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions.

405 KAR 5:096. Repeal of 405 KAR 5:010 and 405 KAR 5:020.

Department of Education: Office of District Support Services: School Administration and Finance

702 KAR 3:270. SEEK funding formula.

Bureau of Learning Results Services: Learning Results Services

703 KAR 4:060. Academic expectations. In response to Senator Preston's question, Chairman Kerr stated that in the letter requesting deferral, the Commissioner gave no reason for the request.

Subcommittee staff noted that by operation of law, KRS 13A.290 provides that if an agency representative is not present with authority to amend the administrative regulation, it is automatically deferred to the next regularly-scheduled meeting of the subcommittee.

Senator Preston stated that: (1) this was the third time the Department requested deferral; (2) persons had traveled some distance to testify and ask questions of the Department; and (3) discussion on the administrative regulation should be postponed until later in the day; and (4) Department representatives should be requested to attend explain why they requested deferral and respond to questions on this administrative regulation.

Chairman Kerr stated that there appeared to be a conflict in KRS 13A.300(1) and 13A.290(4) relating to deferrals. While KRS 13A.300(1) provides that the Subcommittee may agree to an agency request to defer an administrative regulation, KRS 13A.290(4) provides that if an agency representative with authority to amend the administrative regulation is not present at the Subcommittee meeting, the administrative regulation shall be deferred to the next regularly-scheduled meeting of the Subcommittee. Chairman Kerr added that the Subcommittee would accept testimony today on this administrative regulation.

Donna Shedd, a teacher and mother of school-age children, stated that she testified at the Department's public hearing on June 29, 1994, that the outcomes (academic expectations) were exceedingly vague and unclear. Ms. Shedd stated that she was concerned: (1) with the Department's statement that: "The academic expectations provide a middle level of detail describing those goals, while greater detail is provided in '*TRANSFORMATIONS, Kentucky's Curriculum Framework*'"; (2) that the law requires the outcomes to be stated in measurable terms that define expectations for students, which would not permit the Department to "partially define", or "define to a middle level"; (3) with Outcome 1.2, which reads: "Students make sense of the variety of materials they read."; (4) with remarks made by U.S. Secretary of Education, Richard Riley, in which he referred to a report, entitled "Putting Learning First", which condemns Kentucky outcomes as containing "such vague statements 'as students will make sense of the variety of materials they read...' without defining what 'make sense of' might mean."; (5) that other people are also dissatisfied with the outcomes, quoting: (a) a prize winning investigative journalist, Charles Sykes, who called Kentucky outcomes "Goals from Hell.", and stated that they are "fuzzy" and "clogged with impenetrable jargon."; (b) Albert Shanker, president of the American Federation of Teachers, who stated that "vaguely worded outcomes like this will not send a message to students, teachers and parents about what is required of youngsters."; (6) that such vagueness in the outcomes provides ample opportunity for: (a) abuse; (b) political agendas to find their way into the curricula, as has already been found in *Kentucky's Curriculum Framework* document; and (c) mediocrity; and (7) that the Department's responses in its Statement of Consideration were unsatisfactory. She stated that she hoped the Subcommittee would not place their approval on such a crime against Kentucky's children.

Cindy Rausch stated that: (1) she was dismayed that: (a) this was the third deferral requested by the Department; and (b) they chose not to be present to answer questions; (2) it appears Dr. Boysen: (a) is using the same "strong arm tactics" with this legislative committee that he has been accused of using within his department; and (b) is resorting to similar tactics before the November elections; (3) the desire of the legislature to remove politics from education by appointing a Commissioner obviously has not eliminated politics from the Department of Education; (4) the Subcommittee should attach a letter of deficiency to this administrative regulation; (5) she had raised the following questions at the department's public hearing, which were not specifically addressed by the Department: (a) How does the Department measure the outcomes; (b) How are the outcomes scored or what is the standard used to determine if the outcomes have been achieved; (c) Who set the standard; (d) How will a student be remediated if he does not achieve the outcomes; (e) What happens if the state and the parent disagree on the standard or how it is measured; (f) Does the parent or the state have ultimate authority over the child; (6) the academic expectations do not measure the goals as set forth by statute, and are not measurable by generally recognized psychometrics used in the field of assessment; and (7) the use of additional documents to support this administrative regulation violate KRS Chapter 13A because they have not been incorporated by reference in the administrative regulation. Ms. Rausch asked whether some of the outcomes can legally be measured without informed written consent of the parent, such as the outcomes that measure mental health of students, and advised the Subcommittee that assessing the personal lives of children and their family appears to violate: (a) the Grassley amendment (20 U.S.C.1232h, Section 439); and (b) a child's, and family's right to privacy. She questioned whether the outcomes would have been adopted in 1990 had legislators been able to review them.

Marti McKenney stated that: (1) she also gave written and oral comments at the Department's public hearing; (2) some of her specific questions were not answered, while other questions received nonanswers; (2) she was concerned about Department documents, *Transformations*, content guidelines, the KIRIS assessment or scoring guides, because they are not laws or documents which have been incorporated by reference; (3) the scoring guides (rubrics) are

particularly troubling because they are not formulated until after the testing officials have seen all the answers, which destroys even the pretense of objectivity; (4) she asked the Department why the expectations did not include a section devoted to history; and (5) other comments, which were not responded to in the Department's Statement of Consideration, included: (a) How are rights and responsibilities defined, (referencing #2.15); (b) Will Kentucky's students be taught American civics and government correctly, (referencing #2.15); (c) Is this an academic or a thought restructuring process, (referencing #2.16); and (d) What is the correct understanding of interpretation of historical events, (referencing #2.20).

Ms. McKenney stated that the "academic expectations" are vague and not measurable or objective; for example, Expectation #2.17: "Students interact effectively and work cooperatively with the many ethnic and cultural groups of our nation and world". She asked: (1) how students from a small, rural community would interact and work cooperatively with many ethnic and cultural groups; (2) Would students be bused to specific communities so that they can interact with a variety of ethnic and cultural groups; (3) Would Kentucky students be flown to other countries in order to interact and work with groups of the world; (4) How can this expectation be assessed; (5) Would Kentucky's small communities have the same resources available; (6) Rather than focusing on how a student "interacts", shouldn't we focus on a student's "understanding", because action, not just an "understanding", is required. She stated that: (1) the Department's response, "The degree to which student's support their answers, not the answers themselves, determines how they are evaluated", is unacceptable; and (2) she found it hard to believe that the "expectations" comply with the legislative intent to improve education in Kentucky.

Kathleen Darbro, a parent with a degree in education, from Mt. Washington, Kentucky, stated that she also testified before the Department's public hearing and asked the Department to answer to 25 questions.

Ms. Darbro stated that the Department: (1) inadequately responded to six of her questions; (2) failed to respond to the remaining 19; and (3) referred her to documents which it stated would "provide greater detail", although these documents were not incorporated by reference in the administrative regulation. Ms. Darbro stated that her question, whether the expectations represent "outcome based education" (OBE), was answered in Volume 2, page 6, of *Transformations: Kentucky's Curriculum Framework*, that stated in essence, "OBE is the foundation of KERA". She informed the Subcommittee that Alabama, Michigan, Pennsylvania, Colorado and Virginia have thrown out these types of outcomes, and recommended that the Subcommittee slow down the process and consider writing academic standards in the 1996 General Assembly that are measurable and specific. Ms. Darbro requested that the Subcommittee find this administrative regulation deficient because there are still questions that the Department has not answered.

With regard to a finding of deficiency, Senator Smith stated that: (1) although the Subcommittee may consider finding this administrative regulation deficient, administrative regulations found deficient by a legislative subcommittee during the interim session of the General Assembly, shall expire on adjournment of the next Regular Session of the General Assembly (KRS 13A.333(2)); (2) the administrative regulation would still be: (a) implemented by the Department; and (b) remain in effect until adjournment of the next regular General Assembly; and (3) he hoped the Department would: (a) consider reworking the substance of the administrative regulation before the next Subcommittee meeting; and (b) be more responsive to the concerns of taxpayers and parents.

Chairmen Kerr stated that: (1) if an administrative regulation is found deficient, it would force an administrative body to prepare and submit legislation to LRC which may subsequently be enacted into law; (2) Commissioner Boysen had told him that: (a) he would not be present at today's Subcommittee meeting; (b) many legislators had contacted him expressing concerns about the vagueness of the academic expectations; (3)(a) although the Department may continue to delay consideration of this administrative regulation, the substance of this administrative regulation cannot be implemented by the Department until the administrative regulation becomes effective; (b) any use of these academic expectations for assessment or other purposes would permit any citizen to seek an injunction against their use until the administrative regulation has become effective.

Ms. Darbro stated that she had personal knowledge, giving as examples her two elementary school-age children, of cases instances when teachers were required to tie their lesson plans to specific academic expectations such as those contained in this administrative regulation.

Chairman Kerr stressed that the Subcommittee: (1) knew that the Department has: (a) utilized the "learner outcomes"; and (b) referenced them in the other administrative regulations; (2) previously advised the Department by letter that, until they had been incorporated by reference in an administrative regulation, the outcomes could not be used or referred to in other administrative regulations; (3) has been assured by the Department that, although it would continue to use the outcomes (academic expectations), it intends to promulgate this administrative regulation incorporating the academic expectations; and (4) has not yet approved this administrative regulation, which means: (a) the academic expectations are not in effect; and (b) if the Department is using the expectations, it is doing so illegally.

Iona Adams, a public school teacher, former school-council member, and parent of three public school children, stated that she: (1) asked specific questions of the Department in June to which she received nonanswers; (2) wanted to ascertain the standards of proficiency for each of the "expectations" in order to know how any student would show mastery of each "expectation"; (3) could not understand why: (a) standards do not exist to which a student could aspire, a teacher adhere, and the school achieve in order to stay out of crisis; (b) the expectations were written in such a vague and ambiguous way as to be unmeasurable; (4) does not believe that legislators envisioned, nor intended, nonacademic expectations, when they set out to seek excellence in education; (5) will not accept the Department's elitist notion that parents are so unintelligent that they need a special set of "expectations" written just for them; (6) believes that if the standards for the outcomes cannot be articulated sufficiently, they cannot be measured subjectively, objectively, or otherwise; and (7) believed the Subcommittee members should not: (a) waiver from their original intention of true academic excellence; and (b) accept an administrative regulation that is vague, nonacademic and unmeasurable.

Richard Innes, a concerned parent from Villa Hills, Kentucky, stated: (1) that any reference to trigonometry or higher mathematics is virtually nonexistent in these expectations; and (2) as an electrical engineer, trigonometry is very important for most college studies and most technical areas that do not require a college degree. He stated that a Department official told him: (1) the Department's math division had determined that trigonometry was not considered important for general high school graduates; (2) when the content guidelines are released, that trigonometry will not be present in that document either; (3) the Department uses a pre-KERA document as a college track guidance document on trigonometry "The Program of Studies", the mathematics section of which: (a) has not been revised since passage of KERA; (b) is very limited because it tells high school principals what: 1. courses they may, not must, offer in their schools, and 2. academic and professional requirements teachers must meet in order to be eligible to teach the course; (c) does not provide detailed descriptions of required or suggested course content; and (d) does not mesh well with the interdisciplinary concepts of KERA. Mr. Innes added that: (1) he does not believe the current set of goals and outcomes reflect what the legislature intended for KERA, that is,

virtually no state guidance for the development and operation of higher math and science courses; (2) the Subcommittee should closely review the proposed expectations and ensure that they are stated clearly, and in measurable terms; and (7) he understood the Department had asked the Subcommittee to defer consideration of this administrative regulation until November. Mr. Innes stated that he received an "Electronic Mail" communication from a highly placed member of the Department at 7:10 p.m. on October 4th, who indicated that the Subcommittee hearing on the expectations was going to be postponed until January 1995.

Chairman Kerr stated that the only way the Department could accomplish this objective would be to not appear before the Subcommittee on any Department administrative regulations until January 1995.

Martin Cothran, with The Family Foundation, asked the Subcommittee to review a draft document entitled: "Proposed Academic Standards for Kentucky Students", as an illustration of examples of specific, academic and measurable outcomes proposed by the Foundation. He stated that the Department had access to this document as a proposed alternative to the Department's expectations during the process of revising the present academic expectations. To illustrate what the Foundation means by specific, academic and measurable standards, Mr. Cothran read into the record, two standards proposed by the Family Foundation and compared those with two of the Department's proposed expectations. The Foundation's proposed standard for: (1) "American History" was compared to Academic Expectation #2.16: "AMERICAN HISTORY: Students should possess a knowledge of colonial America; the American Revolution and the rise of American political thought, including (but not limited to) Washington, Jefferson, Madison and Monroe; the Federalist and Republican eras; westward expansion; the Jacksonian era; manifest destiny; slavery; the Civil War; Reconstruction; the Guilded Age; Theodore Roosevelt and the Spanish-American War; immigration; America as a world power; the progressive era; American participation in World War I; the 1920s; the Depression; the New Deal; the United States in World War II; and domestic issue since 1945; and should be able to write about, discuss and analyze the contribution of the people and events of American history to this nation's culture." The Department's academic expectation, Social Studies #2.16: "Students observe, analyze, and interpret human behaviors, social groupings, and institutions to better understand people and the relationships among individuals and among groups"; and (2) "Geography" was compared to Academic Expectation #2.19: "WORLD GEOGRAPHY: Students should possess a knowledge of the physical and cultural characteristics of major world regions and major countries in each; international boundaries; capitals and principal cities; major landforms and bodies of water; climate; weather, and natural resources; transportation and communication; commerce and economy; population growth, decline, and shift; major races, languages, cultures, and religions; agriculture; politics and government; and should be able to use and make maps, use a globe, write about, discuss and analyze the effects of geography on the political, social and historical conditions of different countries." The Department's academic expectation, Social Studies #2.19: "Students recognize and understand the relationships between people and geography and apply their knowledge in real-life situations."

Mr. Cothran, stated that: (1) with the exception of the Social Studies section, and some of the Science section, the Department's content guidelines are devoid of content; (2) the content guidelines do not contain a section on literature; (3) he was disappointed that the Department did not appear before the Subcommittee; (4) when someone will not defend something, it contributes to the impression that it cannot be defended; and (5) parents, teachers, and taxpayers of the state were stood up today and deserve more.

Thomas Ashby, from Owensboro and president of Families United for Morals in Education, stated that: (1) he had to begin travel early in the day to be present for the Subcommittee meeting and was disappointed that the Department did not attend; (2) the Department failed to respond to his questions at it's public hearing; (3) new academic expectations failed to satisfactorily state in measurable terms what students must know and be able to do to exit the public school; (4) he thought that, under KRS 158.6451, the 6 Learning Goals must be expressed "in measurable terms"; for instance, the expectations that appear under Goal 2 are to be in descriptive terms - terms that describe just how Goal 2 is to be measured; (5) the State Board of Education explained that the academic expectations only "provide a middle level of detail describing those goals," and that more detail is provided from other sources coming from the Department; (6) the purpose of this administrative regulation was to describe expectations which could be measured, totally independent of any other literature or material and the reader should not have to depend on other materials to determine measurement of the goals; (7) the other materials from the Department (*Transformations*, content guidelines, other course and grade outlines, assessment items, scoring guides, and teacher portfolio handbooks) do not describe measurement either; (8) he believed that: (a) the intent of the legislature was for students to learn about their rich cultural and historical heritage; and (b) most legislators wanted, and expected, students to learn specific facts and specific details about their culture and history, and not simply to "interpret historical events" to develop an "historical perspective," as outcome 2.20 specifies; (9) the outcomes require students to observe, analyze, interpret, and appreciate, but the Department states that "students are not necessarily scored as 'correct' or 'incorrect', but on how well they answer the question"; (10) the wording of the expectations precludes an objective measurement; and (11) the Subcommittee should reject the expectations.

In response to Senator Preston's question concerning scoring rubrics, Mr. Ashby explained that: (1) he understood the "rubric", or "scoring guide", is developed after testing students; and (2) the "answer" is based on the consensus of "a large number of student responses". Senator Preston stated that if a majority of students answered incorrectly, such rubrics would appear to permit incorrect answers or results. For example, if students are asked "What is the capital of Kentucky?" and most students answered "Glasgow", the scoring guide would appear to indicate that "Glasgow" is the correct answer.

Chairman Kerr read into the record the Department of Education's response given in its "Statement of Consideration", Item #22, "Correctness of Student Responses to KIRIS questions", to the question: "The expectations call on students to observe, analyze, interpret, and appreciate, but it is unclear if there is a 'correct' observation, interpretation, and appreciation and, if so, who decides what is correct?" Department response: "Correct responses on the KIRIS assessments are determined by the appropriate content advisory committee consisting of Kentucky teachers. When a student is asked to analyze, interpret, or appreciate on the KIRIS assessment, a large number of student responses is reviewed by teachers and a rubric or scoring guide is developed. Students are not necessarily scored as 'correct' or 'incorrect' but on how well they answer the question. Students will be scored at high levels when their analysis is logical, detailed, and thoughtful. If their response contradicts well-established evidence or knowledge and they have no logical reasoning in their response, they will be scored at low levels. It is possible to score at a high level on the KIRIS assessment with a response that is unique to one particular student if there is detailed logical reasoning to support the response."

Chairman Kerr stated that it appears that students could obtain a high score even if their answer contradicts well-established facts, as long as their reasoning is logical.

James and Nancy Neukam, parents from Owensboro, stated they were present at the Department's September 7th State Board meeting in Owensboro, in which Mary Dean and Mr. Thurman reported to Chairman Kelly and Dr. Boysen that the Department was ready to

present the outcomes to the Administrative Regulation and Review Subcommittee.

Nancy Neukam stated she was disappointed that the Department: (1) requested deferral of the administrative regulation for the third time; and (2) chose not to be present to answer questions; and (3) did not adequately answer questions they posed at the Department's public hearing. She told the Subcommittee that questions asked about Expectation #1.2, which requires that "students make sense of the variety of materials they read", included: (1) What skills are necessary for reading; (2) How are these skills measured; (3) How do you measure "make sense of"; (4) What performance level is required; (5) Will a seventeen year old be required to know what a first grader knows; (6) What type of reading materials will be covered; and (7) Why can't these expectations be expressed in direct terms and state what is expected of each student, with emphasis on academic content. She stated that the Department did not give specific answers to these questions, and asked the Subcommittee to find this administrative regulation deficient.

Mr. Neukam stated that: (1) in preparation for today's testimony, he and his wife had prepared 26 questions and asked the Subcommittee to forward those to the Department; (2) he understood that the intent of many legislators was for improved academic education; however, the expectations and other documents do not reflect academics; (3) students in his school district who have scored high on the ACT, i.e., in the 35 or 36 range, have been judged as "apprentice" status on the KIRIS tests which indicates that the tests are not measuring academics; (4)(a) if schools do not teach trigonometry, then Kentucky will be importing all its engineers in the future; (b) traditional academics must be taught to Kentucky's students if the state is to produce professionals; and (c) the Subcommittee should find this administrative regulation deficient.

Renee Kelley, with Parents and Professionals in Education, stated that: (1) the expectations: (a) are not what the General Assembly wanted for Kentucky students to reach higher, achieve more in the classroom, and become more employable; (b) complicate the learning process and the purpose of schools; (c) open the door for confusion which results in lower academic achievement; and (d) vague, philosophical statements allow social and political agenda to replace knowledge and skills which was not the intent of the legislature in 1990; (2) students and teachers need more specific academic direction; for example, Nevada recommends that students in the third-grade be able to solve 60 multiplication facts with products through 45, in five minutes with 95% accuracy, which is an academic and measurable goal wherein skills are taught first, then application and higher level thinking follow; (3) Kentucky's outcomes require "becoming and remaining mentally and emotionally healthy", and lists such vague ideas as "emotional, social, and psychological readiness for effective parenting."; (4) as a parent and a teacher, she wanted academic guidelines and asked why the Department did not answer her questions such as: (a) What does a third-year nongraded primary student actually "need to know" or "be able to do" before moving on to fourth-grade; and (b) What skills are needed; (5)(a) the KIRIS tests, content guidelines, and outcomes reveal the attitudes and opinions that are important to those in power; (b) when very young students are asked to write portfolio papers about suicide being justified, KIRIS test questions about solving the homeless problem, and assignments requiring students to secretly survey parent's caffeine or tobacco use, something is wrong; (6) until the Subcommittee has read every KIRIS item, every page of *Transformations* (the curriculum framework), and the latest version of the content guidelines, legislators cannot really know how the outcomes are being interpreted; and (7) those who continue to be so vocal about problems with KERA have spent countless hours in this research and are concerned because of things they see in KERA's own documents and in the classroom; (8) what began as a worthy goal to improve education has been used to force non-academic agenda into the classroom. Ms. Kelley referred the Subcommittee to a recent Courier Journal article which included examples of a math and science KIRIS question and scoring guides. She stated that the scoring guide indicated that a student could earn the highest score of "4" for giving the wrong answer on a simple multiplication table if he was "wordy" enough in his explanation, while a student who gives the right answer can only earn a score of "2" if he doesn't explain in sentence form.

In response to Senator Preston's question, Ms. Kelly explained that not only the expectations, but also the content guidelines are "nonacademic" in nature. She gave examples from the social studies and practical living sections to indicate that detailed language requiring the study of math, history and literature is missing, and stated that the expectations and content guidelines promote social issues rather than education. Ms. Kelly stated that: (1) as a vocal critic of KERA, the Department has invited and allowed her to be involved in the review of much of the KIRIS assessment materials to offer suggestions; (2) in her opinion, the test questions are written with an extreme feminist and environmentalist agenda; and (3) the Department required her to sign a nondisclosure form prohibiting her from discussing specific examples of KIRIS test questions.

Senator Preston stated that he was concerned that the Department would require persons to sign a nondisclosure form relating to test questions which have already been administered to students. Ms. Kelly explained that: (1) the Department informed her that a certain percentage of the test questions are reused, and therefore, cannot be released to the public; (2) some of the questions asked the students to survey their parent's caffeine or tobacco use for a week; and (3) some of the questions are not what the legislature intended students to learn.

Representative Lee stated that he was concerned that test questions remain confidential as public funding and employee time and expertise has been expended to create such assessment tools. Ms. Kelly agreed, but stated that she was concerned that the Department has made every effort not to address parents concerns or answer questions about the tests.

Representative Allen stated that once the test is given, the test is then "public" because many students can recall the test. He requested that the Subcommittee request the KIRIS questions for its review in order to see what types of questions are being asked. Representative Allen stated that many parents are concerned about KERA, and that parents should have input because children belong to their parents, not the school.

Ms. Kelly suggested that the Subcommittee also request to review the Department's scoring guides used with each test, because the guides reveal much about what the Department expects students to learn.

Chairman Kerr stated that: (1) he requested copies of some tests after receiving calls from constituents; (2) instead of measuring the student's ability to comprehend what he read, the reading materials were evidence of a social goal to prompt different perspectives or ideas on how a particular problem should be handled, depending upon whether the student was a liberal or a conservative.

Peg Jones, a parent and adult education business instruction from Corbin stated that she: (1) began examining KERA's reforms two years ago by: (a) observing in classrooms, (b) talking with teachers; and (c) reading extensively; (2) was repeatedly directed to the learner outcomes as the blueprints for KERA's curriculum; (3) expected a comprehensive plan remedying Kentucky's failures in teaching basic literacy and math skills combined with rigorous academic content; (4) found the goals to be vague, subjective statements incapable of being measured as illustrated by the following example: (a) Goal 1.11, the only statement referring to writing skills, provides: "Students write using appropriate forms conventions, and styles to communicate ideas and information to different audiences for different purposes"; and (b) the specific mechanics of writing, such as proper grammar, spelling, sentence structure, and paragraphing, are omitted. She asked why details that would promote consistency in teaching and accuracy in testing are excluded from the curriculum guidelines, and

was told by the Department that the: (1) goals and outcomes are intentionally broad so that every school can interpret and apply them as needed; and (2) details are in supporting materials and teacher training.

Ms. Jones stated that she had never received a consistent response from the Department when asked about KERA's philosophies and goals. One curriculum coordinator summarized the outcomes and supporting *Transformations Curriculum Framework* by stating that a teacher's interpretations depended upon: (1) which college the teacher attended; (2) which training workshops the teacher attended, and (3) who was teaching each workshop. This conflicting interpretation of KERA explained why parents receive inconsistent information about teaching strategies, phonics, grammar, spelling, and basic math skills. If a curriculum blueprint is necessary it must be specific, academically rigorous, and measurable. The current outcomes do not meet any of these criteria.

Ms. Jones requested that the Subcommittee find the academic expectation administrative regulation deficient, and that the Academic Standards written by the Family Foundation by considered as the replacement.

Shirley Daniel, Eagle Forum of Kentucky, stated that: (1) she supported the recommendations of the Campaign for Academic Renewal in Education, CARE; (2) CARE promotes real standards for real reform; (3) the academic expectations represent vague standards that "omit important historical and literary figures from the curriculum"; (4) Thomas Payne wrote a pamphlet over two hundred (200) years ago called "Common Sense" which argued for the American people to declare their independence from Great Britain, and common sense now dictates that we declare our independence from KERA's vague, impossible-to-measure academic expectations; (5) the academic expectations do not set credible standards; (6) allowing these vague standards to be promulgated as an administrative regulation insults the integrity of the legislators who passed KERA amidst such high hopes for true reform in 1990; (7) common sense dictates that these academic expectations cannot be enforced with a system of assessment based upon them; (8) a poll taken by the Kentucky Institute for Education Research indicates there is widespread distrust of the KIRIS test even though there has been an active campaign by the media, legislators and government-business partnerships to promote the KERA goals; (9) common sense says "you can fool all the people some of the time, but you can't fool all the people all the time."; (10) parents are being fooled about real student achievement, and should be able to compare their child's achievement to other students in the same grade; (11) students should be held accountable for their own achievement but there is no accountability under academic expectation; (12) educators should return to individualized student assessment which fosters individual accountability; (13) standardized achievement tests provide reliability and accountability; (14) the academic expectations will only continue to cause further embarrassment; (15) trust cannot be restored to education reform until the vague, unmeasurable, and untestable "academic expectations" are replaced with "real standards for real reform"; (16) real academic standards would once again place teachers in positions of being certain of their role and able to convey to students a clear, uncompromising set of standards; (17) teachers' morale is suffering while students are insulted by vapid questions for which acceptable answers are subject to the latest political winds that blow in the with the latest politically correct fad; (18) just as common sense called for local participatory government for the Colonists, it now requires that Kentuckians receive that local control that legislators thought they were giving their constituents but which turned out to be empty rhetoric instead; (19) CARE's policies would: (a) restore true local control by limiting the broad, sweeping powers of the appointed state school board; (b) provide for more local control and decision-making by allowing school-based councils to decide how and whether to implement the controversial primary program; (c) protect the privacy of students and their families by restricting the kind of information the state can gather and by placing limitations on how that information is used; common sense dictates that education reform can only be saved by adopting the proposals offered today by the Campaign for Academic Renewal.

Representative Lee asked why Ms. Daniel believed there had been a decline in local school district control of educational curricula. She stated that: (1) local schools lack true local control as long as their feet are being held to the fire by the subjective KIRIS assessments and the Department; (2) site-based councils should have control over their curriculum, however, they are not free from KIRIS assessments which determine whether their schools are even allowed to operate at a local level; (3) while these councils have the opportunity to develop coursework, she believes that most do not because they are held hostage by the Department to perform well on the KIRIS assessments; and (4) the KIRIS assessment, the expectations and the goals drive curriculum.

Dena Falon and Victoria Webb, concerned parents from Jefferson County, stated that: (1) they do not feel their schools should not advance children to the next grade if they are not reading at a level equal to their peers; (2) their children should not be included in mixed grade settings, nor with children who have learning disabilities; and (3) instead of educating their children, KERA is "dumbing" them.

Representative Lee stated: (1) that the "Chapter One" reading program is helpful and very effective; (2) the Hardin County school system has an evaluation program available for children who have been identified with reading problems.

Camille Wagner, Parents and Professionals Involved in Education, stated that: (1) at the Department's public hearing, many legitimate concerns were raised regarding the learner outcomes, which were either ignored or answered carelessly and flippantly by the Department in its Statement of Consideration; (2) although the Department has deferred this administrative regulation 3 times, it has changed only one word during the 3 months following the public hearing; (3) it appears that the department does not care that: (a) many people have made elaborate arrangements to be away from their work; (b) plan child care; (c) prepare testimony; and (d) make the long trip to Frankfort; (4) Chairman Kerr's thoughtfulness in letting individuals testify is appreciated since the Department requested a deferral too late to notify people not to come; (5) the Department appears to be afraid to expose itself to the questions of an informed citizenry, and has put itself in a position to have one month or more to study today's testimony and prepare its rebuttal.

Ms. Wagner asked: (1) whether the 3 deferrals had resulted in any change; (2) what important change in the administrative regulation has taken place to justify the inconvenience the Department has caused the people who took time to involve themselves in this process; (3) where is the Department; (4) why couldn't the Department send at least one of its hundreds of tax funded employees a few blocks to answer citizen's questions; (5) whether the Department was accountable to anyone; (6) why was each deferral requested; (7) how long will it be before this administrative regulation is actually heard; and (8) is there a way to prevent the Department from deferring an administrative regulation by simply not showing up.

Senator Smith stated that he also would like the Department to answer the public's questions.

Geri Wenta, from Louisville, stated that: (1) phonics is not being taught in outcome-based education programs; and (2) children should be taught phonetically to be given the basic foundation needed for reading comprehension and skills to think in abstract terms.

In response to a statement made from a member of the audience, Senator Smith stated that he was aware of an erroneous interpretation of statutory language, interpreted by some of the public to be a "gag order", or provision that stifled a person's right to speak or be critical of KERA. He assured the speaker that no statutory language exists that prohibits the exercise of one's constitutional right to communicate opinions about KERA.

Chairman Kerr noted that he: (1) often hears of teachers feeling intimidated or reluctant to criticize KERA or the school administration; and (2) was also not aware of any legislation passed by the General Assembly that would prohibit anyone from criticizing KERA.

The Subcommittee approved a motion to send a letter and audio tapes of the testimony to Commissioner Thomas C. Boysen and ask him to address, in writing, before the next Subcommittee meeting, the issues raised in the Department's Statement of Consideration and at this meeting.

Office of Instruction

704 KAR 3:455. Instructional material and textbook adoption process.

Cabinet for Human Resources: Department for Social Services: Children's Residential Services

905 KAR 7:240. Kentucky Educational Collaborative for State Agency Children.

OTHER BUSINESS:

Cabinet for Human Resources: Department for Social Services: Child Welfare

905 KAR 1:300. Standards for child caring facilities. Pursuant to Chairman Kerr's instructions, Subcommittee Staff had prepared and transmitted a memorandum relating to the: (1) licensing of child caring facilities; and (2) statutory exemption permitting the use of corporal punishment for church related, privately operated child caring facilities found in KRS 199.640(3). The analysis of applicable statutes in the memorandum concluded that the: (1) administrative regulation did not contain a cross-reference to the statutory exemption; (2) Cabinet's "Survey Instrument" should make it clear that a facility exempted from the ban on corporal punishment by KRS 199.640(3) would not be found deficient or denied licensure for administering corporal punishment. In addition, the memorandum raised the issue of the applicability of sections of KRS Chapter 13A governing the incorporation by reference of material to the contracts with facilities that are required by the Cabinet for the placement of committed children.

At the September, 1994 meeting of the Subcommittee, the Cabinet agreed to respond to issues relating to the compliance of administrative regulation provisions governing the licensing of child caring facilities provisions with the provisions of KRS 199.640(3) that establish an exemption from the ban on corporal punishment for church-related, privately operated child caring facilities.

Pursuant to Subcommittee instruction, prior to the October, 1994 Subcommittee staff discussed the issues with facility operator, and Cabinet personnel. The Cabinet agreed to file a Notice Of Intent To Promulgate an administrative regulation to: (1) add a cross-reference to KRS 199.640(3); and (2) amend the "Survey Instrument" used by the Division of Licensing and Regulation: (a) to state the KRS 199.640(3) exemption from the ban on corporal punishment for church related, privately operated child caring facilities; and (b) make it clear that such facilities will not be determined to have violated applicable law and administrative regulation because they administer corporal punishment. Subcommittee staff and Cabinet personnel agreed that, pursuant to KRS 605.090, KRS 605.100, and KRS 605.010(10), the Cabinet is: (a) granted plenary authority in the placement of committed children; and (b) may refuse to place a committed child in a facility that is permitted to administer corporal punishment.

Subcommittee staff: (1) informed the Subcommittee of the meetings with the Cabinet; (2) summarized the issues raised, and the agreement reached with the Cabinet, and stated that concerned facility operator had been advised of the agreement and the legal basis for the agreement. With regard to the contracts signed by a facility prior to placement of a committed child by the Cabinet, Subcommittee staff and Cabinet personnel agreed to: (1) review the contracts to determine whether they were standard forms that are required by KRS Chapter 13A to be incorporated by reference; and (2) make a recommendation to the Subcommittee.

In response to questions by Representative Allen: (1) Subcommittee staff stated that the corporal punishment policy of the facility that had raised the issues provided that corporal punishment was administered out of sight of the other children, with a second adult present; (2) Cabinet personnel stated that it agreed with the conclusions of the memorandum concerning the statutory exemption; and (3) children placed in private foster care by the Cabinet cannot be administered corporal punishment, because the exemption is restricted to church related, privately operated child caring facilities.

Chairman Kerr pointed out that the restriction against corporal punishment does not apply to people who have legally adopted a child, or to natural parents who have custody of their children.

The Subcommittee adjourned at 3:15 p.m. until November 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.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of October 12, 1994

The Interim Joint Committee on State Government reviewed administrative regulations of the State Treasury and the Department of Law that were referred by the LRC October 7.

The Committee determined that the following administrative regulations comply with statutory requirements:

20 KAR 1:020 - Unclaimed property; definitions; location of owners

20 KAR 1:040 - Unclaimed property; claims

20 KAR 1:050 - Unclaimed property; examination of holder records

20 KAR 1:060 - Unclaimed property; safe deposit boxes or other safekeeping repositories

20 KAR 1:070 - Unclaimed property; administrative hearing, appeals process

40 KAR 2:061 & E - Repeal of 40 KAR 2:060, business opportunities

40 KAR 2:080 & E - Prehearing procedure for revocation, suspension of registration, or refusal to renew certification of professional solicitors or fundraising consultants

40 KAR 2:090 & E - Hearing for revocation, suspension of registration, or refusal to renew registration of professional solicitor or fundraising consultant

40 KAR 2:100 & E - Notice of requested disclosure of percentage of gross revenue going to charitable organization

40 KAR 2:110 & E - Notice of intent to solicit form

40 KAR 2:120 & E - Business opportunity forms

40 KAR 2:130 & E - Hearing for revocation, suspension, or refusal to renew registration for business opportunities

40 KAR 2:180 & E - Statement of training for crematory operators form

40 KAR 2:190 & E - Crematory authority license application form

40 KAR 2:210 & E - Application for conducting more than two going-out-of-business sales in four years form

40 KAR 2:230 & E - Prehearing procedure for rejection of application for more than two going-out-of-business sales during a four-year period

40 KAR 2:240 & E - Hearing for denial of application for more than two going-out-of-business sales during a four-year period

The Committee determined that the following administrative regulations, as amended by the State Government Committee, comply with statutory requirements:

20 KAR 1:030 - Unclaimed property; escheating

Section 2, line 3 - Insert "August" before "September" and bracket and strike through "September."

40 KAR 2:070 & E - Procedure for registration of telephone solicitation merchants

Section 2, subsection (2), line 1 - Insert "TS 1, 10/94" before "OAG" and bracket and strike through "OAG effective July 15, 1994".

Form TS 1, 10/94, question 17B, line 3 - Bracket and strike through "ANY TELEPHONE SOLICITATION STATUTE" and insert in lieu thereof "KRS 367.46951 TO KRS 367.46991"

40 KAR 2:140 & E - Prehearing procedure for rejection, revocation, suspension, or refusal to renew registration for business opportunities

Section 1(3), line 3 - Insert "business opportunity" before "professional" and bracket and strike through "professional solicitor or fundraiser".

Section 2, subsections (4), (4)(a), (5)(a), and(5)(d) - Each time it appears, bracket and strike through "licensee or certificant" and insert "business opportunity".

Section 2(5)(a) - Bracket and strike through "on Board of Appraisers Answer Form."

40 KAR 2:150 & E - Cremation authorization form

Cremation Authorization Form CR-1, middle of page 1 - Delete ", and agrees to be responsible for all charges incurred with respect to this authorization".

Cremation Authorization Form CR-1, pages 2 and 3 - Move the second part of question #4, (lines 6 and 7, "Does deceased have....."), insert it as a new question #11 on page 3, and renumber existing questions #11 and #12 accordingly.

40 KAR 2:160 & E - Crematory annual report form

Crematory Annual Report Form CR-2 - Add a signature line.

40 KAR 2:170 & E - Preneed cremation authorization form

Preneed Cremation Authorization Form CR-3 - Insert new language at the very end of the form, to allow for witness signature, address and telephone (see suggested language, attached, submitted by the Department of Law).

40 KAR 2:200 & E - Application for removal sale permit form

Section 1, lines 1 and 2 - Delete "Permit" and insert "License" in lieu thereof.

Section 2, lines 1 and 4 - Insert "License" before "Permit" and bracket and strike through "Permit".

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates E2

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 E10

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 E20

The Subject Index is a general index of regulations published in VOLUME 21 of the Administrative Register, and is mainly broken down by agency.

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