# ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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SUNDAY, JANUARY 1, 1995

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**MEETING NOTICE**

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on January 9, 1995, at 10 a.m. in Room 131 of the Capitol Annex. See **tentative agenda** on pages 1631-1633 of this Administrative Register.

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

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

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# ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
# TENTATIVE AGENDA - January 9, 1995 at 10 a.m.
# Room 131, Capitol Annex

**(& E) - means that the emergency administrative regulation has been reviewed previously by the subcommittee**

## TREASURY

**State Treasury**

20 KAR 1:080. Linked deposit.

## STATE BOARD OF ELECTIONS

**Forms and Procedures**

31 KAR 4:090E. Mock elections for school children.

## DEPARTMENT OF LAW

**Attorney General**

40 KAR 1:030. Open records and open meetings decisions.

## AUDITOR OF PUBLIC ACCOUNTS

**Audits**

45 KAR 1:080. Standards for Title VI reporting. (Deferred from December)

## REVENUE CABINET

**Income Tax, General Administration**

103 KAR 15:080. Depreciation; calculation and recognition of "transition amount" .
103 KAR 15:090. Computing the amortization deduction for intangible assets.

## KENTUCKY EMPLOYEES' RETIREMENT SYSTEM

**General Rules**

105 KAR 1:120. Participation of agencies.
105 KAR 1:140. Contribution reporting.
105 KAR 1:150. Installment purchase procedures.
105 KAR 1:180. Death before retirement procedures.
105 KAR 1:190. Qualified domestic relations orders.
105 KAR 1:200. Retirement procedures and forms.
105 KAR 1:210. Disability procedures.
105 KAR 1:215. Administrative hearing.
105 KAR 1:230. Reemployment after retirement.
105 KAR 1:240. Death after retirement procedures.
105 KAR 1:260. Purchase of out-of-state service credit.
105 KAR 1:270. Special federal income tax withholding.
105 KAR 1:280. Federal restrictions on the purchase of service credit.

## GENERAL GOVERNMENT CABINET

**Board of Medical Licensure**

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

**Board of Embalmers and Funeral Directors**

201 KAR 15:100. Schools recognized by the board.

## TOURISM CABINET
### Department of Fish and Wildlife Resources

**Game**

301 KAR 2:221E. Waterfowl seasons and limits.
301 KAR 2:222E. Waterfowl hunting requirements. (Repeals 301 KAR 2:220)
301 KAR 2:223E. Waterfowl reporting requirements.
301 KAR 2:224E. Waterfowl hunting zones.

## ECONOMIC DEVELOPMENT CABINET
### Department of Agriculture

**Livestock Sanitation**

302 KAR 20:110. Treatment of imported mares.
302 KAR 20:120. Treatment of imported stallions.
302 KAR 20:130. Treatment of contagious equine metritis.
302 KAR 20:140. Breeding shed for female equines.
302 KAR 20:180. Restrictions equine viral arteritis.

**Weights and Measures; Motor Fuel**

302 KAR 79:010 & E. Testing and inspection program. (Amended After Hearing)

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

### Department for Environmental Protection

**Air Quality - General Administrative Procedures**

401 KAR 50:072. Acid rain permit.

401 KAR 50:076. Acid rain nitrogen oxides emission reduction program.

**Air Quality - Hazardous Pollutants**

401 KAR 57:015. National emission standard for beryllium.

401 KAR 57:021. National emission standard for mercury.

401 KAR 57:025. National emission standard for beryllium rocket motor firing.

401 KAR 57:030. National emission standard for vinyl chloride.

401 KAR 57:035. National emission standard for equipment leaks (fugitive emission sources).

401 KAR 57:045. National emission standard for inorganic arsenic emissions for glass manufacturing plant.

401 KAR 57:050. National emission standard for inorganic arsenic emissions from primary copper smelters.

401 KAR 57:055. National emission standard for inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities.

401 KAR 57:130. National emission standard for benzene emissions from coke by-product recovery plants.

401 KAR 57:270. National emission standard for benzene emissions from benzene storage vessels.

401 KAR 57:300. National emission standard for benzene emissions from benzene transfer operations.

**Air Quality - General Standards of Performance**

401 KAR 63:070. Compliance for early reductions of hazardous air pollutants.

### 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 7:095. Assessment of civil penalties. (Amended After Hearing) (Deferred from November)

**Performance Standards for Surface Mining Activities**

405 KAR 16:200. Revegetation. (Amended After Hearing) (Deferred from November)

**Performance Standards for Underground Mining Activities**

405 KAR 18:200. Revegetation. (Amended After Hearing) (Deferred from November)

## JUSTICE CABINET

### Department of Corrections

**Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:020E. Corrections policies and procedures. (Agency Requests Deferral)

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:070E. Kentucky Correctional Institution for Women. (Agency Requests Deferral)

501 KAR 6:130. Western Kentucky Correctional Complex.

### Department of State Police

**Driver Training**

502 KAR 10:035 (& E). Commercial driver's license skill testing.

## EDUCATION, ARTS AND HUMANITIES CABINET
### Department of Education
### Office of District Support Services

**School Administration and Finance**

702 KAR 3:275. School district tax rate formulas. (Amended After Hearing)

## LABOR CABINET

**Department of Workers' Claims**

803 KAR 25:089 (& E). Workers' compensation medical fee schedule for physicians. (Repeals 803 KAR 25:090)
803 KAR 25:091 (& E). Workers' compensation hospital fee schedule.
803 KAR 25:110 (& E). Workers' compensation managed health care plans.
803 KAR 25:120. Training or education programs eligible for retraining incentive benefits.

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

**Heating, Ventilation and Air Conditioning Licensing Requirements**

815 KAR 8:010. Master heating, ventilation and air conditioning (HVAC) contractor licensing requirements.
815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.
815 KAR 8:030. Apprentice heating, ventilation, and air conditioning (HVAC) mechanic registration and certification requirements.

## CABINET FOR HUMAN RESOURCES
### Department for Health Services

**Emergency Medical Services** (The following three emergencies were deferred from December)

902 KAR 14:030E. License procedures and fee schedule for ambulance service providers.
902 KAR 14:040E. Ground ambulance service providers and patient emergency medical services. (Repeals 902 KAR 20:117)
902 KAR 14:050E. Air ambulance providers. (Repeals 902 KAR 20:155)

**Health Services and Facilities**

902 KAR 20:320. Psychiatric residential treatment facility operation and services.

### 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)

### Department for Medicaid Services

**Medicaid Services**

907 KAR 1:009E. Physicians' services. (Deferred from December)
907 KAR 1:010E. Payments for physicians' services. (Deferred from December)

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

**Notice of Intent**

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**

After the Notice of Intent process, 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

### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Date: December 6, 1994
Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 5:130**, Student application.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 1 of the administrative regulation governing the subject matter listed above, particularly, the process by which a student may apply for a KHEAA Grant.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 10 a.m., at 1050 U.S. 127 South, Suite 102, 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

(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 Kentucky Higher Education Assistance Authority 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 application for a KHEAA Grant is KRS 164.744(2), 164.753(4), 164.780 and 164.785.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 5:130, as follows: Section 1 of the above cited administrative regulation currently requires a student to complete and submit in accordance with the instructions provided the 1994-95 Free Application for Federal Student Aid (FAFSA). The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to require the submission of the 1995-96 Free Application for Federal Student Aid (FAFSA) to award grants for the upcoming 1995-96 academic year.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed amendment is necessary to update the version of the Free Application for Federal Student Aid (FAFSA) that is used for the KHEAA Grant programs, consistent with its use for other programs of student financial assistance.

(d) The benefits expected from the administrative regulation are: The student can use a single application form for KHEAA grants and institutional and federal programs of student financial assistance at no processing cost to the student.

(e) The administrative regulation will be implemented as follows: The administrative regulation will require that a student complete and submit in accordance with the instructions provided the 1995-96 Free Application for Federal Student Aid (FAFSA) in order to be considered for a KHEAA Grant.

Date: December 6, 1994
Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 5:140**, KTG award determination procedure.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 4(4) of the administrative regulation governing the subject matter listed above, particularly, increasing the KTG Grant award amount from $1200 to $1500.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 10 a.m., at 1050 U.S. 127 South, Suite 102, 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

(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 Kentucky Higher Education Assistance Authority 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 a KTG Grant is KRS 164.744(2) to 164.753(4), 164.780, 164.785

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 5:140, as follows: Section 4(4) of the above cited administrative regulation currently provides for a maximum $1200 KTG Grant per year. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to increase the annual KTG award amount to $1500.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed amendment is necessary to increase the KTG award amount per year.

(d) The benefits expected from the administrative regulation are: The KTG award amount has been $1200 per year since 1986. Since 1986, the costs of attending a private Kentucky college have increased by at least 12.9%. The increase of $3000 in the KTG award amount will enhance the ability of Kentucky residents to afford private college costs and therefore allow Kentucky residents the choice of educational opportunities.

(e) The administrative regulation will be implemented as follows: KTG awards for the 1995-96 academic year will be increased by $300 to $1500 per year.

Date: December 6, 1994
Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 5:160**, Disbursement procedures.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 2 of the administrative regulation governing the subject matter listed above, particularly, the process by which KHEAA grants are disbursed.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 10 a.m., at 1050 U.S. 127 South, Suite 102, 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

(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 Kentucky Higher Education Assistance Authority 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 application for a KHEAA Grant is KRS 164.744(2), 164.753(4), 164.780 and 164.785.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 5:160, as follows: Section 2 of the above cited administrative regulation currently provides that the KHEAA grant funds shall be disbursed by the authority twice during an academic year to educational institutions for subsequent delivery to eligible students. The first disbursement of KHEAA grant funds by the authority to educational institutions shall be made in August for subsequent delivery by the institution to eligible students enrolled for a semester or quarters beginning not earlier than July 1 and not later than December 31. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that the grants shall be made to eligible students enrolled for a semester or quarters beginning not earlier than June 1.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed amendment is necessary to allow disbursement for eligible students enrolled for a semester or quarters beginning not earlier than June 1.

(d) The benefits expected from the administrative regulation are: The regulation will allow for disbursement for eligible students enrolled for a semester or quarter beginning not earlier than June 1.

(e) The administrative regulation will be implemented as follows: The administrative regulation will provide for disbursements of KHEAA grant funds.

Date: December 6, 1994
Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 12:060**, Cancellation and payment of refund.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to the administrative regulation governing the subject matter listed above, particularly, provisions for administrative fees upon cancellation of the Kentucky Higher Education Assistance Authority's Kentucky educational savings plan trust.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 10 a.m., at 1050 U.S. 127 South, Suite 102, 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

(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 Kentucky Higher Education Assistance Authority 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 transfer of savings plan trust funds is KRS 164A.310(2), (11), 164A.325(5), 164A.330(10), and 164A.345.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 12:060, as follows: Section 2 of the above cited administrative regulation currently requires that the administrative fee upon cancellation shall be the lesser amount of two percent of the total balance in the participant's account or $25. That section of the regulation will be amended to conform to the definitions contained in 11 KAR 12:010, Section 1(5), provide that the administrative fee will be the lesser amount of two percent of the amount refunded or $25 dollars.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed amendments are necessary to conform to the definitions contained in 11 KAR 12:010, Section 1(5).

(d) The benefits expected from administrative regulation are: The amendment will make the regulations internally consistent.

(e) The administrative regulation will be implemented as follows: The administrative regulation will provide that the program administrator will assess an administrative fee according to the regulation.

Date: December 6, 1994

Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 12:070**, Benefits payable from the Kentucky educational savings plan trust program fund.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to the administrative regulation governing the subject matter listed above, particularly, the process by which the Kentucky Higher Education Assistance Authority's Kentucky educational savings plan trust disburses trust funds.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 10 a.m., at 1050 U.S. 127 South, Suite 102, 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

(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 Kentucky Higher Education Assistance Authority 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 transfer of savings plan trust funds is KRS 164A.310(2), (7), (9), 164A.325(7), (9), 164A.330(5), 164A.345, and 164A.350.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 12:070, as follows: Section 4 of the above cited administrative regulation currently requires that the program administrator shall refund the balance of payments and investment income remaining in the account in accordance with KRS 164A.350, unless the participant submits either a notice to delay benefits under the participation agreement or a notice to use benefits. That section of the regulation will be amended to provide that if the trust does not receive a completed notice to use trust benefits or a notice to delay trust benefits within a specific time frame, the program administrator shall refund the balance of payments and investment income remaining in the account in accordance with KRS 164A.350, and will provide for a limit on delays in disbursing benefits. Section 5 of the above cited administrative regulation currently requires that the program administrator pay the balance of the unused benefits to the participant upon the beneficiary's graduation. That section of the regulation will be amended to provide that the account may be continued if the beneficiary plans to attend another institution.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed amendments are necessary to provide a course of action for the program administrator in the event that the participant does not inform the program administrator as to the disbursement of benefits after the beneficiary becomes eligible and to provide for flexibility in the program.

(d) The benefits expected from administrative regulation are: The program administrator will be able to more efficiently administer the trust accounts in accordance with the trust purposes.

(e) The administrative regulation will be implemented as follows: The administrative regulation will provide that the program administrator will administer the trust funds in accordance with the regulation's requirements for disbursements.

## DEPARTMENT OF PERSONNEL

Date: December 8, 1994
Department of Personnel

(1) Health benefits - **101 KAR 4:010.**

(2) The Department of Personnel 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 January 30, 1995, at 10 a.m., at 200 Fair Oaks Lane, Fifth Floor, Conference Room 508, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or and 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 January 30, 1995, 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 Personnel, Office of the Commissioner, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, (502) 564-7430.

(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 person 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 of Personnel 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 health benefits is KRS 18A.2282.

(b) The administrative regulation that the Department of Personnel intends to promulgate will not amend an existing administrative regulation. This regulation will provide all persons, including elected public officials who are regularly employed by any department, board, agency or branch of state government and are contributing members of any one of the retirement systems administered by the states including federally-funded time-limited employees, and persons who must fulfill the requirements of the state board of elementary and secondary education with health benefits through the state employees benefit fund.

(c) The Necessity and Function of the proposed administrative regulation is a follows: KRS 18A.2282 requires the Department of Personnel to adopt rules with regard to the administration of the state employee benefit fund; the conditions under which an employee may participate in or withdraw from the fund, and the procedure by which an employee is to contribute to the fund; insure that the fund is actuarially sound; and to insure the integrity of the fund and to insure that the fund be used solely for the purposes specified in that section.

(d) The benefits expected from the administrative regulation is: A viable alternative for state employees to commercial health insurance provided through the employee benefit fund.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will establish rules concerning the administration of the state employee benefit fund including the conditions under which employees may participate in or withdraw from the fund and contribute to the fund. The proposed regulation will also adopt rules to ensure that the fund is actuarially sound, to provide for the fiscal integrity of the fund and to mandate that the fund be used only for the purposes permitted by KRS 18A.2282.

## KENTUCKY INFRASTRUCTURE AUTHORITY

Date: December 15, 1994
Kentucky Infrastructure Authority

(1) Regulation Number and Title: **200 KAR 17:010.** Guidelines for infrastructure revolving fund.

(2) The Kentucky Infrastructure Authority 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 January 30, 1995, at 9 a.m., in Room 386, Capitol Annex at 702 Capitol Avenue, 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 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Infrastructure Authority, Suite 261 Capitol Annex, 702 Capitol Avenue, 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 Kentucky Infrastructure Authority 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 infrastructure revolving loan fund is KRS 224A.113 and 224A.070(1).

(b) The administrative regulation the authority intends to promulgate will amend 200 KAR 17:010 as follows: (Section 1(3) will be amended to change the name of the Office of Investment and Debt Management to the Office of Financial Management and Economic Analysis, (Section 4) will be amended to reflect the current addresses of the Department of Local Government and the Kentucky Infrastructure Authority, (Section 6(3)) will be amended to clarify how the authority establishes interests rates using market and income data and (Section 9) will be amended to state the authority's right to collect an administrative fee from borrowers.

(c) The effect of this change is to accurately list office names and addresses and to clarify how rates are set, especially for lower income applicants and to set forth the authority's right to collect an administrative fee.

(d) The proposed amendment should provide applicants with current information and establish the method the authority uses to set interest rates and fees.

(e) The administrative regulation will be implemented as follows: The name and address changes are simply an informational clean-up and implementation of the program will not change as a result. In regard to the setting of interest rates and fees, staff will follow the regulations in determining appropriate rates and fees.

December 15, 1994

Kentucky Infrastructure Authority

(1) Regulation Number and Title: **200 KAR 17:050**. Guidelines for federally assisted wastewater revolving fund.

(2) The Kentucky Infrastructure Authority 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 January 30, 1995, at 9 a.m., in Room 386, Capitol Annex at 702 Capitol Avenue, 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 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Infrastructure Authority, Suite 261 Capitol Annex, 702 Capitol Avenue, 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 Kentucky Infrastructure Authority 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 infrastructure revolving loan fund is KRS 224A.113 and 224A.070(1).

(b) The administrative regulation the authority intends to promulgate will amend 200 KAR 17:050 as follows: (Section 7(3)) will be amended to change the data base used to determining which loan applicants qualify as low income for purposes of interest rate determination and other sections including (Section 1(10) and (12)), (Section 3), (Section 4(1) and (2)), (Section 6), (Section 7(2)(4)(5)(6) and (7)), (Section 8(3)), (Section 9(1)), (Section 10) and (Section 11), will be amended as a general clean-up of the regulation.

(c) Currently, loan applicants are assigned interest rates based on county median family income data. Some low income cities feel that they are being penalized because they are located in a county, that taken as a whole is high income. In addition, "family" income data excludes single persons and unrelated persons living together from the count.

(d) The proposed amendment should provide the lowest rates to the lowest income loan applicants and the general clean-up will provide current information regarding addresses, dates and application forms.

(e) The administrative regulation will be implemented as follows: County loan applicants will have their interest rates set by the application of county household income data to statewide median income. City loan applicants will have their interest rates set by the application of city household income to statewide median. Other eligible applicants such as water districts will be governed by the location of the majority of the users they serve or by an averaging of more than one city or county. General clean-up language will be followed by program staff in administering the program.

**TOURISM CABINET**
**Department of Fish and Wildlife Resources**

Date: December 15, 1994
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 5:001**, Definitions; **301 KAR 5:010**, License agent selection criteria; **301 KAR 5:020**, License agent requirements and responsibilities.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, 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 January 30, 1995, 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, Kentucky 40601.

(b) On the 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 an administrative regulation governing license sale agents is KRS 150.195.

(b) The administrative regulations that the department intends to promulgate will not amend an existing administrative regulation. 301 KAR 5:001 will define the terms used in regulations concerning licensing agents. 301 KAR 5:010 will establish criteria for selecting agents to sell hunting and fishing licenses and permits. 301 KAR 5:020 will specify reporting, bookkeeping, fee remittance and general responsibilities of agents who sell hunting and fishing licenses and permits for the department; establish fees to be retained by agents; specify which licenses are to be sold by license agents; require agents to sign an agreement setting forth their duties and responsibilities as agents of the department; and specify procedures for revoking agent status and conducting appeals of revocation.

(c) The necessity and function of the proposed administrative regulations are, as required by KRS Chapter 150, to establish (1) the number and distribution of license agents in each county; (2) the requirements for persons, other than county clerks, to sell licenses and permits for the department; (3) matters relating to the remittance of license and permit fees and procedures for accountability of licenses and permits and the fees from their sale; (4) procedures for revoking or suspending agent status; and hearing procedures for appeal of a suspension or revocation of agent status.

(d) The benefits expected from these administrative regulations are standardized agent selection criteria and an appropriate number of license agents in each county; and uniform responsibilities and requirements for becoming and agent and retaining agent status.

(e) The administrative regulations will be implemented as follows: Prospective agents will apply to the department and be selected based on criteria established by this regulation; the department will constantly monitor agent reporting and remittance of fees.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Environmental Protection**
**Division of Water**

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division of Water

(1) The subject matter of the administrative regulations to be amended is: **401 KAR 5:001**, Definitions of terms used in 401 KAR Chapter 5; **401 KAR 5:026**, Classification of waters; **401 KAR 5:029**, General provisions; **401 KAR 5:031**, Surface water standards.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate four administrative regulations governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for January 31, 1995, at 7 p.m. EST, in the Auditorium of the Julian M. Carroll Academic Services Building, Kentucky State University, East 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 January 31, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, and phone number 502/564-3410.

(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 Water at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulations relating to water quality standards is KRS 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 33 USC 1288, 1313, 1314(b), 1342, 40 CFR Parts 116, 131, 136, 401-471.

(b) The administrative regulations that the Division of Water intends to promulgate will amend the four regulations listed in (1) above that constitute the water quality standards regulations of the cabinet. A summary of these amendments follows. 401 KAR 5:001 will be amended to add definitions that were formerly listed in 401 KAR 5:029, to clarify previous definitions, and add definitions that are needed as a result of amendments to the regulations. Of particular note are definitions of outstanding national resource waters, outstanding state resource waters, high quality waters, and use protected waters that are new classes of waters proposed for implementing the existing antidegradation policy. New definitions including and relating to biological integrity are also proposed to expand on existing narrative biological criteria. 401 KAR 5:026 will be amended to remove the outdated provision that prioritized use designation activities of the cabinet. New sections are added for procedures to reclassify waters as outstanding state resource waters (moved from 401 KAR 5:031), outstanding national resource waters, high quality waters, and use protected waters. The list of streams designated for specific uses is amended to move existing outstanding resource waters from the use designation list into the new classification list as outstanding state resource waters. New streams are added to the outstanding state resource water list based on discoveries of federally endangered or threatened aquatic species, and in one case, a section of the Licking River below Cave Run Lake Dam (River Mile 165.0 to River Mile 154.5) was added based on a highly diverse native fauna of freshwater mussels that provides for a unique aquatic environment within a particular region of the state. New uses are also designated for several streams based on new information, and one stream (a section of White Oak Creek in Greenup County) has warm-water aquatic habitat and primary contact recreation uses removed because historical hydrological conditions prevent the uses from being attained. 401 KAR 5:029 will be amended to include a new section that provides the procedures for implementing the existing antidegradation policy in outstanding national resource waters, outstanding state resource waters, high quality waters, and use protected waters. Changes are made to the mixing zone provisions to prohibit new zones of initial dilution in high quality waters and publicly owned lakes and reservoirs. New methods are added to limit the size of these zones where they are allowed. Mixing zone dimensions are clarified for streams, rivers, and publicly owned lakes and reservoirs. A new section is added which defines the procedures and conditions for allowing discharges to publicly owned lakes and reservoirs. 401 KAR 5:031 is amended to update numerical criteria for the protection of human health from fish and water consumption. An important addition is a criterion for dioxin (0.00000012 µg/l) based on protection of human health at the one in a million cancer risk level. Numerical criteria for the protection of aquatic life have also been updated. A narrative criteria for maintaining biological integrity in surface waters has been added and links this to the cabinet's Section 401 certification actions. A new section has been added which allows for an exception to criteria for individual dischargers that is based on a demonstration that meeting existing instream criteria will result in substantial and widespread economic and social impacts.

(c) The Necessity and Function of the proposed amendments are as follows: Federal regulations require that state water quality standards be revised at least every three years. These amendments are necessary to comply with the federal requirement. Their function is to clarify existing provisions, add new provisions which meet federal regulations, and implement KRS Chapter 224 which requires that the Natural Resources and Environmental Protection Cabinet provide for the prevention, abatement, and control of water pollution.

(d) The benefits expected from these amendments will be an improvement in the protection of human health from fish and water consumption, and a greater protection of aquatic life from polluting activities and substances. The antidegradation implementation provisions will further protect outstanding national resource waters and high quality waters in the Commonwealth and provide for an understanding of how existing and new dischargers to these waters will be affected.

(e) The administrative regulations will be implemented as follows: On and after the effective date of their adoption, the regulations will be implemented through the cabinet's existing regulatory programs.

**Division of Waste Management**

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet
Department of Environmental Protection
Division of Waste Management

(1) The subject matter of the administrative regulation, **401 KAR 42:005**, will define terms pertaining to underground storage tanks in accordance with KRS 13A.222(4)(e).

(2) The Natural Resources and Environmental Protection Cabinet intends to promulgate one (1) administrative regulation governing the subject matter listed above. For a copy of the draft regulation, contact the Division of Waste Management, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for January 31, 1995 at 10 a.m. EST in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five 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 January 31, 1995, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 221.

(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 Waste Management at the address listed above.

(7) Information relating to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing underground storage tanks is KRS 13A.222(4)(e), 224.10-100, 224.60-105, 224.60-137.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will not amend an existing administrative regulation.

(c) The necessity and function of the administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-137 requires the cabinet to promulgate regulations to establish standards for corrective action to protect human health and the environment, that shall be based upon the study performed by the Petroleum Storage Tank Environmental Assurance Fund Commission. KRS 13A.222(4)(e) requires that all definitions be defined within a separate administrative regulation and that the administrative regulation be the first administrative regulation within the specific chapter of the Kentucky Administrative Regulations Service to which the definitions apply.

(d) The benefit expected from this administrative regulation is: All definitions pertaining to underground storage tanks will be defined and located in compliance with KRS 13A.222(4).

(e) The administrative regulation will be implemented as follows: This regulation will establish definitions for all terms used within 401 KAR Chapter 42. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet
Department of Environmental Protection
Division of Waste Management

(1) The subject matter of the administrative regulation, **401 KAR 42:011**, is program scope, exceptions, deferrals, and interim prohibition.

(2) The Natural Resources and Environmental Protection Cabinet intends to amend the administrative regulation cited above. For a copy of the draft regulation and draft document incorporated by reference, contact the Division of Waste Management, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 31, 1995 at 10 a.m. EST in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five 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 January 31, 1995, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-225 ext. 221.

(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 Waste Management 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 underground storage tanks is KRS 224.10-100, 224.60-105, 224.60-137.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend 401 KAR 42:011 to eliminate definitions and adopt federal language pertaining to applicability, exceptions, deferrals, and interim prohibition.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment.

(d) The benefit expected from this administrative regulation is: Compliance with KRS 13A.222(4) and a clarification of applicability, exceptions, deferrals, and interim prohibitions.

(e) The administrative regulation will be implemented as follows: This regulation will identify systems that are excluded for 401 KAR Chapter 42 administrative regulations, which systems are deferred from specific requirements within 401 KAR Chapter 42, and establish interim prohibition requirements for all deferred systems.

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet

Department of Environmental Protection
Division of Waste Management

(1) The subject matter of the administrative regulation, **401 KAR 42:020**, establishes performance standards for new UST systems.

(2) The Natural Resources and Environmental Protection Cabinet intends to amend the administrative regulation cited above. For a copy of the draft regulation and draft document incorporated by reference, contact the Division of Waste Management, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for January 31, 1995 at 10 a.m. EST in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five 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 January 31, 1995, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-225 ext. 221.

(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 Waste Management at the address listed above.

(7) Information relating to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing underground storage tanks is KRS 224.10-100, 224.60-105, 224.60-137.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend 401 KAR 42:020 by amending the notification of underground storage tanks form which is incorporated by reference.

(c) The necessity and function of the administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-137 requires the cabinet to promulgate regulations to establish standards for corrective action to protect human health and the environment, that shall be based upon the study performed by the Petroleum Storage Tank Environmental Assurance Fund Commission.

(d) The benefit expected from this administrative regulation is: An updated form will provide the Division of Waste Management the ability to track tank system activities which will include construction, leak detection, substances stored, and other items pertaining to UST systems.

(e) The administrative regulation will be implemented as follows: To register UST systems in compliance with 401 KAR 42:200, facilities shall use the amended notification form, incorporated by reference, to the Division of Waste Management.

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet
Department of Environmental Protection
Division of Waste Management

(1) The subject matter of the administrative regulation. **401 KAR 42:040**, is release detection for underground storage tank systems.

(2) The Natural Resources and Environmental Protection Cabinet intends to amend the administrative regulation cited above. For a copy of the draft regulation and draft document incorporated by reference, contact the Division of Waste Management, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for January 31, 1995 at 10 a.m. EST in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five 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 January 31, 1995, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 221.

(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 Waste Management at the address listed above.

(7) Information relating to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing underground storage tanks is KRS 224.10-100, 224.60-105, 224.60-137.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend 401 KAR 42:040 by incorporating by reference "Outline for Site Assessment for Leak Detection Compliance".

(c) The necessity and function of the administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment.

(d) The benefit expected from this administrative regulation is: A clarification of standards required for the site assessment used in determining appropriate leak detection methods to be used at the underground storage tank facility.

(e) The administrative regulation will be implemented as follows: Facilities will be required to follow the document incorporated by reference, "Outline for Site Assessment for Leak Detection Compliance" to determine if the leak detection method to be used is appropriate for the site and will be sufficient to meet the requirements of 40 CFR Part 280 Subpart D.

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet
Department of Environmental Protection
Division of Waste Management

(1) The subject matter of the administrative regulation, **401 KAR 42:060**, is release response and corrective action for UST systems containing petroleum or hazardous substances.

(2) The Natural Resources and Environmental Protection Cabinet intends to amend the administrative regulation cited above. For a copy of the draft regulation and draft documents incorporated by reference, contact the Division of Waste Management, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for January 31, 1995 at 10 a.m. EST in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five 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 January 31, 1995, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 221.

(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 Waste Management at the address listed above.

(7) Information relating to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing underground storage tanks is KRS 224.10-100, 224.60-105, 224.60-137.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend 401 KAR 42:060 by amending documents and forms incorporated by reference that pertain to site checks, site investigations, corrective action plans, initial abatement, well assessments and groundwater monitoring.

(c) The necessity and function of the administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-137 requires the cabinet to promulgate regulations to establish standards for corrective action to protect human health and the environment, that shall be based upon the study performed by the Petroleum Storage Tank Environmental Assurance Fund Commission.

(d) The benefit expected from this administrative regulation is a clarification and standardization of procedures to meet the requirements of the subject matter listed above.

(e) The administrative regulation will be implemented as follows: Facilities shall follow the appropriate outlines and complete the required forms when assessing the sites for suspected or confirmed releases into the environment.

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet
Department of Environmental Protection
Division of Waste Management

(1) The subject matter of the administrative regulation, **401 KAR 42:070**, is standards for out-of-service UST systems and temporary closure, permanent closure or a change is UST service.

(2) The Natural Resources and Environmental Protection Cabinet intends to amend the administrative regulation cited above. For a copy of the draft regulation and draft documents incorporated by reference, contact the Division of Waste Management, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for January 31, 1995 at 10 a.m. EST in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five 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 January 31, 1995, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 221.

(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 Waste Management at the address listed above.

(7) Information relating to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing underground storage tanks is KRS 224.10-100, 224.60-105, 224.60-137.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend 401 KAR 42:070 by amending the applicability and the documents and forms which are incorporated by reference.

(c) The necessity and function of the administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-137 requires the cabinet to promulgate regulations to establish standards for corrective action to protect human health and the environment, that shall be based upon the study performed by the Petroleum Storage Tank Environmental Assurance Fund Commission.

(d) The benefit expected from this administrative regulation is: The updated forms will provide the Division of Waste Management with information necessary for closure reviews. The documents pertaining to UST closure will provide clear standards for an appropriate assessment of a UST site as well as disposal guidelines to be used during UST closure.

(e) The administrative regulation will be implemented as follows: Facilities shall follow the appropriate outlines and complete the required forms when assessing a site for temporary closure, permanent closure, or a change in UST service.

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet
Department of Environmental Protection
Division of Waste Management

(1) The subject matter of the administrative regulation, **401 KAR 42:071**, is to establish optional closure requirements for sites that have notified the Division of Waste Management of their intent to permanently close underground storage tank systems prior to April 18, 1994 and have not received a closure letter from the Division of Waste Management indicating no further action is necessary.

(2) The Natural Resources and Environmental Protection Cabinet intends to promulgate one (1) administrative regulation governing the subject matter listed above. For a copy of the draft regulation and draft document incorporated by reference, contact the Division of Waste Management, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for January 31, 1995 at 10 a.m. EST in the Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five 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 January 31, 1995, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 221.

(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 Waste Management at the address listed above.

(7) Information relating to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing underground storage tanks is KRS 224.10-100, 224.60-105, 224.60-137.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will not amend an existing administrative regulation.

(c) The necessity and function of the administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-137 requires the cabinet to promulgate regulations to establish standards for corrective action to protect human health and the environment, that shall be based upon the study performed by the Petroleum Storage Tank Environmental Assurance Fund Commission.

(d) The benefit expected from this administrative regulation is: This regulation will provide a simplified set of closure criteria for owners of UST systems who notified the Division of Waste Management prior to April 18, 1994 of their intent to permanently close the UST system.

This should allow the closure of a large number of old sites for which owners and operators cannot locate basic site closure documentation.

(e) The administrative regulation will be implemented as follows: Facilities who have notified the Division of Waste Management prior to April 18, 1994 of their intent to permanently close underground storage tanks will have the option to follow the requirements within this administrative regulation to meet the requirements for permanent closure or follow the requirements specified in 401 KAR 42:070.

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet
Department of Environmental Protection
Division of Waste Management

(1) The subject matter of the administrative regulation, **401 KAR 42:080,** is classification of petroleum underground storage tank systems and listing of associated clean-up levels.

(2) The Natural Resources and Environmental Protection Cabinet intends to amend the administrative regulation cited above. For a copy of the draft regulation and draft document incorporated by reference, contact the Division of Waste Management, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for January 31, 1995 at 10 a.m. EST in the Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five 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 January 31, 1995, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 221.

(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 Waste Management at the address listed above.

(7) Information relating to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing underground storage tanks is KRS 224.10-100, 224.60-105, 224.60-137.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend 401 KAR 42:080 by amending the "Petroleum Underground Storage Tank System Facility Classification Outline" based upon the study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission in compliance with KRS 224.60-137.

(c) The necessity and function of the administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-137 requires the cabinet to promulgate regulations to establish standards for corrective action to protect human health and the environment, that shall be based upon the study performed by the Petroleum Storage Tank Environmental Assurance Fund Commission.

(d) The benefit expected from this administrative regulation is: An established classification scheme for petroleum underground storage tank systems and clean-up levels for petroleum in compliance with KRS 224.60-137.

(e) The administrative regulation will be implemented as follows: Facilities shall follow the incorporated outline to establish a site classification and determine the appropriate site specific clean-up levels.

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet
Department of Environmental Protection
Division of Waste Management

(1) The subject matter of the administrative regulation, **401 KAR 42:090,** is financial responsibility.

(2) The Natural Resources and Environmental Protection Cabinet intends to amend the administrative regulation cited above. For a copy of the draft regulation, contact the Division of Waste Management, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for January 31, 1995 at 10 a.m. EST in the Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five 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 January 31, 1995, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 221.

(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 Waste Management at the address listed above.

(7) Information relating to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing underground storage tanks is KRS 224.10-100, 224.60-105, 224.60-137.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend 401 KAR 42:090 by adopting federal language pertaining to financial responsibility.

(c) The necessity and function of the administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment.

(d) The benefit expected from this administrative regulation is: Owners and operators of underground storage tank systems will be provided additional options to meet the financial responsibility requirements.

(e) The administrative regulation will be implemented as follows: This regulation will be amended to include revised federal language which allows owners and operators additional options to meet the financial responsibility requirements.

Date: December 15, 1994
Natural Resources and Environmental Protection Cabinet
Department of Environmental Protection
Division of Waste Management

(1) The subject matter of the administrative regulation, **401 KAR 42:200**, establishes underground storage tank owner registration fees.

(2) The Natural Resources and Environmental Protection Cabinet intends to amend the administrative regulation cited above. For a copy of the draft regulation, contact the Division of Waste Management, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for January 31, 1995 at 10 a.m. EST in the Capital Plaza Tower, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of five 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 January 31, 1995 the hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Division of Waste Management, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225 ext. 221.

(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 Waste Management at the address listed above.

(7) Information relating to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing underground storage tanks is KRS 224.10-100, 224.60-105, 224.60-137.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend 401 KAR 42:200 to clarify fee schedules and registration responsibilities for owners of underground storage tank systems containing regulated substances.

(c) The necessity and function of the administrative regulation is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-150 requires the cabinet to levy and collect annual fees from owners of underground storage tanks containing regulated substances.

(d) The benefit expected from this administrative regulation is: Fee schedules and registration responsibilities of underground storage tank owners will be clarified.

(e) The administrative regulation will be implemented as follows: Facilities shall be required to submit the notification form and required fees within the specified time frames.

**Division for Air Quality**

Date: December 12, 1994
Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 63:068**, Accidental releases of hazardous substances. The subject matter of this proposed regulation relates to the necessity of the Division for Air Quality to adopt section 112(r) of Title III of the 1990 federal Clean Air Act Amendments. The adoption of this

rule is required for approval of Kentucky's Title V permitting program by the federal Environmental Protection Agency. The regulation will establish a list of chemicals and threshold quantities subject to accident prevention and risk management planning requirements.

(2) The Division for Air Quality intends to incorporate the federal accidental release and risk management planning rule by reference.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995 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 January 30, 1995, 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, (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 proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation relating to the accidental releases of hazardous substances regulation is 40 CFR Parts 9 and 68, 42 USC 7401-7671q, et seq., KRS 224.10-100 and 224.20-100.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will incorporate by reference the final federal rule which lists the toxic substances and threshold limits which would subject a source to accident prevention and risk management planning requirements. When the risk management planning program is finalized by the federal Environmental Protection Agency, the division will seek to amend this regulation to include that final rule.

(c) This proposed regulation is necessary for the division to implement and conduct a program deemed essential for the protection of the public health and the environment by the United States Congress and the Kentucky General Assembly. It is also a necessary requirement for Kentucky to obtain approval of its Title V permitting program.

(d) The promulgation of this administrative regulation will fulfill one of the requirements for federal approval of Kentucky's Title V permitting program. Implementation of the accidental release risk management planning program will result in enhanced protection of the Commonwealth's citizens and environment.

(e) This administrative regulation will be implemented by requiring that a risk management plan be submitted with a source's Title V permit application.

## KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD

Date: December 15, 1994

Kentucky Heritage Land Conservation Fund Board

(1) Subject matter of administrative regulation:

**418 KAR 1:010**, Definitions. The subject matter of the administrative regulation is definitions for 400 KAR Chapter 4.

**418 KAR 1:020**, Administrative procedures of the board. The subject matter of the administrative regulation is the administrative procedures of the Kentucky Heritage Land Conservation Fund Board and the repeal of 301 KAR 10:010, the administrative regulation which currently governs the board.

**418 KAR 1:030**, State agency projects. The subject matter of the administrative regulation is applications for projects funded pursuant to KRS 146.570(4)(a) through (e), the review and approval or denial of those applications, and agreements between the board and state agencies.

**418 KAR 1:040**, Grants. The subject matter of the administrative regulation is applications for grants funded pursuant to KRS 146.570(4)(f), the review and approval or denial of those applications, and agreements between the board and grantees.

**418 KAR 1:050**, Acquisition of land. The subject matter of the administrative regulation is procedures for the acquisition of land purchased with money from the Kentucky Heritage Land Conservation Land Fund.

**418 KAR 1:060**, Management of land. The subject matter of the administrative regulation is the management of land acquired with money from the Kentucky Heritage Land Conservation Fund.

**418 KAR 1:070**, Remedies. The subject matter of the administrative regulation is the remedies available to the board for failure to acquire land or expend money within certain time limits or maintain land for the purposes set forth in KRS 146.560.

(2) The Kentucky Heritage Land Conservation Fund Board intends to promulgate 418 KAR 1:010 through 1:070 governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the administrative regulations has been scheduled for Tuesday, January 31, 1995, at 9 a.m. EST at the Department for Natural Resources, 107 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 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 January 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Heritage Land Conservation Fund Board, c/o Commissioner, Department for Natural Resources, 107 Mero 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 Kentucky Heritage Land Conservation Fund Board 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 definitions is KRS 146.550, 146.560, 146.565, and 146.570.

The statutory authority for the promulgation of an administrative regulation relating to administrative procedures of the board is KRS 146.560.

The statutory authority for the promulgation of an administrative regulation relating to state agency projects is KRS 146.560, 146.565, and 146.570.

The statutory authority for the promulgation of an administrative regulation relating to grants is KRS 146.560, 146.565, and 146.570.

The statutory authority for the promulgation of an administrative regulation relating to acquisition of land is KRS 146.560(2) and 146.570(3).

The statutory authority for the promulgation of an administrative regulation relating to management of land is KRS 146.560(2) and 146.570(2) and (3).

The statutory authority for the promulgation of an administrative regulation relating to remedies is KRS 146.560(2) and 146.570(3).

(b) The administrative regulations that the board intends to promulgate will not amend an existing regulation. They will, however, replace 301 KAR 10:010, the administrative regulation which currently governs the board. They will also establish the administrative procedures of the board; establish requirements for projects and grants funded pursuant to KRS 146.570(4); establish procedures for the acquisition and management of land acquired with fund money; and set forth the remedies of the board for failure to maintain land for the purposes set forth in KRS 146.560.

(c) The Necessity and Function of the proposed administrative regulations are as follows: KRS 146.560 through 146.570 were amended in 1994 to alter the membership of the board and to require the board to promulgate administrative regulations necessary for the application for funds and review and approval of proposed projects and grants. The amendments also direct the board to promulgate regulations on land acquisition and contain requirements for management of land acquired with money from the Kentucky Heritage Land Conservation Fund. KRS 146.565 requires board approval as a prerequisite to acquisition of land and expenditure of funds using proceeds provided by KRS 146.570. Finally, KRS 146.570, in its amended form, provides local governments and state colleges and universities, as well as state agencies, with the opportunity to receive grant money. Existing administrative regulations do not comply with these amendments. The proposed administrative regulations meet these additional statutory mandates and are necessary to ensure that fund money is expended for acquisition and management of land and that land acquired is maintained in perpetuity for the purposes set forth in KRS 146.560.

(d) The benefits expected from the administrative regulations are: The administrative procedures of the board will be made available to the public. State agencies, local governments, and state colleges and universities will have the opportunity to acquire land and manage it for the purposes set out in KRS 146.560. These administrative regulations will set forth the requirements for applications for fund money and review and approval or denial of those applications. The administrative regulations will also ensure that fund money is properly expended and that land acquired with fund money is maintained in perpetuity for the purposes set forth in KRS 146.560.

(e) The administrative regulations will be implemented as follows: The board will work with state agencies, local governments and colleges to explain the Kentucky Heritage Land Conservation Fund Program. These administrative regulations will set forth the requirements for grant and project applications, and land acquisition and management, so that entities that qualify for fund money will be aware of the conditions of the program.

## KENTUCKY PAROLE BOARD

Date: December 12, 1994

Kentucky Parole Board

(1) Regulation Number and Title: **501 KAR 1:030**. Determining parole eligibility.

(2) Kentucky Parole Board 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 January 30, 1995, at 10 a.m., at the Kentucky Parole Board, 10th Floor Conference Room, State Office Building, 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael O'Connor, Attorney Supervisor, Kentucky Parole Board, Room 500, 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 Kentucky Parole Board 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 parole eligibility is KRS 439.340.

(b) The administrative regulation that the Kentucky Parole Board intends to promulgate will amend 501 KAR 1:030, as follows: Section

1(4) will be amended to define "Chair" as the Chairman of the Kentucky Parole Board. Section 3(2)(b) will be amended to reflect the transfer of the Kentucky Parole Board from the Department of Corrections to the Justice Cabinet for administrative purposes, and to include agencies that deal with victims of crimes in the list of agencies with which the board will communicate and cooperate. Section 3(2)(c) will be amended to add victims of crime to the list of citizens and officials from whom input is welcomed. Section 4(1)(h) will be amended to substitute the word "void" for "wipe out". Section 4(1)(n) will be deleted as unnecessary. Section 4(2) will be amended to delete the second sentence which lists specific instances when a board may consider inmates for parole prior to the normal eligibility date. Section 4(7) will be deleted as unnecessary. Section 5(4) will be amended to delete the procedure for requesting a reconsideration of an unfavorable parole decision, and to provide that an inmate may request an appellate review by the board within twenty-one (21) days of an unfavorable decision for limited, specific reasons.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation establishes the criteria for determining parole eligibility as required by KRS 439.340.

(d) The benefits expected from administrative regulation are: A clear and workable process for determining eligibility for parole.

(e) The administrative regulation will be implemented as follows: The existing regulation will be in effect until the amendments are approved and become final.

Date: December 12, 1994
Kentucky Parole Board

(1) Regulation Number and Title: **501 KAR 1:040**. Conducting parole revocation hearings.

(2) Kentucky Parole Board 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 January 30, 1995, at 10 a.m., at the Kentucky Parole Board, 10th Floor Conference Room, State Office Building, 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael O'Connor, Attorney Supervisor, Kentucky Parole Board, Room 500, 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 Kentucky Parole Board 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 conducting parole revocation hearings is KRS 439.340(3).

(b) The administrative regulation that the Kentucky Parole Board intends to promulgate will amend 501 KAR 1:040, as follows: All references to Chairman of the Kentucky Parole Board will be changed to Chair of the Kentucky Parole Board.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The existing regulation provides the procedure for the revocation of parole and the issuance of warrants. The amendment does not affect the procedure.

(d) The benefits expected from administrative regulation are: The existing regulation provides a clear and workable procedure for revocation of parole and the issuance of warrants. The amendment makes the term "Chair" consistent throughout the Parole Board regulations.

(e) The administrative regulation will be implemented as follows: When the regulation is final, the Chairman will be referred to as the Chair of the Kentucky Parole Board.

Date: December 12, 1994
Kentucky Parole Board

(1) Regulation Number and Title: **501 KAR 1:050**. Granting final discharge from parole.

(2) Kentucky Parole Board 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 January 30, 1995, at 10 a.m., at the Kentucky Parole Board, 10th Floor Conference Room, State Office Building, 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael O'Connor, Attorney Supervisor, Kentucky Parole Board, Room 500, 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 Kentucky Parole Board 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 granting final discharge from parole is KRS 439.330(1)(g), 439.354.

(b) The administrative regulation that the Kentucky Parole Board intends to promulgate will amend 501 KAR 1:050, as follows: Section 1 will be amended to delete the provision that the board shall consider a parolee for final discharge after ten (10) years service on parole.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The regulation establishes a set time period for the issuance of a final discharge from parole.

(d) The benefits expected from administrative regulation are: The amendment will clarify that all final discharges are requested by application.

(e) The administrative regulation will be implemented as follows: When the amendment is approved and final, it will become policy.

## DEPARTMENT OF CORRECTIONS

Date: December 14, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 2:020**, Department of Corrections: class D felons.

(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 January 31, 1995, 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 January 31, 1995, 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, 197.020 and 532.100.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 2:020, as follows:

1. Add definition for first incarceration shock treatment (FIST).

(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: December 14, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 2:040**, Department of Corrections: class D felons.

(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 January 31, 1995, 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 January 31, 1995, 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, 197.020 and 532.100.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 2:040, as follows: Amended for allowing a computer listing of class D felons and their transfer to county jails when funds and beds are available.

(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: December 14, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 2:050**, Department of Corrections: class D felons.

(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 January 31, 1995, 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 January 31, 1995, 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, 197.020 and 532.100.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 2:050, as follows:

1. Amended for allowing county jails to house class D felons if the legislature has funded them.

(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: December 14, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 2:060**, Department of Corrections: class D felons.

(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 January 31, 1995, 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 January 31, 1995, 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, 197.020 and 532.100.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 2:060, as follows:

1. Amended to allow class D felons to apply for the first incarceration shock treatment program.

2. Amended to state that jails will be paid $1.75 per day for routine medical care.

(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: December 14, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: preparole progress reports, involuntary medication, protective custody, and victims notification.

(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 January 31, 1995, 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 January 31, 1995, 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. Preparole progress reports (18-10-01) shall be amended to change the policy number to 18.16.

2. Involuntary medication (18.10) shall be added to provide procedures to forcibly treat an inmate with antipsychotic medication when the inmate is in danger to himself or others and when it is in his medical interest.

3. Protective custody (18.15) shall be amended to bring this policy into compliance with our standardized due process procedures.

4. Official release notification (25.11) shall be added to comply with KRS 197.170(1) regarding dissemination of information to individuals upon release of an inmate from departmental custody.

(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: December 14, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:110**, Roederer Correctional Complex: inmate access to and communication with staff, staff participation in professional organizations and conferences: provisions for leave and reimbursement for expenses, fiscal management: accounting procedures, agency funds, budget, inmate canteen services, fiscal management: audits, processing of invoices, property inventory, first aid and CPR training program, offender records, court trips, fire prevention, hazardous communication program, duties and responsibilities of the fire and safety officer, search policy and disposition of contraband, dining room guidelines, bed areas, health maintenance services: sick call and pill call, dental procedures and sick call, preliminary health evaluation and establishment of inmate medical records, suicide prevention and intervention program, first aid and CPR training program, emergency medical and dental care services, health records, use of pharmaceutical products, notifying inmate's families of admission and procedures for mail and visiting, job assignments, government service details, academic education program, library services, inmate clubs and organizations, religious services, social services and counseling, recreation and inmate activities and inmate discharge procedure.

(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 January 31, 1995, 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 January 31, 1995, 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 6:110, as follows:

1. Inmate access to and communication with staff (01-06-01) shall be amended to reflect new areas of the institution.

2. Staff participation in professional organizations and conferences: provisions for leave and reimbursement for expenses (01-09-01) shall be amended as to not duplicate information contained in the Kentucky Department of Finance regulation.

3. Fiscal management: accounting procedures (02-01-02) shall be amended to reflect current operating procedures at RCC.

4. Fiscal management: agency funds (02-01-03) shall be amended to reflect current operating procedures at RCC and the establishment of a staff canteen board.

5. Fiscal management: budget (02-02-01) shall be amended to reflect current operating procedures at RCC.

6. Inmate canteen services (02-02-05) shall be amended to reflect current operating procedures at RCC.

7. Fiscal management: audits (02-03-01) shall be amended to reflect current operating procedures at RCC.

8. Processing of invoices (02-04-02) shall be amended to reflect current operating procedures at RCC.

9. Property inventory (02-06-01) shall be amended to reflect structural change.

10. First aid and CPR training program (13-06-02) shall be amended to reflect a new policy number (04-01-02) and to include new areas of the institution.

11. Offender records (06-01-01) shall be amended to update Records Office operations.

12. Court trips (06-04-01) shall be amended to reflect current operating procedures at RCC and to delete attachments.

13. Fire prevention (08-01-01) shall be amended to reflect current operating procedures and to comply with state fire and safety regulations.

14. Control and use of flammable, toxic and caustic materials (08-08-01) shall be amended to reflect new subject title and to delete attachments.

15. Duties and responsibilities of the fire and safety officer (09-04-03) shall be amended to reflect current operating procedures at RCC.

16. Search policy and disposition of contraband (09-06-01) shall be amended to reflect current operating procedures at RCC and to delete attachments.

17. Dining room guidelines (11-03-01) shall be amended to reflect current operating procedures at RCC.

18. Bed areas (12-01-02) shall be amended to reflect new areas of the institution.

19. Health maintenance services: sick call and pill call (13-02-01) shall be amended to include new areas of the institution.

20. Dental procedures and sick call (13-03-01) shall be amended to reflect the establishment of a dental position and the changes in the current operating procedures at RCC.

21. Preliminary health evaluation and establishment of inmate medical records (13-04-01) shall be amended to ensure compliance with ACA Standards and current operating procedures at RCC.

22. Suicide prevention and intervention program (13-06-01) shall be amended to reflect current operating procedures at RCC.

23. First aid and CPR training program (13-06-02) only policy number shall be deleted with the policy being amended under new policy number 04-01-02.

24. Emergency medical and dental care services (13-06-03) shall be amended to reflect current operating procedures at RCC.

25. Health records (13-07-01) shall be amended to reflect the establishment of new medical records procedures and ensure compliance with ACA standards.

26. Use of pharmaceutical products (13-07-03) shall be amended to reflect current operating procedures at RCC.

27. Notifying inmate's families of admission and procedures for mail and visiting (17-05-03) shall be amended to ensure compliance with ACA Standards.

28. Job assignments (19-01-01) shall be amended to reflect new areas of the institution and current operating procedures at RCC.

29. Government service details (19-02-01) shall be deleted to reflect the discontinuance of our government service details.

30. Academic education program (20-01-01) shall be amended to reflect the current operating procedures at RCC and to delete attachments.

31. Library services (21-01-01) shall be amended to reflect current operating procedures at RCC and to delete attachments.

32. Recreation and inmate activities (22-01-01) shall be amended to reflect current operating procedures at RCC.

33. Inmate clubs and organizations (22-03-01) shall be amended to reflect current operating procedures at RCC.

34. Religious services (23-01-01) shall be amended to reflect current operating procedures at RCC and to ensure compliance with ACA Standards.

35. Social services and counseling (24-01-01) shall be amended to reflect current operating procedures at RCC and denotes the transfer of the substance abuse program to the Kentucky State Reformatory.

36. Inmate discharge procedure (25-05-01) shall be amended to reflect current operating procedures and to ensure compliance with ACA standards.

(c) The Necessity and Function of the proposed administrative regulation is: To update operating procedures at Roederer 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.

Date: December 14, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:140**, Bell County Forestry Camp: organization of health services, sick call and physician's weekly clinic, routine and emergency dental appointments, inmate medical screening and health evaluations, medical emergencies and medical or psychiatric transfers, physician's referrals, health records, routine and emergency eye examinations, family notification: serious illness, injury, major surgery or death, health education: special health care needs, informed consent, psychiatric and psychological services, chronic and convalescent care, use of pharmaceutical products, parenteral administration of medications and use of psychotropic drugs, elective services, management of serious and infectious diseases, bloodborne pathogens exposure control plan, work assignments, government service detail, first aid/CPR training program, emergency medical/dental care services, transfer of inmates to Kentucky Correctional Psychiatric Center, vision care/optometry services.

(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 January 31, 1995, 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 January 31, 1995, 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 6:140, as follows:

1. Organization of health services (13-01-01) shall be amended to reflect the basic organization of health care services at BCFC.
2. Sick call and physician's weekly clinic (13-02-01) shall be amended to reflect current operating procedure at BCFC for inmates to access sick call and the physician's weekly clinic.
3. Routine and emergency dental appointments (13-03-01) shall be amended to reflect current dental procedures at BCFC.
4. Inmate medical screening and health evaluations (13-04-01) shall be amended to reflect the current procedure at BCFC for inmate medical screening upon new inmate arrivals, the procedure for maintenance of medical records when transporting inmates and the current procedure for medical examinations.
5. Medical emergencies and medical or psychiatric transfers (13-05-01) shall be amended to reflect the current operating procedures at BCFC concerning medical emergencies or transfers for inmates exhibiting psychiatric difficulties.
6. Physician's referrals (13-06-01) shall be amended to reflect the current operating procedures at BCFC.
7. Health records (13-07-01) shall be amended to reflect the current operating procedures at BCFC.
8. Routine and emergency eye examinations (13-08-01) shall be amended to reflect current BCFC procedure concerning inmate eye care.
9. Family notification: serious illness, injury, major surgery or death (13-09-01) shall be amended to reflect current procedure at BCFC for family notification in the event of serious illness, injury, major surgery or death of an inmate.
10. Health education: special health care needs (13-10-01) shall be amended to reflect the current procedure of BCFC in health education.
11. Informed consent (13-11-01) shall be amended to reflect inmate's rights in medical treatment and to comply with KRS 208.170 and 208.180.
12. Psychiatric and psychological services (13-12-01) shall be amended to reflect the current procedure at BCFC.
13. Chronic and convalescent care (13-13-01) shall be amended to reflect current operating procedure at BCFC.
14. Use of pharmaceutical products (13-14-01) shall be amended to reflect the current procedure at BCFC to procure, distribute and the security and storage of inmate medication.
15. Parenteral administration of medications and use of psychotropic drugs (13-15-01) shall be amended to reflect the current operating procedures at BCFC.
16. Elective services (13-16-01) shall be amended to reflect the current operating procedures at BCFC for inmates to access elective health services.
17. Management of serious and infectious diseases (13-18-01) shall be amended to reflect a change in the title of the policy.

18. Bloodborne pathogens exposure control plan (13-19-01) shall be amended to ensure BCFC follows OSHA standards for contaminated laundry, and to reflect the current training requirements for bloodborne pathogens.

19. Work assignments (19-01-01) shall be amended to reflect the current operating procedures at BCFC concerning inmate work programs.

20. Government service details (19-02-01) shall be amended to reflect current operating procedures at BCFC and follows corrections policy and procedure 19.1 for government service details.

21. First aid/CPR training program (13-06-02) shall be deleted due to this policy being combined in BCFC 13-05-01.

22. Emergency medical/dental care services (13-06-03) shall be deleted due to this policy being combined in BCFC 13-03-01.

23. Transfer of inmates to Kentucky Correctional Psychiatric Center (13-12-02) shall be deleted due to this policy being combined in BCFC 13-05-01.

24. Vision care/optometry services (13-17-01) shall be deleted due to this policy being combined in BCFC 13-08-01.

(c) The Necessity and Function of the proposed administrative regulation is: To update operating procedures at Eastern 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.

Date: December 14, 1994
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:150**, Eastern Kentucky Correctional Complex: public information and news media access, special management unit: operating procedures and living conditions, special management inmates: assignment, classification reviews and release, food service: purchasing and storage, health evaluations, hair and grooming standards: inmate barber shop, restricted wing, due process, disciplinary procedure, inmate visiting.

(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 January 31, 1995, 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 January 31, 1995, 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 6:150, as follows:

1. Public information and news media access (01-02-01) shall be amended to include procedures to address emergency and nonemergency responses to the media.

2. Special management unit: operating procedures and living conditions (10-02-01) shall be amended to ensure compliance with ACA Standards.

3. Special management inmates: assignment, classification reviews and release (10-02-02) shall be amended to ensure compliance with ACA Standards.

4. Food service: purchasing and storage (11-02-02) shall be amended to ensure compliance with ACA standards.

5. Health evaluations (13-02-05) shall be amended to reflect changes in current wording.

6. Hair and grooming standards: inmate barber shop (15-01-01) shall be amended to reflect changes in barber shop schedule.

7. Restricted wing (15-02-01) shall be added to reflect current operating procedures at EKCC.

8. Due process, disciplinary procedure (15-06-01) shall be amended to conform to LRC guidelines and corrections policy and procedure.

9. Inmate visiting (16-01-01) shall be amended to conform with LRC guidelines.

(c) The Necessity and Function of the proposed administrative regulation is: To update operating procedures at Eastern 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: December 15, 1994
Transportation Cabinet

(1) **601 KAR 12:070** relating to driving privilege for nonpayment of child support (HB 311 passed by the 1994 General Assembly).

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation establishing the procedure for withdrawal of a person's driving privilege upon notification from the Human Resources Cabinet that the individual is one (1) year or more in arrears on child support payment. The administrative regulation will further set forth a procedure to be followed in having driving privilege restored upon payment of the child support and an appeal process.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 31, 1995 at 9 a.m. local prevailing time, at 275 East Main Street, Health Services Building (Old Human Resources Building) Health Services Auditorium, 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 January 31, 1995, 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 driving privilege withdrawal for nonpayment of child support is KRS 186.570 (HB 311).

(b) The administrative regulation that the Transportation Cabinet intends to promulgate is a new administrative regulation relating to the withdrawal of driving privilege for nonpayment of child support.

(c) The Necessity and Function of the proposed administrative regulation relating to withdrawal of driving privilege for nonpayment of child support is as follows: KRS 186.570(2) mandates that the Transportation Cabinet deny any person a license, or suspend the license, of an operator of a motor vehicle upon receiving written notification from the Cabinet for Human Resources that the person has a child support arrearage which equals or exceeds the accumulative amount which would be owed after one year of nonpayment. Denial or suspension of driving privilege shall continue until the arrearage has been eliminated or payments on the child support arrearage are being made in accordance with a court or administrative order. Before the license may be reinstated, proof of elimination of the child support arrearage from the Cabinet for Human Resources shall be received by the Transportation Cabinet. This administrative regulation, in conjunction with an administration regulation proposed by the Human Resources Cabinet, sets forth the procedure for notification of the Transportation Cabinet by the Human Resources Cabinet of an arrearage, notification to the person of his pending driving privilege withdrawal, the opportunity for a hearing to appeal the driving privilege withdrawal, and notice from the Human Resources Cabinet to the Transportation Cabinet that the arrearage is under control.

(d) The benefits expected are: Increased payment of child support in the Commonwealth of Kentucky.

## EDUCATION, ARTS, AND HUMANITIES CABINET
### Department of Education

Date: December 9, 1994
State Board for Elementary and Secondary Education

(1) **701 KAR 5:100**, Guidelines for alternative models for school-based decision making, amended administrative regulation. This amended administrative regulation outlines guidelines and criteria by which the State Board for Elementary and Secondary Education will approve an alternative model for school-based decision making.

(2) The State Board for Elementary and Secondary Education 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 January 30, 1995 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 January 30, 1995, 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 guidelines for alternative models for school-based decision making is KRS 160.345.

(b) The administrative regulation that the SBESE intends to promulgate is an amended administrative regulation. It will provide guidelines for alternative models for school-based decision making.

(c) The necessity and function of the amended administrative regulation is to provide guidelines and criteria by which the State Board for Elementary and Secondary Education will approve an alternative model for school-based decision making.

(d) The benefits expected from the administrative regulation are to provide clarification of the guidelines and criteria by which the State Board for Elementary and Secondary Education will approve an alternative model for school-based decision making to schools, school districts, and the general public.

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

(1) **702 KAR 3:120**, Uniform school financial accounting system, proposed amendment. This administrative regulation is necessary to provide a uniform system of financial accounting and budgets for boards of education.

(2) The State Board for Elementary and Secondary Education intends to amend 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 January 30, 1995 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 January 30, 1995, 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 amendment to an administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to a uniform system of financial accounting and budgets for boards of education is KRS 156.160.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend is an existing administrative regulation.

(c) The Necessity and Function of the existing administrative regulation is to provide a uniform system of financial accounting and budgets for boards of education.

(d) The benefits expected from the administrative regulation are to provide a uniform system of financial accounting and budgets for boards of education.

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

(1) **702 KAR 3:130**, Internal accounting, proposed amendment. This administrative regulation is necessary to establish uniform procedures for the accounting of school activity funds.

(2) The State Board for Elementary and Secondary Education intends to amend 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 January 30, 1995 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 January 30, 1995, 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 amendment to an administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to uniform procedures for the accounting of school activity funds is KRS 156.160.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend is an existing administrative regulation.

(c) The Necessity and Function of the existing administrative regulation is to provide uniform procedures for the accounting of school activity funds.

(d) The benefits expected from the administrative regulation are to provide uniform procedures for the accounting of school activity funds.

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

(1) **702 KAR 3:245**, School council allocation formula, proposed amendment. This administrative regulation is necessary to guide the way in which school district funds shall be allocated to each school council.

(2) The State Board for Elementary and Secondary Education 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 January 30, 1995, 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 January 30, 1995, 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 amend 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 amendment to an administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to school council allocations is KRS 156.070 and 160.345.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend is an existing administrative regulation.

(c) The Necessity and Function of the existing administrative regulation is to guide the way in which school district funds shall be allocated to school councils.

(d) The benefits expected from the administrative regulation are to guide the way in which school district funds shall be allocated to school councils.

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

(1) **702 KAR 3:246**, School council allocation formula using KETS accounting system. This administrative regulation is necessary to use the new KETS accounting system.

(2) The State Board for Elementary and Secondary Education 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 January 30, 1995, 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 January 30, 1995, 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 amendment to an administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to school council allocations is KRS 156.070 and 160.345.

(b) The administrative regulation that the Department of Education intends to promulgate is a new administrative regulation.

(c) The Necessity and Function of the new administrative regulation is to guide the way to use the new KETS accounting system.

(d) The benefits expected from the administrative regulation are to guide the way to use the new KETS accounting system.

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

(1) **702 KAR 3:280**, School district Medicaid providers, proposed administrative regulation. This proposed administrative regulation is necessary to implement KRS 605.115 which allows local school districts to become Medicaid providers.

(2) The State Board for Elementary and Secondary Education 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 January 30, 1995 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 January 30, 1995, 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 school district's as Medicaid providers is KRS 156.160 and 156.070.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to promulgate is a new administrative regulation. It will provide an administrative regulation which is necessary to implement KRS 160.115 which allows local school districts to become Medicaid providers.

(c) The Necessity and Function of the proposed administrative regulation is to implement KRS 160.115 which allows local school districts to become Medicaid providers.

(d) The benefits expected from the administrative regulation are to provide additional health-related services to Medicaid eligible students and to provide for reimbursement to local school districts for these services.

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

(1) **702 KAR 7:010**, Terms and months.

(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 January 30, 1995 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 form the required number of people at least 20 days prior to January 30, 1995, 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 amend 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 amended administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to pupil attendance is KRS 156.070, 156.160, 157.520, 158.060, 158.070 and 159.170.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend is 702 KAR 7:010. It provides for the recording of pupil attendance in common schools in Kentucky.

(c) The Necessity and Function of the proposed amendment is to provide for the implementation of alternative school schedules provided for in KRS 158.060.

(d) The benefits expected from the amendment to the administrative regulation are to provide a method of recording attendance that will accommodate various schedules and eliminate redundant language.

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

(1) **702 KAR 7:020**, Calendar.

(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 January 30, 1995 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 form the required number of people at least 20 days prior to January 30, 1995, 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 amend 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 amended administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to pupil attendance is KRS 156.070, 156.160, 157.520, 158.060, 158.070 and 159.170.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend is 702 KAR 7:020. It provides for the recording of pupil attendance in common schools in Kentucky.

(c) The Necessity and Function of the proposed amendment is to provide for the implementation of alternative school schedules provided for in KRS 158.060.

(d) The benefits expected from the amendment to the administrative regulation are to provide a method of recording attendance that will accommodate various schedules and eliminate redundant language.

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

(1) **702 KAR 7:030**, Census.

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

(3) A public hearing to receive oral and written comments on the amendment to an existing administrative regulation has been scheduled for January 30, 1995 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 form the required number of people at least 20 days prior to January 30, 1995, 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 amend 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 amended administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to pupil attendance is KRS 156.070, 156.160, 157.520, 158.060, 158.070 and 159.170.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend is 702 KAR 7:030. They provide for the recording of pupil attendance in common schools in Kentucky.

(c) The Necessity and Function of the proposed amendment is to provide for the implementation of alternative school schedules provided for in KRS 158.060.

(d) The benefits expected from the amendment to the administrative regulation are to provide a method of recording attendance that will accommodate various schedules and eliminate redundant language.

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

(1) **702 KAR 7:040**, Experimental schools.

(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 regulations has been scheduled for January 30, 1995 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 form the required number of people at least 20 days prior to January 30, 1995, 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 pupil attendance is KRS 156.070, 156.160, 157.520, 158.060, 158.070 and 159.170.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend are 702 KAR 7:040. It provides for the recording of pupil attendance in common schools in Kentucky.

(c) The Necessity and Function of the proposed amendment is to provide for the implementation of alternative school schedules provided for in KRS 158.060.

(d) The benefits expected from the amendment to the administrative regulation are to provide a method of recording attendance that will accommodate various schedules and eliminate redundant language.

Date: December 14, 1994

State Board for Elementary and Secondary Education

(1) **702 KAR 7:050**, Attendance; residence, nonresident.

(2) The State Board for Elementary and Secondary Education intends to amend an existing administrative regulation listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995 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 form the required number of people at least 20 days prior to January 30, 1995, 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 amend an existing 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 amendment of an existing administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to pupil attendance is KRS 156.070, 156.160, 157.520, 158.060, 158.070 and 159.170.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend are 702 KAR 7:050. It provides for the recording of pupil attendance in common schools in Kentucky.

(c) The Necessity and Function of the proposed amendment is to provide for the implementation of alternative school schedules provided for in KRS 158.060.

(d) The benefits expected from the amendment to the administrative regulation are to provide a method of recording attendance that will accommodate various schedules and eliminate redundant language.

Date: December 9, 1994

State Board for Elementary and Secondary Education

(1) Regulation Number and Title: **703 KAR 4:010**, The formula for determining successful schools, 1994-96 biennium.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995 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 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 January 30, 1995, 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, 500 Mero Street, 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 amend an existing 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 amendment to an administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to formula for determining successful schools

is KRS 156.070 and 158.6455.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend is an existing administrative regulation and includes the following: Provide weight to the new arts and humanities and practical living and vocational studies part of the KERA accountability system. Provide weight to the mathematics portfolio for grades 8 and 12. Maintain the basis for establishing school accountability thresholds.

(c) The Necessity and Function of the proposed administrative regulation is: KRS 158.6455, which requires the state board to establish a school based accountability system.

(d) The benefits expected from administrative regulation are: Enhanced learning for all Kentucky students.

(e) The administrative regulation will be implemented as follows: Via the KIRIS testing program and accountability system.

Date: December 13, 1994
Education, Arts, and Humanities Cabinet
Department of Education
Division for Exceptional Children

(1) Regulation Number and Title: **704 KAR 7:120**, Home or hospital instruction.

(2) The State Board for Elementary and Secondary Education (SBESE) intends to amend the administrative regulation listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995 at 10 a.m. in the State Board Room, First Floor, Department of Education, 500 Mero Street, Capital Plaza Tower, 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 January 30, 1995, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Kevin M. Noland, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601.

(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 of Education at the address listed above.

(7) Information relating to the proposed amendment to an administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to home or hospital instruction is KRS 159.030.

(b) The administrative regulation that the SBESE intends to promulgate will amend 704 KAR 7:120 as follows:

Section 3 may be amended to add that option of local directors of home/hospital instruction programs be one of the options for membership on the Home Instruction Review Committee in lieu of a home/hospital teacher at local discretion.

Section 3 may be amended to require that the membership of the Home Instruction Review Committee select "local health personnel" with medical credentials for review of medical applications and mental health professionals for review of mental health applications.

Section 3 may be amended to disallow a student being provided services or counted for attendance for home/hospital instruction prior to the date of approval of program eligibility by the home/hospital instruction review committee and to disallow eligibility for students not expected to be absent for more than five (5) consecutive school days.

Section 4 may to be amended to allow for students to be withdrawn and reentered to home/hospital instruction without doing a new application each time when they have recurring conditions (e.g., students on chemotherapy, ongoing surgeries, etc.).

Section 5 may be amended to stipulate that local boards shall regulate the number of credit hours secondary students may earn towards graduation while placed on home instruction for extended periods.

A new Section 6 may be created to speak to operational issues of home instruction as follows:

An adult shall be present in the home during the time the home instruction teacher is present. Each home instruction teacher shall complete a visitation and planning schedule on a weekly basis. This schedule shall include specific times for instruction, travel, planning and conferences. A copy of this schedule shall be on file in the central office. Attendance records are to be maintained and summarized on a monthly basis on the Home/Hospital Program Monthly report form for submission to the department at the end of each semester.

Teachers serving students in a home instruction program shall not exceed caseload of twelve (12) students, while teachers serving students in a hospital setting shall not exceed a caseload of fifteen (15) students. Those teachers serving a combination of home and hospital students caseload maximum will be determined by the setting where the majority of students are served.

Children or youth with communicable diseases may be served by alternative means such as correspondence during their period of contagion if their condition poses a health threat to the teacher, based on documentation of that threat from a licensed physician.

Amendment to the application for home hospital services by expansion of Section 11 to add more information regarding the term of approved home instruction and a review date. Also add for signature of the "local health personnel" participating on the committee and their title.

(c) The Necessity and Function of the proposed administrative regulation is: Section 3 - Need to allow for input by local directors of home/hospital instruction on student eligibility. Need to assure the requests for medical exemption be reviewed by member of home instruction review committee with medical credential and for mental health cases by person with mental health background.

Specific language may be added to clarify no services are to count for ADA until eligibility is confirmed by the committee to prevent some present practices of counting students and to prevent students being served on home instruction and counted for ADA prior to an eligibility determination. Also, language may be added to set a limit of expected five days absence prior to considering application due to some local education agencies (LEAs) serving students on home instruction for only one or two days to get the full weeks average daily attendance (ADA).

Section 5 - Need to set limits on credits that secondary students can earn towards graduation while on home instruction as many students are earning full years for a semester credits via only two (2) 1 hour visits per week.

Section 6 - Create a new section on home/hospital instruction to address issues related to:

1. Need for adult in the home during instruction.

2. Development and submission of weekly schedule by home/hospital teachers as it is often hard to track instructional and other time for which being paid.

3. Requirement that home instruction teachers complete KDE Home/Hospital Program Monthly Report form that Pupil Attendance Branch and Program Services Branch need at end of each semester to verify services being reimbursed and for tracking appropriate student eligibility and related issues.

4. Need to set caseload maximums for home/hospital teachers to avoid practice of some teachers being given excessive caseloads and no time for planning or travel.

5. Need to address issue of how students with communicable conditions will be served if condition poses health threat to home or hospital teacher.

Section 7 - Revision of the application to clarify term of home instruction approval and date for review. Also add place for signature of the "local health personnel " member of the home instruction committee.

(d) The benefits expected from the administrative regulation are:

1. Add needed professional representation into decision making for program eligibility.

2. Preventing districts from putting students on home instruction for short periods for typical absences (i.e., only out 1-3 days) just to avoid loss of ADA and to assure students not counted for ADA purposes on home/hospital or served prior to date of determination of eligibility.

3. Provides way for students with recurring conditions that are able at times to attend school at times to not have to keep going to doctor and having to be redetermined eligible each time. Current system discourages students from coming to school when able as it terminates home instruction eligibility.

4. Prevent secondary students from getting same credits for two hours of home instruction per week that other students must attend school thirty hours per week to receive.

5. Provide better mechanism for accounting for the time of home instruction teachers.

6. Assure that the Division of Pupil Attendance gets needed information to document services to be reimbursed and to be able to track numbers and nature of reasons students placed on home instruction.

7. Set maximum caseload to allow for teachers to not be overloaded to point of not being able to serve students adequately.

8. Create a means whereby students with communicable conditions do not go without services while still preventing teachers being subject to health risks.

9. Add items to home/hospital application form for signature of "local health personnel" verifying their participation on committee as required by regulation.

(e) The administrative regulation will be implemented as follows: The proposed amended regulation will be implemented by informing LEAs of their new responsibilities and via KDE monitoring of Monthly Summary Reports on home/hospital instruction as submitted to KDE at the end of each semester.

Date: December 15, 1994
Department of Education
Bureau of Learning Support Services
Office of Special Instructional Services

(1) **707 KAR 1:090**. Kentucky School for the Deaf; code of conduct.

(2) The State Board for Elementary and Secondary Education intends to amend 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 January 30, 1995, 10 a.m., at the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort KY 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 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 January 30, 1995 the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort Kentucky 40601.

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to amend 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 Kentucky Department of Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to the Kentucky School for the Deaf Student Code of Conduct is KRS 156.070 and 167.150.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend is 707 KAR 1:090.

(c) The Necessity and Function of the amendment to the existing administrative regulation is to insure that rules governing student conduct at the Kentucky School for the Deaf are consistent with federal and state laws, and clearly communicate issues to students, parents, and staff.

(d) The benefits expected from this amended administrative regulation are clearer understanding of conduct issues by students, staff, and parents.

(e) The administrative regulation will be implemented as follows: copies will be disseminated to Kentucky School for the Deaf students, parents, and staff.

## EDUCATION PROFESSIONAL STANDARDS BOARD

December 5, 1994
Education Professional Standards Board

(1) **704 KAR 20:680**, Professional code of ethics for Kentucky school certified personnel.

(2) The Education Professional Standards Board 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 January 26, 1995, at 10 a.m. in the 1st Floor Conference Room, 1st floor, Capital Plaza Tower, 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 10 days prior to January 26, 1995, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 500 Mero Street, Frankfort, Kentucky 40601.

(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 Education Professional Standards Board 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 professional code of ethics for Kentucky school certified personnel is KRS 161.028 and 161.040.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will fulfill the statutory mandate that the board "develop a professional code of ethics." The proposed code of ethics sets forth the responsibilities of the education profession including obligations to students, to parents, and to the education profession and provides that violation may result in cause to initiate proceedings for revocation and suspension of Kentucky certification as provided in KRS 161.020 and 704 KAR 20:585.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 161.028 requires that the Education Professional Standards Board develop a professional code of ethics. This administrative regulation establishes the code of ethics for Kentucky school certified personnel and establishes that violation of the code of ethics may be grounds for revocation or suspension of Kentucky certification for professional school personnel by the Education Professional Standards Board.

(d) The benefits expected from administrative regulation are: The professional code of ethics for certified personnel defines expectations of professional conduct for educators in the Commonwealth as required by KRS 161.040. Furthermore, violation of these standards may result in proceedings for revocation or suspension of Kentucky certification.

(e) The administrative regulation will be implemented as follows: The provisions of the proposed administrative regulation will be implemented (1) by providing individual certificate holders a copy of the code of ethics at the time a certificate is issued to them, (2) by colleges and universities providing the code of ethics to persons seeking admission to teacher education programs, and (3) by informing each school district of the adoption of the professional code of ethics into administrative regulation.

## LABOR CABINET
### Department of Workplace Standards
### Division of Employment Standards and Mediation

Date: December 15, 1994
Labor Cabinet
Department of Workplace Standards
Division of Employment Standards and Mediation

(1) Regulation Number and Title: **803 KAR 1:110**, Prevailing wage written overtime agreement requirements.

(2) The Division of Employment Standards and Mediation 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 10:45 a.m., local time, on Friday, January 27, 1995, in the Bay 3 Conference Room at 1047 U.S. Highway 127 South, Suite #3, Frankfort, Kentucky 40601.

(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 January 27, 1995, 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 Stephen E. Waltrip, Counsel, Labor Cabinet, Office of General Counsel, 1047 U.S. 127 South, Suite #4, 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 Labor Cabinet's Office of 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 337.520(1).

Summary of the proposed regulation:

(b) The division intends to promulgate a new regulation numbered and titled as 803 KAR 1:110 - Prevailing wage written overtime agreement requirements. This regulation relates to KRS 337.530 and 337.540, and sets forth the procedure to be followed when written agreements are executed between employees and employers as contemplated by KRS 337.540(1). Effective July 15, 1994 was the amended version of KRS 337.540, which permits an employer and employee to enter into a written agreement to work on a public project in excess of eight (8) hours, but not more than ten (10) hours, in a calendar day, (limited by provisions of KRS 337.540). This regulation explains in further detail how a prior, written agreement is to be executed and applied.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Pursuant to KRS 337.520, the Kentucky Labor Cabinet, Division of Employment Standards and Mediation has promulgated this regulation to clarify potential questions as to what shall constitute a "written agreement" under the General Assembly's recent revisions to KRS 337.540.

(d) The benefits expected from this administrative regulation are: Reduction of inconsistent interpretations of KRS 337.520(1), providing uniform guidelines for businesses, employees and labor organizations.

(e) The Kentucky Labor Cabinet, Department of Workplace Standards, Division of Employment Standards and Mediation, will implement this regulation into the procedure for enforcement of the prevailing wage statutes in KRS Chapter 337. As a part of the division's response to a complaint alleging violation of any applicable statutory provision, a field investigator will initiate an investigation to ascertain whether a written agreement exists, as defined by this regulation.

**Kentucky Occupational Safety and Health**

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:301**. Adoption of 29 CFR 1910.7-.19.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a persons 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:301, as follows: The amendments to 29 CFR Part 1910.19, "Special Provisions for Air Contaminants," as published in the Federal Register, Volume 59, Number 153, August 10, 1994, will be incorporated by reference. The amended paragraph (a) references asbestos and provides that 29 CFR 1910.1001 shall apply to employee exposure to asbestos in places of employment covered by 29 CFR 1910.16 in lieu of any different standard on exposure to asbestos.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: Compliance with this proposed amendment will further reduce a significant health risk for Kentucky general industry employees with occupational exposure to asbestos.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation is intended to provide employers with an appropriate reference to the OSHA standard.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:307**. Adoption of 29 CFR 1910.101-.120.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

1. "I will 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:307, as follows: The amendments to 29 CFR Parts 1910, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, August 22, 1994, will be incorporated by reference. This final rule addressed technical corrections to an appendix and adds a new nonmandatory appendix to provide suggested guidelines for a more effective training curriculum and program.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. OSHA uses nonmandatory appendices for a number of purposes such as to provide nonregulatory guidance to employees and employers for the purpose of complying with various OSHA regulations or to assist them in developing more effective safety and health operations. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: Kentucky employers, employees, and other affected parties engaged in the business of hazardous waste site operations and emergency response with respect to employee protection. This information will provide employers, employees, and other affected parties with information on techniques to be used to comply with the OSHA requirements.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation is intended to provide employers with supplemental information and guidance in complying with the OSHA standard. If employers follow these guides, they should be in compliance with the standard.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:308**. Adoption of 29 CFR 1910.123-.140.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:308, as follows: The additions to 29 CFR Part 1910.132, "General Requirements," as published in the Federal Register, Volume 59, Number 126, July 1, 1994, will be incorporated by reference. This addition clarifies the coverage for the paragraphs requiring a hazard assessment and training. The revision to 29 CFR Part 1910.133, "Eye and Face Protection," as published in the Federal Register, Volume 59, Number 126, July 1, 1994, will be incorporated by reference. This revision corrects a typographical error in the table. The revision to 29 CFR Part 1910.136, "Foot Protection," as published in the Federal Register, Volume 59, Number 126, July 1, 1994, will be incorporated by reference. This revision substitutes the word "or" for "and" between the words "falling" and "rolling" in paragraph (a) to reflect the intent of the original regulation. The corrections to 29 CFR Part 1910.137, "Electrical Protective Equipment," as published in the Federal Register, Volume 59, Number 125, June 30, 1994, will be incorporated by reference. These corrections correct minor typographical or typing errors in the original publication. The revision to 29 CFR Part 1910.138, "Hand Protection," as published in the Federal Register, Volume 59, Number 126, July 1, 1994, will be incorporated by reference. This correction adds the phrase, "Section 1910.138 is revised to read as follows:"

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments;

accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: The corrections and revisions as proposed in this proposed amendment will clarify existing regulations for employers and employees allowing for a better understanding of the regulations, resulting in a safer and more healthful workplace.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:317**. Adoption of 29 CFR 1910.261-.275.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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."

(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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:317, as follows: The revision of 29 CFR Part 1910.266, "Logging," as published in the Federal Register, Volume 59, Number 196, October 12, 1994, will be incorporated by reference. This revision replaces the current 29 CFR 1910.266 which regulates only pulpwood logging. This proposed amendment provides protection for all employees engaged in logging operations. This regulation addresses the unique hazards found in logging operations, strengthens and clarifies some provisions of the existing standard, and eliminates unnecessary provisions. The corrections to 29 CFR Part 1910.269, "Electric Power Generation, Transmission, and Distribution," as published in the Federal Register, Volume 59, Number 125, June 30, 1994, will be incorporated by reference. These corrections correct minor typographical or typing errors in the original publication. The revision to 29 CFR Part 1910.269, "Electric Power Generation, Transmission, and Distribution," as published in the Federal Register, Volume 59, Number 152, June 30, 1994, will be incorporated by reference. This revision corrects a reference in paragraph (f)(2) to reference subpart M of Part 1926.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These amendments as proposed in this proposed amendment will clarify existing regulations for employers and employees allowing for a better understanding of the regulations, resulting in a safer and more healthful workplace and will add additional protection to those involved in logging operations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:320**. Adoption of 29 CFR 1910.1000-.1500.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to be January 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: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:320, as follows: The amendments to 29 CFR Parts 1910.1001, "Occupational Exposure to Asbestos," as published in the Federal Register, Volume 59, Number 153, August 10, 1994, will be incorporated by reference. The previous Kentucky Occupational Safety and Health Program amendments to 29 CFR Parts 1910.1001, "Occupational Exposure to Asbestos," will be deleted. Adoption of additions to 29 CFR Part 1910 "Retention of DOT Markings, Placards, and Labels," as published in the Federal Register, Volume 59, Number 137, July 19, 1994.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: Compliance with this proposed amendment will further reduce a significant health risk for Kentucky general industry employees with occupational exposure to asbestos. Compliance with the section which addresses the retention of DOT markings, placards, and labels will reduce the safety and health risk for Kentucky general industry employees who are involved with containers of hazardous materials.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:403**. Adoption of 29 CFR 1926.50-.66.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:403, as follows: The Kentucky Occupational Safety and Health Program amendments to 29 CFR Parts 1926.58, "Occupational Exposure to Asbestos," will be deleted while 29 CFR 1926.58 is redesignated to 29 CFR 1926.1101 as published in the Federal Register, Volume 59, Number 153, August 10, 1994, will be incorporated by reference as proposed in 803 KAR 2:425. Adoption of additions to 29 CFR Part 1926 "Retention of DOT Markings, Placards, and Labels," as published in the Federal Register, Volume 59, Number 137, July 19, 1994.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: Compliance with this proposed amendment will further reduce a significant health risk for Kentucky construction industry employees with occupational exposure to asbestos. Compliance with the section which addresses the retention of DOT markings, placards, and labels will reduce the safety and health risk for Kentucky construction industry employees who are involved with containers of hazardous materials.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:404** Adoption of 29 CFR 1926.95-.107.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:404, as follows: The revision of 29 CFR Part 1926.104, "Safety belts, Lifelines, and Lanyards," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, will be incorporated by reference. This revision removes this regulation. The revision of 29 CFR Part 1926.105, "Safety Nets," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, will be incorporated by reference. This revision removes and reserves this regulation. The revision of 29 CFR Part 1926.107, "Definitions Applicable to this Subpart," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, will be incorporated by reference. This revision removes paragraphs (b), (c),and (f).

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These amendments, as part of a package of proposed regulations by this agency, will remove existing regulations in favor of more definitive regulations to be promulgated. This will result in employers and employees having a better understanding of the regulations, resulting in a safer and more healthful workplace.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:407**. Adoption of 29 CFR 1926.250-.252.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:407, as follows: The revision of 29 CFR Part 1926.250, "General Requirements for Storage," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, will be incorporated by reference. This updates a reference.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This revision, as part of a package of proposed regulations by this agency, will clarify fall protection requirements for those in the construction industry. This will result in employers and employees having

a better understanding of the regulations, resulting in a safer and more healthful workplace.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:412**. Adoption of 29 CFR 1926.500-.503.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m.(E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:412, as follows: The revisions to 29 CFR Part 1926.500, "Scope, Application, Definitions Applicable to this Subpart," 29 CFR Part 1926.501, "Duty to Have Fall Protection," 29 CFR Part 1926.502, "Fall Protection Systems Criteria and Practices," and 29 CFR Part 1926.503, "Training Requirements," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, will be incorporated by reference. These revisions clarify and update the fall protection requirements for those in the construction industry.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these revisions; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These revisions, as part of a package of proposed regulations by this agency, will clarify fall protection requirements for those in the construction industry. This will result in employers and employees having a better understanding of the regulations, resulting in a safer and more healthful workplace.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:413**. Adoption of 29 CFR 1926.550-.556.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:413, as follows: The revisions to 29 CFR Part 1926.550, "Cranes and Derricks," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, will be incorporated by reference. This updates a two references.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these revisions; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: These revisions, as part of a package of proposed regulations by this agency, will clarify fall protection requirements for those in the construction industry. This will result in employers and employees having a better understanding of the regulations, resulting in a safer and more healthful workplace.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:415**. Adoption of 29 CFR 1926.650-.652.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:415, as follows: The revision of 29 CFR Part 1926.651, "Specific Excavation Requirements," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, will be incorporated by reference. This updates a reference.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This revision, as part of a package of proposed regulations by this agency, will clarify fall protection requirements for those in the construction industry. This will result in employers and employees having a better understanding of the regulations, resulting in a safer and more healthful workplace.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:416**. Adoption of 29 CFR 1926.700-.706.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:416, as follows: The revision of 29 CFR Part 1926.701, "General Requirements," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, will be incorporated by reference. This removes a paragraph.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This revision, as part of a package of proposed regulations by this agency, will clarify fall protection requirements for those in the construction industry. This will result in employers and employees having a better understanding of the regulations, resulting in a safer and more healthful workplace.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:417**. Adoption of 29 CFR 1926.750-.753.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:417, as follows: The addition of 29 CFR Part 1926.753(a), "Safety Nets," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, will be incorporated by reference. This adds a section regulating the use of safety nets.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this addition; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This addition adds regulations on the use of safety nets to the proper section of Part 1926. This amendment is part of a package of proposed regulations by this agency which will clarify fall protection requirements for those in the construction industry. This will result in employers and employees having a better understanding of the regulations, resulting in a safer and more healthful workplace.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:421**. Adoption of 29 CFR 1926.950-.960.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public

hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:421, as follows: The revision of 29 CFR Part 1926.951, "Tools and Protective Equipment," as published in the Federal Register, Volume 59, Number 152, August 9, 1994, will be incorporated by reference. This revision updates a reference.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: This revision, as part of a package of proposed regulations by this agency, will clarify fall protection requirements for those in the construction industry. This will result in employers and employees having a better understanding of the regulations, resulting in a safer and more healthful workplace.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:424**. Adoption of 29 CFR 1926.1071-.1092.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:424, as follows: The proposed amendment will move 29 CFR 1926.1127, as published in the Federal Register, Volume 59, Number 1, January 3, 1994 to 803 KAR 2:425, which is the appropriate administrative regulation.

(c) The Necessity and Function of the proposed administrative regulation is: This proposed amendment will provide a necessary housekeeping correction.

(d) The benefits expected from the proposed administrative regulation are: This proposed amendment will provide a necessary housekeeping correction.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:425**. Adoption of 29 CFR 1926.1100-.1148.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:425, as follows: The amendments to 29 CFR Parts 1926.1101, "Occupational Exposure to Asbestos," as published in the Federal Register, Volume 59, Number 153, August 10, 1994, will be incorporated by reference. The proposed amendment will move the adoptions of 29 CFR 1926.1127, as published in the Federal Register, Volume 59, Number 1, January 3, 1994 to 803 KAR 2:425, which is the appropriate administrative regulation.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements. This proposed amendment will also provide a necessary housekeeping correction.

(d) The benefits expected from the proposed administrative regulation are: Compliance with this proposed amendment will further reduce a significant health risk for Kentucky construction industry employees with occupational exposure to asbestos. This proposed amendment will also provide a necessary housekeeping correction.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:500**. Adoption of 29 CFR Part 1915, 1917, 1918, and 1919, Maritime Employment.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:500, as follows: The amendments to 29 CFR Parts 1915 "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment" as published in the Federal Register, Volume 59, Number 141, July 25, 1994, will be incorporated by reference. Adoption of additions to 29 CFR Part 1915.100, 1917.29, and 1918.100, "Retention of DOT Markings, Placards, and Labels," as published in the Federal Register, Volume 59, Number 137, July 19, 1994. Adoption of additions to 29 CFR Part 1915 "Occupational Exposure to Asbestos," as published in the Federal Register, Volume 59, Number 153, August 10, 1994, will be incorporated by reference.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: Compliance with this proposed amendment would reduce significant risk in confined and enclosed spaces and other dangerous atmosphere work in the shipyard industry. Compliance with this proposed amendment will extend the protection afforded by previous rules to employees entering any confined or enclosed space or working in any other dangerous atmosphere in or out of a shipyard. The final rule also simplifies and clarifies some of the requirements in the previous standards. Compliance with the section which addresses the retention of DOT markings, placards, and labels will reduce the safety and health risk for

Kentucky shipyard industry employees who are involved with containers of hazardous materials. Compliance with this proposed amendment will further reduce a significant health risk for Kentucky shipyard industry employees with occupational exposure to asbestos.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: December 14, 1994
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:600**. Adoption of 29 CFR Part 1928.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1995, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 is not received from the required number of people at least 20 days prior to January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, 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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:600, as follows: Adoption of additions to 29 CFR Part 1928.21(a)(7), "Retention of DOT Markings, Placards, and Labels," as published in the Federal Register, Volume 59, Number 137, July 19, 1994. Adoption of additions to 29 CFR Part 1928.219(a)(3), "Logging Operations," as published in the Federal Register, Volume 59, Number 196, October 12, 1994.

(c) The Necessity and Function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these amendments; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirements.

(d) The benefits expected from the proposed administrative regulation are: Compliance with the section which addresses the retention of DOT markings, placards, and labels will reduce the safety and health risk for Kentucky agriculture industry employees who are involved with containers of hazardous materials. Compliance with the section which addresses logging operations will significantly decrease the number of Kentucky agriculture industry employees who are killed during logging operations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

## KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

Date: December 12, 1994
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is attorney fee discount, **803 KAR 25:075.**

(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 January 30, 1995, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, 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 January 30, 1995, 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 attorney fee discounts is KRS 342.260 and 342.320.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. An existing administrative regulation designated as 803 KAR 25:070, "Charges for attorneys," will continue to apply for injuries occurring and disabilities arising after July 15, 1982, and prior to April 4, 1994. The proposed new regulation will apply to work-related injuries occurring and disabilities arising under the Workers' Compensation Act on or after April 4, 1994. This regulation will establish a mechanism for crediting the employer, the employer's insurance carrier, and the special fund for the payment of attorneys' fees.

(c) The Necessity and Function of the proposed administrative regulation is as follows: House Bill 928 of the 1994 Regular Session of the General Assembly amended KRS 342.320 to delete the option of repaying an attorney fee from the "end" of a workers' compensation award and to permit weekly benefits to be reduced when the claimant elects to repay an attorney's fee through the reduction of weekly benefits rather than payment of the attorney's fees out of personal funds or the proceeds of a lump sum settlement.

(d) The benefits expected from administrative regulation are the consistent and appropriate calculation of the attorney's fee credit in workers' compensation cases.

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

EMPLOYERS' CALCULATION

(1) EMPLOYER WEEKS AWARDED - WEEKS PAID = R WEEKS
(2) R WEEKS = P WEEKS (PRESENT WORTH)
(3) Emp % ATTORNEY FEE + P WEEKS = Y RATE
(4) R WEEKS x Y RATE = EMP ATTORNEY FEE & DISCOUNT
(5) EMP ATTORNEY FEE & DISCOUNT - EMP ATTORNEY FEE = EMP DISCOUNT
(6) WEEKLY RATE - Y RATE = EMPLOYER REDUCED RATE

SPECIAL FUND CREDIT

(1) EMPLOYER WEEKS AWARDED - WEEKS PAID = R WEEKS
(2) R WEEKS = P WEEKS (PRESENT WORTH)
(3) TOTAL WEEKS AWARDED - WEEKS PAID = TR WEEKS
(4) TR WEEKS = PW WEEKS (PRESENT WORTH)
(5) PW WEEKS - P WEEKS = SF WEEKS
(6) SF % ATTORNEY FEE + SF WEEKS = SF RATE REDUCTION
(7) SF RATE REDUCTION X SF WEEKS OWED = SF ATTORNEY FEE & DISCOUNT
(8) SF ATTORNEY FEE & DISCOUNT = SF ATTORNEY FEE = SF DISCOUNT

## KENTUCKY RACING COMMISSION

Date: December 13, 1994
Kentucky Racing Commission

(1) Regulation Number and Title: **810 KAR 1:009**. Jockeys and apprentices.

(2) The Kentucky Racing Commission 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 January 30, 1995 at 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 January 30, 1995, 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. Bernard Hettel, c/o Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) Jockeys and apprentices is KRS 230.260.

(b) The administrative regulation that the commission intends to promulgate will amend 810 KAR 1:009, as follows:
Section 14. Attire., "Advertising, promotional, or cartoon symbols or wording which in the opinion of the commission are not in keeping with traditions of the turf are prohibited" will be added.

(c) The Necessity and Function of the proposed administrative regulation is: Clarifies ambiguous existing wording of present regulation.

(d) The benefits expected from the amendment to the administrative regulation are: Clarification for owners, trainers, jockeys, and apprentice jockeys.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

Date: December 13, 1994
Kentucky Racing Commission

(1) Regulation Number and Title: **810 KAR 1:014**. Weights.

(2) The Kentucky Racing Commission 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 January 30, 1995, 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 January 30, 1995, 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. Bernard Hettel, c/o Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) Weights is KRS Chapter 13A.

(b) The administrative regulation that the commission intends to promulgate will amend 810 KAR 1:014, as follows:
Amend 810 KAR 1:014, Section 1(18). The stewards shall investigate and when warranted take disciplinary action against the individual or individuals responsible for the violation. When warranted, such action shall include disqualification of the horse from receiving what would otherwise be its share of the purse.

(c) The Necessity and Function of the proposed administrative regulation is: This change will permit the race to be make official as soon as possible, replacing the time consuming method presently required by regulation.

(d) The benefits expected from the amendment to the administrative regulation are: This change will be of benefit to the racing associations, in addition to the betting public, and racing participants.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

Date: December 13, 1994
Kentucky Racing Commission

(1) Regulation Number and Title: **810 KAR 1:016**. Running of the race.

(2) The Kentucky Racing Commission 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 January 30, 1995, 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 January 30, 1995, 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. Bernard Hettel, c/o Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) Running of the race is KRS Chapter 13A.

(b) The administrative regulation that the commission intends to promulgate will amend 810 KAR 1:016, as follows:
Delete Section 16. Official order of finish as to pari-mutuel payoff. Replace with "When satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and regulations of the commission, the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes is final and no subsequent action shall set aside or alter such official order of finish for the purpose of pari-mutuel wagering."

(c) The Necessity and Function of the proposed administrative regulation is: This change will permit the race to be made official as soon as possible. Replacing the time consuming method presently required by regulation.

(d) The benefits expected from the amendment to the administrative regulation are: This change will be of benefit to the racing associations, in addition to the betting public, and racing participants.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

Date: December 13, 1994
Kentucky Racing Commission

(1) Regulation Number and Title: **810 KAR 1:017**. Objections and complaints.

(2) The Kentucky Racing Commission 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 January 30, 1995, 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 January 30, 1995, 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. Bernard Hettel, c/o Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) Objections and complaints is KRS Chapter 13A.

(b) The administrative regulation that the commission intends to promulgate will amend 810 KAR 1:017, as follows:
Amend 810 KAR 1:017, Section 2. Delete "Objections as to interference or fouls occurring during the running of the race may be lodged orally with the clerk of scales or with the stewards" and insert "Objections as to interference or fouls occurring during the running of the race shall be lodged with the stewards in any manner which the commission may prescribe by rule".

(c) The Necessity and Function of the proposed administrative regulation is: This change will permit the race to be made official as soon as possible, replacing the time consuming method presently required by regulation.

(d) The benefits expected from the amendment to the administrative regulation are: This change will be of benefit to the racing associations, in addition to the betting public, and racing participants.

(e) The administrative regulation will be implemented as follows: Change will be applied as soon as administratively permitted.

Date: December 13, 1994
Kentucky Racing Commission

(1) Regulation Number and Title: **810 KAR 1:025**. Licensing thoroughbred racing.

(2) The Kentucky Racing Commission 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 January 30, 1995 at 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 January 30, 1995, 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. Bernard Hettel, c/o Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) Licensing thoroughbred racing is KRS 230.215 and 230.310.

(b) The administrative regulation that the commission intends to promulgate will amend 810 KAR 1:025 as follows:
Additions to 810 KAR 1:025, Section 3. Grounds for refusal, suspension, or revocation of a license. Subsection (21) "A licensee's failure to satisfy a judgement rendered against him, for goods, supplies, services or fees furnished him and use in the course of his licensed occupation, constitutes a failure to meet the financial responsibility requirements of KRS 230.310. Lack of a showing of legal and just cause for not satisfying said judgement is inconsistent with the best interests of racing and the maintenance of honesty, integrity and high quality thereof and is cause for suspension of the license and denial of any renewal of same."

(c) The Necessity and Function of the proposed administrative regulation is: As judgements are delivered to the Kentucky Racing Commission demanding action against a licensee participation in racing, a specific application of administrative regulation will apply.

(d) The benefits expected from the amendment to the administrative regulation are: Clarification for participants in thoroughbred racing in dealing with financial responsibility.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

Date: December 13, 1994
Kentucky Racing Commission

(1) Regulation Number and Title: **810 KAR 1:027**, Entries, subscriptions, and declarations.

(2) The Kentucky Racing Commission 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 January 30, 1995 at 9 a.m. at the commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 January 30, 1995, 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. Bernard Hettel, c/o Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) Entries, subscriptions, and declarations is KRS 230.260.

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 810 KAR 1:027, as follows: Two chances will be made to this regulation. First, an addition of subsection (6) "In allowance races, permission may be granted by the commission to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners, to create six (6) separate betting interests. In the event more than one (1) mutuel entry is uncoupled, pari-mutuel wagering on daily double, exacta, quinella, or other such wagering allowed by stature shall be prohibited." Second, Section 16(3)(a) is deleted, and subsection (3)(b) is exclusively used in scratching.

(c) Permitting the uncoupling of pari-mutuel betting interests, allows horse owners to complete in races, otherwise prohibited by the limitations of Section 9(3) of this administrative regulation. Secondly, deletes the number of starters required in daily double races.

(d) The first change will benefit owners of horses to compete in races, previously excluded. The second change will reduce the number of starters in daily double races.

(e) Changes will be applied as soon as administratively permitted.

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

Date: December 13, 1994
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 7:100** - The Kentucky Building Code.

(2) The Board 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 10 a.m., local time, on Tuesday, January 31, 1995, 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 January 31, 1995, 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.040(7) and 198B.050.

(b) The department intends to amend 815 KAR 7:100, The Kentucky Building Code, by proposing several technical changes for clarification to meet the intent of the Code and to adopt the newest editions of the sprinkler standards by NFPA as explained below. These amendments were approved by the Board of Housing on November 17, 1994.

1. Amend Section 1005.3 by returning the language from the 1993 BOCA Code so the general egress safety requirement would be addressed in churches, residential complexes of 24 units or less and areas of buildings not required to be on the accessible route.

2. Amend Section 1016.3 by deleting language strictly addressing accessibility because it applies to new and existing construction and ADAAG has the same language applying to existing situations only.

3. Amend Section 1018.5 by retaining the original 1993 BOCA language as the adjacent door requirement is a safety requirement during emergency evacuation of a building and not solely related to providing an accessible door nearby.

4. Amend Section 1612.1.8 because the language is overly vague and it is problematic to determine "potential" for rupture.

5. Amend Chapter 35 under "NFPA" by updating the editions of the sprinkler standards (13, 13R and 13D) to "1994."

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

(d) The benefits expected from this administrative regulation are: Inconsistencies between certain provisions and technical clarifications make the code easier to understand and to be current with industry manufacturers standards for elevator construction.

(e) This administrative regulation will be implemented by supplementing the Kentucky Building Code with the amended provisions for applicability to construction plans submitted after the effective date of the amendments.

Date: December 13, 1994
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:120;** Water supply and distribution.

(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 10 a.m., local time, on Tuesday, January 31, 1995, 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 January 31st, 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 318.130.

(b) The department intends to amend 815 KAR 20:120, Water supply and distribution by amending Section 9 to allow smaller size water distribution piping due to the reduced water usage of current fixtures and faucets.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it as well as identify and publish the manufacturer's specification number of the material accepted in those installations.

(d) The benefits expected from this administrative regulation are: To allow smaller size water distribution piping due to the reduced water usage of current fixtures and faucets.

(e) This administrative regulation will be implemented by plan review and inspection by the Kentucky Division of Plumbing Inspectors.

Date: December 13, 1994
Public Protection and Regulation Cabinet
Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:130** - House sewers and storm water piping; methods of installation.

(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 10 a.m., local time, on Tuesday, January 31, 1995 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 January 31, 1995, 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 an administrative regulation relating to the subject matter of administrative regulation is KRS 318.130.

(b) The department intends to amend 815 KAR 20:130, House sewers and storm water piping; methods of installation by amending Section 8 to allow another type pipe (SDR 35) that is designed for storm water drainage.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation identifies the materials that may be used in the construction of house sewers, storm water piping as well as the methods of installation.

(d) The benefits expected from administrative regulation are: To allow another type of pipe that is designed for storm water drainage.

(e) This administrative regulation will be implemented by the Division of Plumbing through each county area inspector.

## CABINET FOR HUMAN RESOURCES
### Department for Health Services

Date: January 1, 1995
Cabinet for Human Resources
Department for Health Services

(1) The subject matter of the proposed administrative regulation is the facsimile transmission or partial filling of a prescription for a controlled substance listed in schedule II of the Kentucky Controlled Substances Act, **902 KAR 55:095**.

(2) The 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 January 31, 1995, 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 January 31, 1995, 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 St., 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 by writing 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 the facsimile transmission or partial filling of a prescription for a controlled substance listed in schedule II is KRS 194.050, 218A.250.

(b) The administrative regulation that the Department for Health Services intends to promulgate will allow partial filling of prescriptions for schedule II controlled substances for patients who are terminally ill or are residents of a long term care facility and permit the facsimile transmission of prescriptions for certain schedule II controlled substances to a pharmacy.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 218A.250 directs the Cabinet for Human Resources to adopt rules and regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this administrative regulation is to permit the transmission of prescriptions for schedule II controlled substances between the prescriber and dispenser via facsimile, on a limited basis, in order to facilitate the delivery of medications to certain patients whose medication needs change quickly and whose prescription should be communicated rapidly. This administrative regulation also permits the partial filling of prescriptions for schedule II controlled substances to certain patients whose medication needs may be long term but who wish to store limited quantities or in situations where the pharmacy is unable to supply the full quantity prescribed.

(d) The benefits expected from administrative regulation are: Improved patient care.

Date: November 23, 1994
Cabinet for Human Resources
Department for Health Services
Office of Radiation Control Branch

(1) **902 KAR 100:040**. General provisions for specific licenses.

(2) The Cabinet for Human Resources intends to amend 902 KAR 100:040 which provides general provisions for the issuance of radioactive material licenses to possess, use and transfer radioactive material.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 31,

1995 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 January 31, 1995, 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 Health Services, 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) KRS 211.844 provides the statutory authority for the promulgation of an administrative regulation relating to ionizing radiation by the Cabinet for Human Resources. KRS 211.844 states the Cabinet for Human Resources shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(b) The administrative regulation the Cabinet for Human Resources intends to promulgate will amend 902 KAR 100:040. It will provide the general provisions for the issuance of radioactive material licenses to possess, use, and transfer radioactive material.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The amendment is necessary to meet U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as required by Section 274 of the Atomic Energy Act, as amended. KRS 211.844(2) states the Cabinet for Human Resources shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. The KRS 211.842(3) states the Cabinet for Human Resources shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Human Resources shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. 902 KAR 100:040 provides general provisions of the issuance of radioactive material licenses to possess, use and transfer radioactive material.

(d) The benefits expected from this administrative regulation are: The amended administrative regulation provides a standard format by which licensees shall be required to report radioactive material incidents to the Cabinet for Human Resources. The reporting format allows the Cabinet for Human Resources to be immediately aware of the potential severity of the incident.

Date: November 23, 1994
Cabinet for Human Resources
Department for Health Services
Office of Radiation Control Branch

(1) **902 KAR 100:100.** Industrial radiography.

(2) The Cabinet for Human Resources intends to amend 902 KAR 100:100 which provides radiation safety requirements for industrial radiographic operations and applies to licensees or registrants who use sources of radiation for industrial radiography.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 31, 1995 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 January 31, 1995, 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 13 A 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 Health Services, 275 East Main Street, Franktort, 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) KRS 211.844 provides the statutory authority for the promulgation of an administrative regulation relating to ionizing radiation by the Cabinet for Human Resources. KRS 211.844 states the Cabinet for Human Resources shall provide administrative regulations for the registration

and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste.

(b) The administrative regulation the Cabinet for Human Resources intends to promulgate will amend 902 KAR 100:100. It shall provide radiation safety requirements for industrial radiographic operations and applies to licensees or registrants who use sources of radiation for industrial radiography.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The amendment is necessary to meet U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as required by Section 274 of the Atomic Energy Act, as amended. KRS 211.844(2) states the Cabinet for Human Resources shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Human Resources shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Human Resources shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. 902 KAR 100:100 provides radiation safety requirements for industrial radiographic operations and applies to licensees or registrants who use sources of radiation for industrial radiography.

(d) The benefits expected from this administrative regulation are: The amended administrative regulation provides a standard format by which licensees or registrants who use sources of radiation for industrial radiography shall be required to report radiological incidents to the Cabinet for Human Resources. The reporting format allows the Cabinet for Human Resources to be immediately aware of the potential severity of the incident.

**Department for Social Insurance**
**Division of Management and Development**

Date: December 15, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:016**, Standards for need and amount; AFDC.

(2) The Cabinet for Human Resources, 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 January 31, 1995 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 January 31, 1995, 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, or Division of Management and Development, Third Floor West, CHR Building, 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 Aid to Families with Dependent Children Program is KRS 205.200(2), 194.050 and 45 CFR 233.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:016. It will make the following changes: Amend Section 4 to add payments to victims of Nazi persecution to the types of excluded income for determination of the AFDC payment, as specified by PL 103-286; Amend Section 4 to clarify the conditions under which a child care payment may be permitted as a work expense, as specified in the Administration for Children and Families publication, Action Transmittal ACF-AT-94-17; Amend Section 1 to add a definition for "self-employment income"; and amend various other portions of the administrative regulation to clarify existing policy or to conform with drafting requirement of KRS Chapter 13A.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This amendment to 904 KAR 2:016 is necessary to conform the state financial eligibility requirements to conform with federal mandates for the AFDC program, to clarify the policy with regards to self-employment income, and to bring the administrative regulation into compliance with KRS Chapter 13 A drafting requirements.

(d) The benefits expected from administrative regulation are: The amendment will permit the state to stay in compliance with federal mandates, thus protecting our ability to access federal funding for the program.

Date: November 14, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) Regulation Number and Title: **904 KAR 2:116**, Home energy assistance program.

(2) The Cabinet for Human Resources, Department for Social Insurance, Division of Management and Development, intends to promulgate an administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 31, 1995, 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 January 31, 1995, 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 Cabinet for Human Resources at the address listed above.

(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 home energy assistance program is KRS 194.060 and 42 USC 8621, et seq.

(b) The administrative regulation that the cabinet intends to promulgate will amend 904 KAR 2:116, as follows:

1. Section 1(9) will be amended to change the definition of a "household" from sharing kitchen facilities to purchasing energy in common.

2. Section 3(2)(a) will be amended to decrease the liquid assets from $5,000 to $1,500 or to $4,000 if a household has a member who has a catastrophic illness and the household members regularly access their liquid resources for medical and living expenses.

3. Section 3(3)(e) will be amended to read "Have an inoperable heating system" rather than "Require a heat system to repair to obtain adequate heat".

4. Section 4(1)(d) will be amended to add a new paragraph and to delete the subsidy benefit matrix. The new paragraph will allow subsidy benefits to federally assisted households to be lower than benefits to all other households. Changes to the Housing and Community Development Act allow states to reduce the benefits to residents of federally assisted housing so that households with the lowest income and greatest energy need receive the highest benefits as required by the LIHEAP statute.

5. Section 4(2)(d) will be amended from "households needing a heat system repair" to "heat systems which became inoperable since last heating season".

6. Section 9(2) will be amended to change the formula for allocation of crisis funds from the number of nonduplicated households in the previous year to the number of eligible households in the agency's service area.

(c) The Necessity and Function of the proposed administrative regulation is to amend the administrative regulation to incorporate the changes made to the Low Income Home Energy Assistance Program Block Grant during the block grant public hearing.

(d) The benefits expected from administrative regulation are that eligible low income households receive benefits to help with their energy burdens. Approximately 180,000 households are expected to receive $14.8 million in heating benefits.

Date: December 15, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development.

(1) **904 KAR 2:410**. Child support collection and distribution.

(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 January 31, 1995 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 January 31, 1995, 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 collection and distribution of child support collection amounts is KRS 194.050; 205.710 - 205.800; 405.520; 186.570.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate shall amend 904 KAR 2:410, Child Support collection and distribution. It will provide guidance for the collection of child support and medical support obligations amounts and the process of distribution of these collections as required by the Omnibus Reconciliation Act of 1993 and the resulting 1994 Kentucky statutory changes. Additional enforcement remedies shall include procedures for the revocation or suspension of driver's license when a child support arrearage of one year's amount has accumulated.

(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. KRS 205.712 provides for the child support agency to receive and process all child support payments. This administrative regulation sets forth the procedures for collection and distribution of child support payments.

(d) The benefits expected from administrative regulation are: This regulation shall provide additional information concerning federal mandates and state requirements concerning the collection of child support and medical support obligation amounts, and the process for the distribution of these collections. This administrative regulation shall also provide policy and procedures for the implementation of a new administrative enforcement remedy, the denial or suspension of a driver's license.

Date: December 15, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 3:010.** Definitions.

(2) The Cabinet for Human Resources, 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 January 31, 1995 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 January 31, 1995, 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, or Division of Management and Development, Third Floor West, CHR Building, 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 Food Stamp Program is KRS 194.050 and 7 CFR 271.4.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:010. It will add a definition for "self-employment income" to clarify existing policy.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This amendment to 904 KAR 3:010 is necessary to clarify the Food Stamp Program policy with regards to self-employment income.

(d) The benefits expected from administrative regulation are: The amendment will enable agency staff and food stamp clients to better understand the concept of self-employment income and differentiate it from wages.

**Department for Medicaid Services**

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:560**, Medicaid hearings and appeals.

(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 January 31, 1995 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 January 31, 1995, 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 hearings and appeals are KRS 205.520, 42 CFR 431.220, 431.221, 431.222, 431.223, 431.230, 431.231, 431.232, 431.233, 431.240, 431.241, 431.242, 431.243, 431.244, 431.245 and 431.246.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter regulation to address hearings and appeals for the Medicaid eligibility process. The subject matter was previously included in a Department for Social Insurance regulation (904 KAR 2:055).

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth procedures for hearings and appeals.

(d) The benefits expected from administrative regulation are: The creation of an individual subject matter Medicaid regulation from material contained in 904 KAR 2:055 allows the Department for Medicaid Services to have its own regulation and will clarify agency policy.

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:600**, Medicaid adverse action and conditions.

(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 January 31, 1995 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 January 31, 1995, 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 adverse action and conditions are KRS 205.520, 42 CFR 431.210, 431.211, 431.213 and 431.214.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter Medicaid regulation to address adverse action and conditions for Medicaid eligibility determinations. The subject matter was previously included in a Department for Social Insurance regulation (904 KAR 2:046).

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth adverse action and conditions for Medicaid eligibility determinations.

(d) The benefits expected from administrative regulation are: The creation of an individual subject matter Medicaid regulation from the material contained in 904 KAR 2:046 allows the Department for Medicaid Services to have its own regulation and will clarify agency policy.

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:605**, Medicaid procedures for determining initial and continuing eligibility.

(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 January 31, 1995 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 January 31, 1995, 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 eligibility determinations are KRS 205.520, 42 CFR 435.530, 435.531, 435.540, 435.541, 435.914 and 435.916.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter Medicaid regulation to address the eligibility determination process. The subject matter was previously included in a Department for Social Insurance regulation (904 KAR 2:040).

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth procedures for determining initial and continued Medicaid eligibility.

(d) The benefits expected from administrative regulation are: The creation of an individual subject matter Medicaid regulation from material contained in 904 KAR 2:040 allows the Department for Medicaid Services to have its own regulation and will clarify agency policy.

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:610**, Medicaid right to apply and reapply.

(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 January 31, 1995 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 January 31, 1995, 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 the Medicaid eligibility application process are KRS 205.520, 42 CFR 435.530, 435.531, 435.540, 435.541, 435.914 and 435.916.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter regulation to address the application process. The subject matter was previously included in a Department for Social Insurance regulation (904 KAR 2:035).

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth procedures for the Medicaid eligibility application process.

(d) The benefits expected from administrative regulation are: The creation of an individual subject matter Medicaid regulation from material contained in 904 KAR 2:035 allows the Department for Medicaid Services to have its own regulation and will clarify agency policy.

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:640**, Income standards for Medicaid.

(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 January 31, 1995 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 January 31, 1995, 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 income standards for Medicaid are KRS 194.050, 205.520, 42 CFR 432, and 42 USC 1396a, b, d.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter regulation for the income standards by which eligibility is determined for the Medicaid Program. This subject matter was previously included in 907 KAR 1:004 which the department plans to amend or repeal.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth the income standards for eligibility in the Medicaid Program.

(d) The benefits expected from administrative regulation are: The creation of individual subject matter regulations from the material contained in 907 KAR 1:004 should clarify agency policy and promote ease in the use of the material.

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:645**, Resource standards for Medicaid.

(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 January 31, 1995 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 January 31, 1995, 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 resource standards for Medicaid are KRS 194.050, 205.520, and 42 CFR 435.

(b) This new administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter administrative regulation for the resource standards for Medicaid Program eligibility. This subject matter was previously contained in 907 KAR

1:004 which the department plans to amend or repeal.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth the resource standards for eligibility in the Medicaid Program.

(d) The benefits expected from administrative regulation are: he creation of new individual subject matter regulations from materials contained in 907 KAR 1:004 should clarify agency policy and promote ease in the use of the material.

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:650**, Trust and transferred resource requirements for Medicaid.

(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 January 31, 1995 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 January 31, 1995, 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 Medicaid trust and transferred resource requirements KRS 194.050, 205.520, and 42 USC 1396a, p.

(b) This new administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter regulation for trust and transferred resource requirements for Medicaid eligibility determinations. This subject matter was previously contained in 907 KAR 1:004 which the department plans to amend or repeal.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth trust and transferred resource requirements for Medicaid eligibility determinations.

(d) The benefits expected from administrative regulation are: The creation of new individual subject matter regulations from materials contained in 907 KAR 1:004 should clarify agency policy and promote ease in the use of the material.

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:655**, Spousal impoverishment and nursing facility requirements for Medicaid.

(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 January 31, 1995 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 January 31, 1995, 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 spousal impoverishment and nursing facility requirements for Medicaid eligibility are KRS 194.050, 205.520, 42 CFR 435, and 42 USC 1396a, d, r-5.

(b) This new administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter regulation concerning spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations. This subject matter was previously contained in 907 KAR 1:004 which the department plans to amend or repeal.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations.

(d) The benefits expected from administrative regulation are: The creation of new individual subject matter regulations from materials contained in 907 KAR 1:004 should clarify agency policy and promote ease in the use of the material.

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:660,** Relative responsibility requirements for Medicaid.

(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 January 31, 1995 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 January 31, 1995, 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 resource and income considerations for Medicaid eligibility are KRS 194.050, 205.520, 42 CFR 435.712, 435.723, 435.724, and 435.821.

(b) This new administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter regulation with regard to relative responsibility for Medicaid eligibility determinations. This subject matter was previously contained in 907 KAR 1:004 which the department plans to amend or repeal.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth resource and income considerations for Medicaid eligibility determinations.

(d) The benefits expected from administrative regulation are: The creation of new individual subject matter regulations from materials contained in 907 KAR 1:004 should clarify agency policy and promote ease in the use of the material.

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:665**, Special income requirements for alternative intermediate services for the mentally retarded (AIS-MR), hospice, and home and community based services (HCBS).

(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 January 31, 1995 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 January 31, 1995, 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 special income requirements for AIS-MR, hospice, and HCB services administered by the Medicaid Program are KRS 194.050, 205.520, 42 CFR 435, and 42 USC 1396a, n.

(b) This new administrative regulation that the Department for Medicaid Services intends to promulgate will create an individual subject matter regulation concerning the special income requirements for AIS-MR, hospice, and HCB services administered by the Medicaid Program. This subject matter was previously contained in 907 KAR 1:004 which the department plans to amend or repeal.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth special income requirements for Alternative Intermediate Services for the Mentally Retarded (AIS-MR), Hospice, and Home and Community Based Services (HCBS) administered by the Medicaid Program.

(d) The benefits expected from administrative regulation are: The creation of new individual subject matter regulations from materials contained in 907 KAR 1:004 should clarify agency policy and promote ease in the use of the material.

Date: December 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:671**, Conditions of provider participation; enrollment, documentation of services, disclosure, claims processing, withholding, overpayments, appeals process, and sanctions.

(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 January 31, 1995 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 January 31, 1995, 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 conditions of Medicaid provider participation are KRS 194.050, 205.510 to 205.990, and 42 USC 1396a.

(b) This new administrative regulation that the Department for Medicaid Services intends to promulgate is to implement the provisions of House Bill 127 and Senate Bill 37 with regard to improvement of the Medicaid Program including the reduction of fraud and abuse. This administrative regulation is necessary for the Department of Medicaid Services to have adequate state administrative regulatory authority for activities required by the Medicaid State Plan with regard to provider enrollment, claims processing, recoupment of overpayments, provider exclusion and suspension, provider appeals, fraud and abuse, and withholding the federal share of payments to recover Medicare or Medicaid overpayments. Without state administrative regulatory authority for implementation of these state plan provisions, the department may lose federal funding if found out of compliance with federal regulations which require the Medicaid agency to have methods of administration for the proper and efficient operation of the Medicaid State Plan.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to Medicaid provider participation.

(d) The benefits expected from administrative regulation are: Reestablish the department's state administrative regulatory authority for the administration of Title XIX (Medicaid) State Plan federal requirement of provider enrollment, claims processing, recoupment of overpayments, provider exclusion and suspension, provider appeals, fraud and abuse, and withholding the federal share of payments to recover Medicare or Medicaid overpayments.

## KENTUCKY HEALTH POLICY BOARD

Date: November 23, 1994
Kentucky Health Policy Board

(1) **909 KAR 1:020**, State health plan process. The subject matter of the proposed administrative regulation is the process for development, public review and adoption of the state health plan.

(2) The Health Policy Board 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 Tuesday, January 31, 1995 at 1 p.m. in the Department for Health Services Auditorium, 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 January 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack B. Hall, Chairman, Kentucky Health Policy Board, c/o Interim Office of Health Planning and Certification, 275 East Main Street, Frankfort, Kentucky 40621.

(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 Kentucky Health Policy Board at the above address.

(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 the Kentucky Health Policy Board's administrative regulations may call toll free 1-800-648-6056 (V/TDD for hearing impaired) or 1-800-648-6057.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the state health planning process is specified in KRS 216B.2905(1)(b) (HB 250 Sec. 3(1)(b)) and 216B.040(3).

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will replace 902 KAR 17:020 under which the Cabinet for Human Resources promulgated the State Health Plan process and which shall be repealed.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The Kentucky Health Policy Board must establish procedures for development, public review and adoption of the state health plan in order to become operational with regard to statutory mandates concerning the state health plan and the certificate of need process. This administrative regulation will enable the Kentucky Health Policy Board to obtain public input on its plan for implementing provisions of health care reform legislation enacted by the General Assembly and for improving the public health status to which the reforms are directed. The plan will also include review standards and criteria to be used in the certificate of need process.

(d) The benefit expected from this administrative regulation is adoption and application of a state health plan that is developed with optimum public input and review and is designed to further the purposes and mandates of health care reform legislation.

(e) The proposed administrative regulation will be implemented through development, public review and adoption of the state health plan under authority of the Kentucky Health Policy Board.

Date: November 23, 1994
Kentucky Health Policy Board

(1) **909 KAR 1:040**, Certificate of need process. This regulation establishes the procedures under which the certificate of need process is implemented including procedures regarding: application processing; public notice provisions; review of completeness of applications; timetables for review cycles; timetables and standards for implementing CONs with specific implementation standards for projects involving long-term care beds; the certificate of need hearing process; nonsubstantive review, including other circumstances for which nonsubstantive review status may be granted; review of administrative cost escalations; the advisory opinion process; biennial review of projects for compliance with the terms of the certificate of need; and assessment of penalties for violations of KRS Chapter 216B.

(2) The Health Policy Board 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 Tuesday, January 31, 1995 at 1 p.m. in the Department for Health Services Auditorium, 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 January 31, 1995 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack B. Hall, Chairman, Kentucky Health Policy Board, c/o Interim Office of Health Planning and Certification, 275 East Main Street, Frankfort, Kentucky 40621.

(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 Kentucky Health Policy Board, at the above address.

(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 the Kentucky Health Policy Board's regulation

may call toll free 1-800-648-6056 (V/TDD for hearing impaired) or 1-800-648-6057.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authorities for the promulgation of an administrative regulation relating to the certificate of need process are KRS 216B.040, 216B.062, 216B.075, 216B.086, and 216B.095.

(b) The administrative regulation that the Kentucky Health Policy Board intends to promulgate will not amend an existing administrative regulation. It will establish the certificate of need procedures through promulgation of a new proposed administrative regulation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is necessary to establish the procedures to allow the Kentucky Health Policy Board to perform all certificate of need functions required in KRS Chapter 216B by establishing rules whereby the development and expansion of health care facilities and services are reviewed, approved and monitored; ensuring accessibility of the citizens of the Commonwealth to hearings and other proceedings wherein certificate of need matters are discussed and decided; establishing a means whereby health care providers and facilities, and the general public, are put on notice of the procedures to be followed in requesting and participating in certificate of need hearings; and ensuring full knowledge and awareness of the criteria and standards used by the Health Policy Board in making certificate of need decisions.

(d) The benefits expected from this proposed regulation are: To improve the quality of and increase access to health care facilities, services and providers, and to create a cost-efficient health care delivery system for the citizens of the Commonwealth.

(e) The administrative regulation will be implemented through the application of procedures included in the regulation for processing certificate of need applications, conducting public hearings, issuing advisory opinions, monitoring implementation and compliance of approved proposals and assessing penalties for violations.

Date: November 23, 1994
Kentucky Health Policy Board

(1) **909 KAR 1:050**, Certificate of need application fee schedule. The subject matter of the proposed regulation is the fee schedule for filing certificate of need applications.

(2) The Health Policy Board 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 Tuesday, January 31, 1995 at 1 p.m. in the Department for Health Services Auditorium, 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 January 31, 1995 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack B. Hall, Chairman, Kentucky Health Policy Board, c/o Interim Office of Health Planning and Certification, 275 East Main Street, Frankfort, Kentucky 40621.

(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 Kentucky Health Policy Board at the above address.

(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 the Kentucky Health Policy Board's regulation may call toll free 1-800-648-6056 (V/TDD for hearing impaired) or 1-800-648-6057.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation establishing application fees for certificates of need is KRS 216B.040 and 216B.131.

(b) The administrative regulation that the Health Policy Board intends to promulgate will not amend an existing administrative regulation. It will establish application fees for certificates of need through promulgation of a new administrative regulation.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 216B.040 allows the Health Policy Board to establish by administrative regulation reasonable application fees for certificates of need. All monies derived from applicants seeking certificates of need are paid to the State Treasurer, who deposits such monies in a special fund which, in addition to appropriated funds, are used to carry out the purposes of KRS Chapter 216B. The increases in fees are necessary to adjust for inflation since requirements were originally set in September, 1990 and to more adequately fund the program.

(d) The benefits expected from this proposed regulation are: Additional monies will be available to help defray the costs associated with administering and overseeing the certificate of need program and to more fairly apportion these costs among health care providers and facilities.

(e) The administrative regulation will be implemented through the assessment of reasonable fees for filing certificate of need applications.

Date: November 23, 1994
Kentucky Health Policy Board

(1) **909 KAR 1:060,** Licensure hearings. This regulation establishes a means by which the Health Policy Board may conduct due process hearings and issue final determinations on all actions by the Cabinet for Human Resources to deny, revoke, modify or suspend a license.

(2) The Health Policy Board 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 Tuesday, January 31, 1995 at 1 p.m. in the Department for Health Services Auditorium, 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 January 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack B. Hall, Chairman, Kentucky Health Policy Board, c/o Interim Office of Health Planning and Certification, 275 East Main Street, Frankfort, Kentucky 40621.

(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 Kentucky Health Policy Board at the above address.

(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 the Kentucky Health Policy Board's regulation may call toll free 1-800-648-6056 (V/TDD for hearing impaired) or 1-800-648-6057.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation establishing procedures for holding due process hearings on licensure matters is KRS 216B.040 and 216B.042.

(b) The administrative regulation that the Health Policy Board intends to promulgate will not amend an existing administrative regulation. It will establish the hearing process for licensure actions through promulgation of a new administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 216B.040 and 216B.042 allow the Health Policy Board to promulgate administrative regulations necessary for the proper administration of the licensure revocation function.

(d) The benefits expected from this proposed regulation are: Establishing rules to be followed by the Health Policy Board, health care providers, health facilities and the general public to follow which will ensure that an orderly and consistent process be followed conducting evidentiary hearings pertaining to licensure revocation matters.

(e) The administrative regulation will be implemented as follows: The regulation will establish guidelines to be used by the Health Policy Board in reviewing preliminary decisions by the cabinet, and in making final decisions on licensure revocation matters. It will also set forth procedures to be followed in requesting and participating in evidentiary hearings on licensure revocation matters, procedures to be followed in conducting the hearings, and procedures to be followed after the hearings have concluded, including rendering findings, recommendations and final decisions.

Date: December 15, 1994

Kentucky Health Policy Board

(1) **909 KAR 1:070**, Data reporting by health care providers. The subject matter of the proposed administrative regulation is guidance to health care providers on collection of specified health data elements beginning January 1, 1995, and on the forms, procedures and time-lines for submitting the data to the board.

(2) The board intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, January 30, 1995 at 9 a.m. in the Department for Health Services Auditorium at 275 East Main Street, Frankfort, Kentucky.

(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 January 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Jack B. Hall, Chairman, Kentucky Health Policy Board, c/o Interim Office of Health Planning and Certification, 275 East Main Street, Frankfort, Kentucky 40621.

(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 Kentucky Health Policy Board at the above address.

(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 the Kentucky Health Policy Board's administrative regulations may call toll free 1-800-648-6056 (V/TDD for hearing impaired) or 1-800-648-6057.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to health data collection is specified in KRS 216.2905 and 216.2925.

(b) The administrative regulation that the board intends to promulgate will replace 909 KAR 1:070E which was filed as an emergency regulation in order to meet a January 1, 1995 statutory deadline.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 216.2905 and 216-2925 mandate the Kentucky Health Policy Board to promulgate administrative regulations requiring specified health care providers to provide the board with data on charges, quality and outcomes of health care services provided in the Commonwealth. This administrative regulation sets forth the data elements, forms, and timetables required to carry out this mandate.

(d) The benefit expected from this administrative regulation is to enable the board to carry out its statutory mandate to collect patient-level data from health care providers and subsequently use the data to publish reports that will enable consumers to comparison shop among providers on the basis of charges, quality and outcomes.

(e) The proposed administrative regulation will be implemented by requiring health care providers to submit the prescribed data to the board or its agent. Penalties are imposed for noncompliance.

## EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

### (NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
101 KAR 4:010E

Pursuant to KRS 13A.190, the Governor of the Commonwealth does hereby declare that proposed administrative regulation 101 KAR 4:010 should be enacted on an emergency basis in order to comply with the requirements of KRS Chapter 18A that the Department of Personnel provide regulations implementing the state employee benefit fund. KRS 18A.2282 provides that the Department of Personnel shall adopt rules with regard to the administration of the state employee benefit fund, governing the conditions under which an employee may participate or withdrawal from the fund, the procedure by which an employee is to contribute to the fund, insure that the fund is actuarially sound and insure the integrity of the fund and to insure that the fund be used solely for the purposes specified in that section. This emergency regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
LOWELL W. CLARK, Commissioner

**DEPARTMENT OF PERSONNEL**

**101 KAR 4:010E. Health benefits.**

RELATES TO: KRS 18A.225, 18A.227, 18A.228-229
STATUTORY AUTHORITY: KRS Chapter 18A, 18A.2282
EFFECTIVE: December 13, 1994
NECESSITY AND FUNCTION: KRS 18A.2282 provides for the procurement of health insurance or health maintenance organizations' coverage for state and other employees. KRS 18A.228 through 18A.229 provides for the operation of the state employee benefit fund for self-insurance. This administrative regulation is necessary to comply with these statutory requirements.

Section 1. Definitions. (1) "Benefit year" means January 1 of each year through the following December 31.

(2) "Continuation coverage" means remaining in a group sponsored medical plan after termination of employment or eligibility.

(3) "Date of hire" means most recent date of employment.

(4) "Dependents" means the spouse and children under nineteen (19) years of age, twenty-five (25) years of age if attending school, including stepchildren and foster children.

(5) "Family coverage" means coverage for the employee and the employee's dependents. Only those dependents named on the application are covered.

(6) "Flexible benefits plan" means a cafeteria plan as defined in KRS 18A.227.

(7) "Insurance coordinator" means a person assigned by the appointing authority who reviews and processes insurance applications within the agency.

(8) "Open enrollment" means an annual period at least four (4) weeks in duration during which an employee may make changes in his medical coverage.

(9) "Parent plus" coverage means coverage for the employee and named dependents except the spouse. Only those dependents named in the application are covered.

(10) "Plan year" means January 1, of each year through the following December 31.

(11) "Service area" means counties designated by alternative carriers in which they provide medical coverage.

(12) "Single coverage" means coverage for the employee only.

(13) "Spouse" means lawful husband or wife.

Section 2. Initial Enrollment. Employees shall have thirty (30) days from their date of hire to select among benefits offered by the state employees' benefit fund one (1) or more health, hospitalization, medical and major medical companies; one (1) or more health maintenance organizations; elections for single coverage, parent plus coverage, or family coverage; and elections to participate or not to participate in the flexible benefits plan.

Section 3. Open Enrollment. (1) Open enrollment shall be held at a time designated by the commissioner each year during which time employees shall be allowed to select from among benefits offered by the state employees' benefit fund; one (1) or more health, hospitalization, medical and major medical companies; one (1) or more health maintenance organizations. Employees who reside in an alternative carrier's service area may select coverage offered by a medical insurance company or a health maintenance organization. Employees shall be offered the option of withdrawing from, or enrolling in the flexible benefit plan.

(2) Each employee shall be given the option of electing among the various options available for single coverage, parent plus coverage, or family coverage.

(3) Each employee changing to the state employees' benefit fund; health, hospitalization, major medical companies, or health maintenance organizations; or changing their election from single coverage to parent plus coverage or family coverage, or from family coverage or parent plus coverage to single coverage shall submit a new application during open enrollment. An application may be withdrawn and a new application filed any time during open enrollment. Once open enrollment ends, new elections shall not be made until the next open enrollment period unless otherwise provided in these regulations.

Section 4. Transfers. Employees who change positions without a break in service shall have continuous state paid coverage and shall not change plans unless they move out of a service area. Transferred employees shall not change medical coverage plans, or from single to family coverage, or from family to single coverage, or change the employee's flexible benefit election except as set out in Section 6 of this administrative regulation, Changing Coverage. An employee who moves out of a service area shall change medical coverage plans. An employee who has transferred from one agency to another shall complete a new application.

Section 5. Applications. (1) All medical plans offered through the Commonwealth's group health insurance program shall supply applications that meet the specifications set forth in the bid specifications approved by the Department of Personnel. Applications shall be used for initial enrollment, open enrollment, marital status change, move from a service area, name or address change, change to family coverage, change to parent plus coverage, change to single coverage, addition or deletion of a dependent, transfer from one (1) agency to another, or continuation coverage. Employees shall complete the application and deliver it to their insurance coordinator within thirty (30) days of the occurrence of an event requiring a new application or during open enrollment.

(2) Employees shall list other medical coverage, including

automobile insurance, under which they may receive medical benefits.

Section 6. Changing Coverage. (1) Employees shall not change from family coverage or parent plus coverage to single coverage except during open enrollment or the occurrence of one of the following events:

(a) Marriage of employee.

(b) Divorce of the employee.

(c) Death of employee's spouse or a dependent.

(d) The spouse of the employee obtains part-time or full-time employment.

(e) Spouse becomes Medicare eligible and no other dependent is covered under the family or parent plus contract.

(f) Covered dependent ceases to be eligible under the plan and no other dependent is covered under the family or parent plus contract.

(g) Termination of employment of the spouse of the employee.

(2) Employees shall not change from single coverage to parent plus coverage or family coverage or add new family members except during open enrollment or the occurrence of one (1) of the following events:

(a) Birth or adoption of a child.

(b) Marriage of the employee.

(c) Death of spouse.

(d) Divorce of the employee.

(e) Termination of employment of the spouse of the employee.

(f) Loss of health coverage of the spouse of the employee attributed to the spouse's employment.

(g) The spouse of the employee obtains part-time or full-time employment or obtains health benefits attributed to their employer.

(h) Other extraordinary circumstances as may be determined by the Commissioner of Personnel.

(3) All applications for changes shall be delivered to the insurance coordinator within thirty (30) days of a qualifying event. The change to family coverage, parent plus coverage, or added family members shall be effective on the first day of the second month after the application is received by the agency insurance coordinator.

(4) The employee shall supply documentation of the event.

Section 7. State Contribution. An employee who is receiving a state contribution from a state retirement plan shall not be entitled to a full contribution from any agency for which he employed after his retirement. The agency shall reduce its contribution by the amount of the contribution made by the retirement systems.

Section 8. Waiver of Coverage. Any employee who does not want to enroll, or who wants to drop coverage, in one (1) of the state sponsored medical coverage plans, shall sign a "Waiver of Coverage" form during open enrollment. Employees who sign a waiver of coverage, when eligible, shall not enroll with a state sponsored medical plan until the next open enrollment period. A separate waiver shall be delivered to the insurance coordinator each year.

Section 9. Automatic Assignment, New Employees. An employee who does not complete an application for medical coverage or a waiver of coverage within thirty (30) days from their date of hire shall be placed under single medical coverage on the basic state sponsored plan. The basic state sponsored plan shall be the indemnity plan that is offered statewide and for which the state pays all, or the highest percentage, of the single premium. The coverage shall be effective the first day of the second month after the date of hire.

Section 10. Automatic Assignment, Existing Employees. (1) If an employee does not complete a new application when the employee moves out of a service area, the employee shall be placed under the state's basic plan.

(2) If an employee does not complete a new application or sign a waiver of coverage during open enrollment, the employee shall continue on the same medical coverage option the employee had prior to open enrollment. If that medical coverage option is not available, the employee shall be placed under the state's basic plan. If the employee has single coverage, the employee shall continue with single coverage. If the employee has family coverage, the employee shall continue with family coverage. If the employee has parent plus coverage, the employee shall continue with parent plus coverage. The coverage shall be effective the first day of the new plan year. If the change is not discovered until after the start of the new plan year, the employee shall be responsible for any difference in premiums prior to being placed under the state's basic plan.

Section 11. Cross-reference Option. An employee and spouse who are both employees of any agency, or either or both are retirees under age sixty-five (65), participating in the Commonwealth's group health program, may elect the cross-reference option. The Commonwealth shall make two (2) individual contributions towards a family contract and one (1) spouse shall have the additional amount due for the medical coverage deducted from his paycheck. Both spouses shall complete application forms within thirty (30) days of being eligible for cross-reference and indicate cross-reference on the application form and both spouses shall be enrolled in the same health coverage plan. All dependents shall be listed on both applications. An employee who works for two (2) different agencies shall not have two (2) individual contributions. The Commissioner of Personnel may enter into agreements with other groups to allow such groups to participate in the cross-reference program

Section 12. State Employees' Benefit Fund. (1) The state employee benefit fund shall operate on a plan year. The department shall prepare a request for proposal for a third party administrator who shall be the claims administrator. The third party administrator shall not be responsible for determining the design of the plan or plans.

(2) The department shall establish benefits, amounts of co-insurance, deductibles, and all other terms and conditions of the plan or plans. The state employee benefit fund may offer more than one (1) plan and may have different terms and conditions in each plan. The department shall establish premiums for employees and for dependents' coverage under the plans.

(3) In establishing benefits and premiums, the department shall have an actuarial study performed. The qualifications of the actuary shall be determined by the department.

(4) The department shall establish an appeals committee to consider appeals by persons covered by the plans from final decisions of the third party administrator. The decision of the appeals committee shall be final. The appeals committee shall consist of five (5) members appointed by the commissioner.

(5) The department shall require the third party administrator to file reports with the department. Reports shall contain such information as the department specifies.

(6) The department shall have an audit of the third party administrator's books and records performed on an annual basis. The audit shall confirm the accuracy of the third party administrator's reports. The audit shall confirm that claims are paid for benefits covered by the plans and that the third party administrator is in compliance with the contract with the department. The audit shall be approved by the State Auditor.

(7) The department shall have a certificate booklet prepared setting out all terms, conditions, and benefits of the plans. The certificate booklet shall be of sufficient detail to inform persons covered by the plans of their benefits, exclusions, costs containment provisions, and other general provisions. The certificate booklet shall be updated with sufficient regularity to inform covered persons of changes in the plans. The certificate booklet may be supplemented by amendments, however, it shall be republished at least every two (2) years. The certificate booklet shall be printed by the third party

administrator.

(8) The Department of Personnel hereby incorporates by reference the Kentucky Kare Plans Certificate Booklet - Health Coverage 1994, revised 1-1-94 which is available for inspection at the commissioner's office of during normal business hours.

Section 13. Flexible Benefits Plan. (1) The flexible benefits plan shall be established by the department and shall include options among health insurance, participation in the state employee's benefit fund, and other options as allowed by Section 125 of the Internal Revenue Code.

(2) All employees shall participate in the premium conversion part of the plan unless the employee rejects participation, in writing, within thirty (30) days of the employee's date of hire or during any subsequent open enrollment period. An employee may change his election each year during the open enrollment period. All elections made during open enrollment shall be effective with the start of the following plan year. An employee shall not change his elections under the plan outside of open enrollment, and convert from family coverage or parent plus coverage to single coverage except on the occurrence of one (1) of the following events:

(a) Marriage of employee.

(b) Divorce of the employee.

(c) Death of employee's spouse or a dependent.

(d) The spouse of the employee obtains part-time or full-time employment.

(e) Spouse becomes Medicare eligible and no other dependent is covered under the family or parent plus contract.

(f) Covered dependent ceasing to be eligible under the plan and no other dependent is covered under the family or parent plus contract.

(g) Termination of employment of the spouse of the employee.

(3) Employees shall not change from single coverage to parent plus coverage or family coverage or add new family members except during open enrollment or the occurrence of one (1) of the following events:

(a) Birth or adoption of a child.

(b) Marriage of the employee.

(c) Death of spouse.

(d) Divorce of the employee.

(e) Termination of employment of the spouse of the employee.

(f) Loss of health coverage of the spouse of the employee attributed to the spouse's employment.

(g) The spouse of the employee obtains part time or full time employment or obtains health benefits attributed to their employment.

(h) Other extraordinary circumstances as may be determined by the Commissioner of Personnel.

(4) All applications for changes shall be delivered to the agency insurance coordinator within thirty (30) days of a qualifying event. The change to family or parent plus coverage or added family members shall be effective on the first day of the second month after the application is received by the agency insurance coordinator.

(5) The employee shall supply documentation of the qualifying event.

(6) An employee may revoke his election to participate in the flexible benefit plan upon termination of employment or being placed on leave without pay and not being entitled to his state contribution for medical coverage for one (1) or more months. If a revocation occurs under this subsection, no new election shall be made by such employee until open enrollment. If the employee does not elect continuation coverage, his election to participate in the flexible benefits plan shall be terminated for the balance of the plan year. The employee shall participate in the flexible benefits plan effective with the next plan year unless he elects not to participate during open enrollment or if he returns to work during the next plan year and rejects participation, in writing, within thirty (30) days of the date the employee returns to work.

(7) At the request of a department, board, agency, branch of state government, or school board, the employee benefits fund may allow an employee to enroll the employee or the employee's dependents outside of open enrollment or initial enrollment if the employee attempted to comply with Section 3 or 4 of this administrative regulation and was not able to do so due to error of the employing department, board, agency, or branch of state government, or school board. The employee shall pay all past due premiums the employee would normally pay and the department, board, agency, branch of state government, or school board shall pay the past due state contribution into the employee benefit fund.

LOWELL W. CLARK, Commissioner

APPROVED BY AGENCY: December 13, 1994

FILED WITH LRC: December 13, 1994 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: All persons, including elected public officials, who are regularly employed by any department, board, agency, branch of state government, and are contributing members of any one of the retirement systems administered by the state, including federally-funded time-limited employees; and persons who must fulfill the requirements of the State Board for Elementary and Secondary Education.

(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 anticipated.

(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 seen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Not applicable.

2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings: No significant savings or costs anticipated.

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: No significant changes in the reporting and paperwork is anticipated.

(4) Assessment of anticipated effect on state and local revenues: No significant impact of state and local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current budgeted funds are to be used for implementation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were proposed.

(8) Assessment of expected benefits: Provide existing level of benefits of medical insurance for employees on a state wide basis.

(a) Identify effects on public health and environmental welfare of the geographical are in which implemented and on Kentucky: This regulation provides health insurance for employees of the Common-

wealth statewide.

(b) State whether a detrimental effect on environment and public health would result if not implemented: State employees would not have the availability of this level of health insurance if this regulation is not implemented.

(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: There does not appear to be any statute, administrative regulation, government policy in conflict or duplication of this regulation

(a) Necessity of proposed regulation 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: This regulation is designed to provide health insurance for employees of the Commonwealth including HMOs and the state employee benefit fund. The wide choice of insurance offerings stimulates competition among the insurance companies and allows employees to secure insurance at the best prices.

(11) TIERING? Is tiering applied? Yes. This regulation applies equally to all state employees but not to the general public.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2§CER Par 825).

2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

STATEMENT OF EMERGENCY
700 KAR 2:010E

This emergency regulation establishes the procedures to be followed when KET conducts forums or debates for a qualifying slate of candidates as required under KRS 121A.100. There are two reasons that the procedures to be followed by KET in conducting the forums and debates required by KRS 121A.100 must be filed as an emergency regulation. First, the next regularly scheduled election day is May 23, 1995. Pursuant to the terms of the proposed emergency regulation the candidates are to be notified 60 days prior to May 23 of the dates for upcoming forums or debates. This is to provide the candidates with sufficent advance notice to adjust their schedules. However, because of this 60 day advance notice requirement, if this was filed only as an ordinary regulation, there is a possibility that the regulation would not be effective at the time that the notices were required to be sent out. Second, due to the time associated with the promulgation of an ordinary administrative regulation, the qualifying slate of candidates would not be sure of the procedures they would be required to follow during the forums or debates at the time that the debates were being scheduled. Therefore an emergency regulation is required in order to avoid these problems. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON JONES, Governor
W. TERRY MCBRAYER, Chairman

**EDUCATION, ARTS, AND HUMANITIES CABINET**
**Kentucky Authority for Educational Television**

**700 KAR 2:010E. Gubernatorial forums or debates.**

RELATES TO: KRS 121A.100
STATUTORY AUTHORITY: KRS 121A.100
EFFECTIVE: December 12, 1994
NECESSITY AND FUNCTION: KRS 121A.100 provides that a qualifying slate of candidates that receives public funds shall participate in a reasonable number of televised debates or forums and requires KET to promulgate administrative regulations to establish the procedures to manage the debates or forums.

Section 1. Definitions. "Candidate" means a person seeking either a political party's gubernatorial or Lieutenant Governor nomination in a primary or runoff election or the office of Governor or Lieutenant Governor in a general election and who:

(1) Is required by KRS 121A.100(1) to participate in a televised forum or debate;

(2) Has satisfied the requirements under KRS Chapter 121A to

obtain public financing but has declined to receive any public funding; or

(3) Has qualified to have his name appear on an election ballot and is actively conducting a substantial statewide campaign to obtain a political party's nomination in a primary election or be elected in a general election.

Section 2. Primary, Runoffs and General Elections. (1) The Kentucky Authority for Educational Television (KET) shall notify gubernatorial and Lieutenant Governor candidates, in writing, of the number of forums or debates to be held at the KET studio, no less than sixty (60) days prior to the:

(a) May primary elections; and

(b) November general election.

(2) The number of forums or debates shall be based on the number of slates of candidates seeking nomination or election to the offices of Governor and Lieutenant Governor and the limitations contained in KRS 121A.100(1).

(3) Formats for each of the democratic and republican primary election programs shall be designed according to the number of candidates participating in the forum or debate.

(4) If there is a runoff primary election, KET shall schedule one (1) gubernatorial forum or debate to be held two (2) weeks prior to the runoff primary date.

Section 3. (1) Prior to the primaries, runoff and general elections, KET shall schedule separate forums or debates for the candidates for Lieutenant Governor.

(2) The forums or debates for candidates for Lieutenant Governor shall follow the guidelines established by the provisions of this administrative regulation.

Section 4. (1) No less than thirty (30) days prior to the primary and general elections, and fifteen (15) days prior to a runoff primary election, KET shall notify each candidate in writing prior to the broadcast of the:

(a) Date, location and time of the live scheduled broadcast;

(b) Length of the broadcast;

(c) Format of the broadcast; and

(d) That the candidate shall submit accurate and thorough biographical information from which introductions may be made by the program host.

(2) No less than one (1) week prior to the broadcast, KET shall notify the candidates in writing of the:

(a) Names of candidates participating in the KET program;

(b) Location of each candidate on the studio set;

(c) Details describing how the studio set will be arranged; and

(d) If applicable, the names of the journalists scheduled to participate in the forum or debate.

(3) Participating journalists shall be:

(a) Selected by KET; and

(b) Representative of the Kentucky print and electronic media.

(4) If a journalist is unable to participate in the scheduled program, KET shall select a substitute journalist.

Section 5. (1) On the day of the broadcast:

(a) KET may elect to inform or brief candidates about issues or topics to be discussed in advance of the scheduled air time. If KET designates a format which includes briefing candidates in advance of the air time, it shall:

1. Notify each candidate in writing of the topics or issues to be discussed; and

2. Designate the initial round, or subsequent rounds, to which the issue or topic relates.

(b) The candidates shall be instructed how studio time cues shall be given by KET technical personnel during the broadcast. A timekeeper and visual warning device shall be provided.

(c) On the afternoon of the broadcast, each candidate or a representative shall be allowed fifteen (15) minutes to inspect the studio set.

(2) During the broadcast candidates shall not:

(a) Hold, wear, or use any props such as visual materials, charts, photographs, articles or similar items.

(b) Wear campaign pins or name identification pins; or

(c) Bring prepared notes for use during the program. Paper and pen shall be available for note-taking during the program.

(3)(a) The KET studio shall not be open during the program broadcast to members of the general public who are not participating in the debate or forum.

(b) A limited number of guests of the candidates, as determined by KET, shall be provided seating in the KET Visitor's Center to view the program on television monitors.

(c) The number of participating candidates and availability of seating space shall determine how many guests each candidate may request to be present.

(4) Members of the electronic and print media shall:

(a) Not be allotted time while the candidates are in the KET studio prior to the broadcast to conduct interviews with the candidates;

(b) Be allowed in the studio during the program contingent upon availability of space;

(c) Have access to the KET Network Center where audio and video feeds are available; and

(d) Be permitted to question candidates who agree to an interview after the broadcast.

(5) The televised candidate forum or debate shall air live from the KET studios in Lexington at a time specified in the notice required in Section 1(1) of this administrative regulation.

(a) Candidates shall be notified in writing of their requested arrival time at the KET Network Center.

(b) The total number of participating candidates shall determine the amount of time needed for prebroadcast activities.

(c) Designated prebroadcast time shall be used for:

1. Candidate make-up;

2. Review of format and guidelines; and

3. Random drawing to determine the order in which candidates shall speak.

(d) A KET makeup artist shall be available for forum or debate participants.

(e) If a forum or debate participant does not wish to use a KET makeup artist, he shall notify KET at least twenty-four (24) hours prior to the broadcast.

(6)(a) KET televised candidate forums or debates shall be offered to the electronic media across the Commonwealth for simulcast or rebroadcast.

(b) A delayed broadcast shall be aired:

1. Within seven (7) days of the original broadcast; and

2. As an uninterrupted program without commercial sponsorship.

(7) The program shall be broadcast with closed captioning for the deaf and hearing impaired.

(8) KET shall make all necessary accommodations for candidates with disabilities.

(9) KET shall select the location if remote site viewing is utilized by KET for citizen participation in the program via satellite or microwave transmission.

(10) VHS tapes of the broadcast may be purchased from KET.

Section 6. The forum or debate host or moderator shall:

(1) Be selected by KET fifteen (15) days prior to the program;

(2) Impartially insure that the candidates follow the program guidelines and format;

(3) Open and close the program;

(4) Introduce the participants and briefly explain the rules; and

(5) Insure that candidates' answers and statements are made within the allotted times.

Section 7. Format for Debates or Forums. (1) Formats for the debates or forums may include a combination of the following elements:

(a) Opening statements delivered by the candidates;

(b) Questions posed directly to the candidates by representatives of the electronic and print media;

(c) Questions posed directly to the candidates by members of the audience;

(d) Questions submitted by members of the general public and posed by the program host;

(e) Questions posed by opposing candidates;

(f) Informal cross talk between opposing candidates about an issue introduced by the program host;

(g) Timed statements and rebuttals between opposing candidates; and

(h) Closing statements delivered by the candidates.

(2)(a) Candidates shall be initially introduced by their title, if any.

(b) Thereafter, candidates shall be addressed as Mr., Mrs., Miss, or Ms., according to the candidate's preference.

(3) Duration of program elements and time allotted each candidate for statements or responses shall be based on the number of participating candidates.

(4) Members of the general public may participate in the forum or debate through any one (1) of the following:

(a) Live presence in the KET studios;

(b) Live presence at a remote location transmitted to the candidates by satellite or microwave;

(c) Videotaped questions recorded by KET earlier and presented to the candidates during the forum or debate;

(d) Recorded questions phoned in to KET in advance of the forum or debate and played back on air or relayed by the program host; or

(e) Written questions received by KET in advance of the forum or debate and read by the program host.

W. TERRY MCBRAYER, Chairman
APPROVED BY AGENCY: December 6, 1994
FILED WITH LRC: December 12, 1994 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:671E

This emergency administrative regulation is being promulgated to implement the provisions of House Bill 127 and Senate Bill 37 which relate to improvement of the Medicaid Program including the reduction of fraud and abuse. This action must be taken on an emergency basis to prevent a loss of federal funds because the state may be sanctioned if found out of compliance with the following federal requirements: 42 CFR 431.15 which requires the Medicaid agency to have methods of administration for the proper and efficient operation of the state plan; 42 CFR 431.107 and 42 CFR 431.17 with respect to provider agreements and provider's records; 42 CFR 433 Subpart F relating to recoupment of overpayments and refunding of federal share of Medicaid overpayments to providers; 42 CFR 447.45 relating to timely claims processing and payment; 42 CFR 455 relating to program integrity, fraud, abuse; and 42 CFR Part 1002 relating to exclusion of providers and suspension of practitioners and other individuals. Without this emergency administrative regulation the department may not have clear state regulatory authority for activities required by the Medicaid state plan with regard to provider enrollment, claims processing, recoupment of overpayments, provider exclusion and suspension, provider appeals, fraud and abuse, and withholding the federal share of payments to recover Medicare or Medicaid overpayments. This action must also be taken on an emergency basis to protect human health because currently the Medicaid agency may not have adequate state regulatory authority to exclude or suspend providers from the Medicaid Program who are unqualified or pose a threat to Medicaid recipients' health. This emergency regulation differs from the previously withdrawn emergency regulation on the same subject matter in the following ways: first, referral to the United States Attorney's Office of fraud and abuse cases is provided for; second, the hearing process was expanded to include appeals of rate issues for providers with cost-based rates; third, the final decision of the agency on appeals will be made by the secretary of the cabinet (rather than the Commissioner of the Department for Medicaid Services); and fourth, the definitions section has been expanded to clarify issues raised by providers. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the regulations compiler.

BRERETON JONES, Governor
MASTEN CHILDERS, Secretary

**CABINET FOR HUMAN RESOURCES**
**Department for Medicaid Services**

**907 KAR 1:671E. Conditions of Medicaid provider participation; enrollment, documentation of services, disclosure, claims processing, withholding overpayments, appeals process, and sanctions.**

RELATES TO: KRS 194.515, 205.510 to 205.990, 42 CFR 431.107, Parts 455, 1002, 42 USC 1320 a-3, 1320 a-3a, 1320 a-5, 1320 a-7, 1395cc, 1395vv, 1396b, 1396d, 1396m, 1396n

STATUTORY AUTHORITY: KRS 194.050, 205.520, 205.560, 42 USC 1396a

EFFECTIVE: December 13, 1994

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Medicaid Program. KRS 205.8451 through 205.990, 205.624 and 194.515 provide that the Cabinet for Human Resources and the Department for Medicaid Services shall be responsible for the control of Medicaid provider fraud and abuse. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to Medicaid provider participation. If there is a conflict between other topical administrative regulations under Title 907 of the Kentucky administrative regulations, or manual materials incorporated by reference in administrative regulations under Title 907 of the Kentucky administrative regulations, and this administrative regulation, the latter shall prevail.

Section 1. Definitions. (1) "Abuse" shall have the same meaning as that shown in KRS 205.8451.

(2) "Administrative process" means meeting, review, investigation, hearing, appeal, deliberation or exchange of documents or information between the provider and the department.

(3) "Affiliate" means an individual agency or organization controlled by the provider or associated with the provider under common ownership or control.

(4) "Applicant" means a person or entity who submits an application to become a Medicaid provider.

(5) "Application" means completion and submission of a Medicaid provider agreement, and any required addendum specific to a provider type, which is the contract between the provider and the cabinet for the provision of Medicaid services.

(6) "Billing agent" means a contractor that prepares and submits claims on behalf of the provider.

(7) "Bribes and kickbacks" means soliciting or receiving any payment, or offering or paying any payment whether in cash or in kind (i.e., goods or services), in return for:

(a) Referring a recipient to a provider for any medical care, services or supplies; or

(b) Purchasing, leasing, ordering or recommending any medical care, services or supplies, for which payment is claimed under the Medicaid Program.

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

(9) "Claim" means any request for payment under the Medicaid Program, and relates to each individual billing submitted by a provider to the department which details services rendered to an individual recipient on a given date or dates of service. The claim may be either a line item of service or all services for one (1) recipient within a bill. A claim may be submitted on:

(a) A paper form;

(b) An electronic billing process; or

(c) Any format approved by the department.

(10) "Conversion" means converting a Medicaid payment, or any part of a payment, to a use or benefit other than for the use and benefit intended by the Medicaid Program.

(11) "Convicted" shall have the same meaning as that shown in KRS 205.8475, regardless of whether an appeal from that judgment is pending.

(12) "Department" means the Department for Medicaid Services (including any contract agents).

(13) "Disclosing entity" means a Medicaid provider or the fiscal agent for the department.

(14) "Disclosure" means the provision of information in accordance with the requirements shown in 42 CFR 455, Subpart B.

(15) "Exclusion" means the termination of the participation of a provider or the denial of the enrollment of a provider; and no reimbursement to the provider under Medicaid for items or services furnished by the provider during any period of exclusion.

(16) "Factor" shall have the same meaning as shown in 42 CFR 447.10.

(17) "False claim" means a claim for:

(a) Unfurnished medical care, services or supplies; or

(b) Medical care, services or supplies provided:

1. In excess of accepted standards of practice for the medical service that was provided;

2. In an amount in excess of established rates or fees which were communicated by appropriate prior written notice to providers; or

3. Where there is documentation that the provider has knowledge of third-party coverage of the recipient, but the provider knowingly chooses not to bill the third-party payor.

(18) "Fiscal agent" means a contractor that processes or pays provider claims on behalf of the department.

(19) "Full investigation" means the activities of the Medicaid Fraud and Abuse Control Unit of the Office of the Attorney General (MFACU) or any other law enforcement or investigative agency to resolve a complaint of Medicaid fraud or abuse (if the abuse involves substantial allegations or other indications of fraud).

(20) "Furnish" means to provide medical care, services or supplies that are:

(a) Provided directly by the provider;

(b) Provided under the supervision of the provider; or

(c) Prescribed by the provider.

(21) "Managing employee" means the general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who conducts the day-to-day operation of, an institution, organization, or agency.

(22) "Medicaid Fraud and Abuse Control Unit" (MFACU) means the unit of staff in the Office of the Attorney General of Kentucky, certified under the provisions of 42 USC 1396b(q), which conducts a statewide program for the investigation and prosecution of violations of all state laws regarding fraud and abuse in connection with the provision of Medicaid services and the activities of Medicaid providers.

(23) "Preliminary investigation" means the activities of the Office of Inspector General (OIG), MFACU, or the department to determine whether a complaint of Medicaid fraud or abuse has sufficient basis to warrant a full investigation.

(24) "Provider" shall have the same meaning as that shown in KRS 205.8451.

(25) "Recipient" shall have the same meaning as that shown in KRS 205.8451.

(26) "Reliable evidence" means:

(a) Preliminary determinations based on a preponderance of evidence as verified by the department by audit or utilization review staff of unacceptable practices or significant overpayments;

(b) Information of an ongoing investigation of a provider based on a preponderance of evidence, as verified by the cabinet, involving fraud or criminal conduct pertaining to the Medicaid Program.

(c) Information based on a preponderance of evidence, as verified by the cabinet, from a state professional medical licensing or certifying agency of ongoing investigation of a Medicaid provider involving fraud, abuse, professional misconduct, unprofessional conduct or utilization; or

(d) Information from department staff or other sources based on a preponderance of evidence, as verified by the cabinet, regarding unacceptable practices or program abuse.

(27) "Sanction" means any final administrative action taken by the department (including the hearing officer's decision as appropriate) which limits a person's or a provider's participation in the Medicaid Program or imposes a fiscal penalty against the provider including the imposition of civil penalties and interest and the withholding of payments. Sanctions which may be imposed are described in KRS 205.8467 and Section 9 of this administrative regulation.

(28) "Services" means medical care, services or supplies provided to recipients under Medicaid.

(29) "Subcontractor" means an individual, agency, or organization to which a disclosing entity has:

(a) Contracted or delegated some of its management functions or responsibilities of providing medical care or services to its patients; or

(b) Has entered into a contract, agreement, purchase order or lease including real property, to obtain space, supplies, equipment or nonmedical services provided under Medicaid.

(30) "Supplier" means an individual, agency or organization from which a provider purchases goods and services used in carrying out its responsibilities under Medicaid.

(31) "Terminated" means the provider's participation in the Medicaid Program has been ended, and that a contractual relationship no longer exists between the provider and the department for the provision of Medicaid covered services to Medicaid eligible recipients by that individual, entity, or organization.

(32) "Unacceptable practice" means conduct by a provider which constitutes "fraud" or "provider abuse", as defined in KRS 205.8451, or willful misrepresentation, and includes the following practices:

(a) Knowingly submitting, or causing the submission of false claims, or inducing, or seeking to induce, any person to submit false claims;

(b) Knowingly making, or causing to be made, or inducing, or seeking to induce, any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment;

(c) Having knowledge of any event affecting the right to payment of any provider and concealing or failing to disclose the event with the intention that a payment be made when not authorized or in a greater amount than due;

(d) Conversion;

(e) Soliciting or accepting bribes and kickbacks;

(f) Failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services and supplies furnished, or to comply with other requirements as contained in Section 4 of this administrative regulation;

(g) Knowingly submitting a claim or accepting payment for

medical care, services or supplies furnished by a sanctioned provider;

(h) Seeking or accepting additional payments such as gifts, money, donations, or other consideration in addition to the amount paid or payable under the Medicaid Program for any covered medical care, services or supplies for which a claim is made;

(i) Charging or agreeing to charge or collect any fee from a recipient for covered services which is in addition to amounts paid by the Medicaid Program except for any required copayments;

(j) Engaging in conspiracy, complicity or criminal syndication;

(k) Furnishing medical care, services or supplies that fail to meet professionally recognized standards, or are found to be noncompliant with licensure standards promulgated under KRS Chapter 216B, for health care or which are beyond the scope of the provider's professional qualifications or licensure;

(l) Illegally discriminating in the furnishing of medical care, services or supplies based on a recipient's race, color, national origin, religion, sex, age, disabling condition, or marital status;

(m) Having payments made to or through a factor, either directly or by power of attorney, as prohibited by 42 CFR 447.10;

(n) Offering or providing any premium or inducement to a recipient in return for the recipient's patronage of the provider or other provider to receive medical care, services or supplies under the Medicaid Program;

(o) Knowingly failing to meet disclosure requirements;

(p) Unbundling; and

(q) An act committed by a nonprovider on behalf of a provider which, if committed by a provider, would result in the termination of the provider's enrollment in the program.

(33) "Unbundling" means submitting multiple claims for constituent parts of services provided which results in enhanced reimbursement to a provider for a covered service where the claims do not conform with professionally recognized coding standards;

(34) "Withholding" means the process by which claims are processed, but are not paid to a provider with payments for the claims withheld pending the results of an investigation of a report of fraud or willful misrepresentation based upon receipt of reliable evidence.

Section 2. Enrollment Process for Provider Participation in Medicaid. (1) Scope.

(a) The department shall contract with only those providers or entities who can demonstrate that they are qualified as determined by the cabinet to participate as a provider.

(b) All providers or entities who wish to participate in the Medicaid Program shall be enrolled as participating providers prior to being eligible to receive reimbursement.

(2) New enrollments. Any provider or entity interested in participating as a Medicaid provider on or after the effective date of this administrative regulation shall be required to submit an application for enrollment in accordance with this section.

(3) Enrolled providers. All providers or entities enrolled as participating providers in Medicaid prior to the effective date of this administrative regulation shall continue to be participating providers on the effective date of this administrative regulation. Upon receiving notice from the department, existing providers shall be required to submit a new or revised application for enrollment to continue their Medicaid participation.

(a) Providers shall have thirty-five (35) days from the date of the notice to submit a completed and signed application to the department.

(b) The notice shall inform the provider that failure to return the completed and signed application within thirty-five (35) days shall result in termination of participation.

(c) Submission of the application within thirty-five (35) days shall permit the continuation of the existing provider participation which shall remain in effect until a determination with respect to the application for enrollment has been made and notice of approval or denial of enrollment sent to the provider.

(d) The department may revise enrollment requirements by regulatory revision made in accordance with the requirements of KRS Chapter 13A and re-enroll providers if necessary for effective management of the Medicaid Program.

(4) Application for enrollment as a participating provider shall be processed in the following manner:

(a) All applicants for participation shall complete a provider agreement, disclosure of ownership and control interest statement, certification with regard to lobbying activity (pursuant to Title 31 USC 1352), provide proof of a currently valid medical license, registration, or certificate which allows the applicant to provide the services for which the applicant contracts, and provide any additional clarifying information requested for processing of the application for participation.

(b) The department may require any additional clarifying information from the applicant with regard to qualifications for participation. If the applicant does not respond within the time period specified in the request, the application for participation may be denied unless an extension of time is requested and granted.

(c) The department may require that an on-site inspection be performed to ascertain compliance with applicable licensure standards as promulgated under KRS Chapter 216B, and certification standards, prior to an enrollment determination.

(d) The department shall complete its application review and determine whether or not to enroll the applicant within ninety (90) days after receipt of the completed application and any additional clarifying information requested by the department. The department may take additional time for the decision when necessary for resolution of issues or disputes.

(5) Approval of an application.

(a) Upon approval of an application, the provider shall be issued an identifying number to be used exclusively by the provider for billing and identification purposes.

(b) A provider's participation shall begin on the date specified in the notification of approval of program participation and continue for the period specified in the notification, unless the provider participation is otherwise terminated in accordance with this administrative regulation or other applicable state or federal laws.

(6) By enrolling, the provider, its officers, directors, agents and employees (and all subcontractors pursuant to written agreement made a part of the contract) agrees to:

(a) Maintain the documentation for claims as required by Section 4 of this administrative regulation;

(b) Furnish all information regarding the nature and extent of services and claims for payment submitted by, or on behalf of, the provider to representatives of the cabinet, the Kentucky Health Policy Board, the Attorney General, the Auditor of Public Accounts, the Secretary of the United States Department of Health and Human Services, and the Office of the United States Attorney upon request;

(c) Comply with the disclosure requirements of Section 3 of this administrative regulation;

(d) Comply with the applicable advance directives requirements of 42 USC 1396a(w) with regard to the right to accept or reject lifesaving medical procedures as described in KRS 311.621,et seq.;

(e) Accept payment from Medicaid as payment in full for all care, services and supplies billed under Medicaid, except with regard to copayments and recipient liability (if any);

(f) Submit claims for payment only for care, services and supplies actually furnished to eligible recipients and medically necessary or otherwise authorized by law;

(g) Provide true, accurate and complete information in relation to any claim for payment;

(h) Permit review, or audit, by representatives of the cabinet, the Kentucky Health Policy Board, the Attorney General, the Auditor of Public Accounts, the Secretary of the United States Department of Health and Human Services, and the Office of the United States Attorney or any other body with investigative authority over Medicaid,

of all books or records or, in the discretion of the auditing agency, a sample thereof, relating to services furnished and payments received under Medicaid, including recipient histories, case files and recipient specific data. Failure to allow access to records may result in the provider's liability for costs incurred by the cabinet associated with the review of records, including food, lodging and mileage.

(i) Not engage in any activity which would constitute unacceptable practice;

(j) Comply with all terms and provisions contained in the provider agreement; and

(k) Comply with all applicable federal and state statutes and regulations relating to their provider type and provision of services under the Medicaid Program.

(7) Denial of an application for participation.

(a) The following factors shall be reason for denial of application for participation:

1. Any false representation, omission, or failure to disclose of any material fact in making an application;

2. Any suspension, exclusion or involuntary withdrawal from participation currently in effect in any governmental medical insurance program as a result of fraud or abuse of that program;

3. Any false representation or omission relating to the application for any license, permit, certificate or registration related to a health care profession or business;

4. Any previous failure to comply with applicable standards in the operation of a health care business or enterprise after having received written notice of noncompliance from the department or a state or federal licensing, certifying or auditing agency;

5. A current investigation, indictment or conviction for fraud and abuse or unacceptable practice in Medicaid of this or any other state, Medicare, or any other publicly funded health care program;

6. Failure to comply with any Medicaid policy as specified in Kentucky statutes or regulations of the department; or

7. Adequate provider participation in the medical service area.

8. Failure to pay any outstanding debt owed to the department.

(b) If an application is denied, the applicant may resubmit only upon correction of the factors leading to its denial, and after the expiration of any period of exclusion imposed under Sections 9 and 10 of this administrative regulation.

(c) Notice of denial of enrollment. A written notice of the denial mailed to the applicant's last known address shall be given which contains:

1. The reason for the denial; and

2. The date the applicant may make a new submission for enrollment.

(d) The denial shall be effective upon the date of the written notice.

(8) A provider of medical services or supplies may enroll for a time limited period of thirty (30) days in an exceptional situation for emergency services provided to an eligible recipient upon request by the provider and approval by the department.

Section 3. Required Provider Disclosure. (1) Providers and the fiscal agent shall comply with the disclosure of information requirements contained in 42 CFR 455 Subpart B and KRS 205.8451.

(2) Time and manner of disclosure.

(a) The required provider information specified in 42 CFR 455, Subpart B shall be provided:

1. Upon application for enrollment;

2. Annually thereafter; and

3. Within thirty-five (35) days of the request by the department or the Secretary, United States Department of Health and Human Services.

(b) The disclosure requirement may coincide with the certification or recertification period except when the provider is certified other than on an annual basis.

(c) The provider shall file an amended, signed ownership and disclosure form with the department within fifteen (15) days if there is a:

1. Change in ownership or control;

2. Change of a managing employee or management company;

3. Change in a provider's federal tax identification number; or

4. Change which could be considered to constitute a new entity.

(3) If the provider or fiscal agent fails to disclose required information within the time period specified, the provider shall be terminated from participation in the Medicaid Program on the day following the last day for submittal of the required information in accordance with Section 10(3) of this administrative regulation.

Section 4. Required Provider Documentation. (1) Each provider shall maintain documentation of:

(a) Care, services or supplies provided to an eligible recipient;

(b) The recipient's medical record (or other provider file, as appropriate) which shall demonstrate that the care, services, or supplies billed for, were actually performed or delivered;

(c) The diagnostic condition necessitating the service performed or supplies provided; and

(d) Medical necessity as substantiated by appropriate documentation (need for procedure as indicated by appropriate medical order).

(2) A cost based provider shall maintain all fiscal and statistical records and reports which are used for the purpose of establishing rates of payment made in accordance with Medicaid policy, and all underlying books, records, documentation and reports which formed the basis for the fiscal and statistical records and reports.

(3) All documentation required by this section shall be maintained by the provider for a minimum of five (5) years from the latter of:

(a) The date of final payment for services;

(b) The date of final cost settlement for cost reports; or

(c) The date of final resolution of disputes (if any).

(4) If any litigation, claim, negotiation, audit, investigation or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until the latter of:

(a) The completion of the action and resolution of all issues which arise from it; or

(b) The end of the regular five (5) year period.

Section 5. Claims Processing. (1) Claim submittal.

(a) A provider shall submit a claim, using forms and procedures specified by the department, for covered services or supplies rendered to an eligible recipient within twelve (12) months of the provision of service.

(b) A provider shall submit additional clarifying documentation for claims processing when required by the department.

(c) By submitting a claim a provider shall:

1. Be liable for the accuracy of all claims submitted by the provider, on the provider's behalf or by employees of the provider.

2. Be responsible for reviewing the statement of payment or remittance statement to assure that paid claims shown are true and correct, and for informing the department of any discrepancy.

(d) If a provider submits a claim electronically, the provider's acceptance of payment shall be considered to be the provider's certification that a paid claim is true and correct; and

(e) Any submittal of a false claim, statement or document shall be considered to be an unacceptable practice.

(2) Claim payment.

(a) Payment shall be made by the department if:

1. The information required to pay the claim is complete;

2. The claim is not under review for medical necessity;

3. The provider has submitted all reports and information required by the department; and

4. The department is not withholding the provider's payments in accordance with Section 8 of this administrative regulation.

(b) The department may audit paid claims to determine if any

unacceptable practices have occurred which may result in sanctions.

Section 6. Methods for Recoupment of Overpayments. (1) Medicaid overpayments. If a determination is made by the department that a provider was overpaid, a demand letter shall be sent to the provider which shall set forth the amount of the overpayment, the period of time involved, and the basis for determining the overpayment exists.

(a) In response to the demand letter, the provider shall, within thirty (30) days from the date of the letter:

1. Pay the amount in full; or
2. Submit a written request for a payment plan.

(b) If payment amounts due a provider are recalculated within the Medicaid Management Information System due to rate revisions, the department shall apply the rate adjustment against the next payment cycle for the provider prior to notifying the provider of the amount of the overpayment.

(2) A payment plan may be approved by the department if a provider documents that payment in full would create an undue hardship. A declaration in writing to the department of undue hardship shall include the following:

(a) Copies of financial statements which indicate payment in full within thirty (30) days would create an undue hardship; and

(b) Copies of letters from at least two (2) financial institutions indicating the provider's loan request was denied for the overpayment amount.

(3) Payment plans shall not extend beyond a six (6) month period except as provided for in subsection (4) of this section.

(4) The department may approve a payment plan in excess of six (6) months but not to exceed twenty-one (21) months if the monthly repayment exceeds twenty-five (25) percent of the provider's average monthly Medicaid payment. The average monthly Medicaid payment is based on the previous twelve (12) month's payments.

(5) All payment plans shall include provisions for payments of both principal and interest as provided for in KRS Chapter 360.

(6) If a provider fails to make a payment as specified in the payment plan or takes no action toward repayment, the department shall recoup the amount due from future payments. If a provider has insufficient funds available for recoupment through the payment system in the first payment cycle following the due date, payments shall be withheld and the account referred to the cabinet's office of the counsel for collection.

(7) If a provider disputes the amount of overpayment due the department, the provider may request a resolution in accordance with Section 12 of this administrative regulation and an administrative hearing in accordance with Section 13 of this administrative regulation. Disputing the amount of overpayment shall not relieve the provider of his obligation to submit full payment, or to request a payment plan, within thirty (30) days of the demand letter.

(a) If the department determines that no adjustments are required as a result of the resolution process, the initial determination shall stand.

(b) If it is determined that the amount requested should be reduced, any refund plus applicable interest as provided for in KRS Chapter 360 due to the provider shall be refunded to the provider within thirty (30) days from the date of the final determination letter sent to the provider.

(c) If it is determined that the amount requested should be increased, the additional amount due shall be subject to subsection (1) of this section.

(8) Withholding Medicare payments to recover Medicaid overpayments.

(a) The cabinet may request that the Health Care Financing Administration (HCFA) withhold Medicare payments to a provider in order to recover Medicaid overpayments to the provider. The requests for withholding shall be accomplished in accordance with the terms and conditions specified in federal regulations at 42 USC 1395vv.

(b) Amounts withheld by HCFA and returned to the cabinet by HCFA (as provided for in 42 USC 1395vv) which are ultimately determined by the cabinet to be in excess of overpayments shall be returned to the provider.

(9) Statutory recovery. The cabinet shall not issue payments otherwise due a provider if withholding is ordered by a state or federal government agency or by a court for recovery of money with the payments to be withheld in accordance with the provisions of the order issued by the state or federal government agency or the court.

(10) Medicare overpayments. If ordered to do so by HCFA, the department shall recoup the federal share of Medicaid payments otherwise due Medicaid providers as a means to recover Medicare overpayments. The federal share of Medicaid payments is that portion of the payment funded with federal funds.

(11) If a change of ownership occurs for a business which has been determined to have received an overpayment from the department, the sale contract must specify whether the buyer or seller is responsible for the amounts owed the department by the business, including amounts which may be owed to the department but which have not been identified at the time of the sale.

Section 7. Administrative Process for Detection of Unacceptable Practice. (1) A preliminary investigation of alleged unacceptable practice shall be conducted by the department or its agent if:

(a) A complaint is received by the department or other cabinet staff or upon referral from the Office of Attorney General to the cabinet; or

(b) Potentially unacceptable practices are identified by the department or its contractors.

(2) If the findings of a preliminary investigation indicate that an incident of fraud or abuse involving substantial allegations or other indication of fraud has occurred under the Medicaid Program, a referral for a full investigation shall be made to the MFACU or the Office of the United States Attorney, if appropriate.

(3) In order to facilitate a full investigation, the department shall, at the request of the MFACU or the Office of the United States Attorney, provide access to, and free copies of, any records, data, or information kept by the department, its contractors, or providers if authorized as specified in Section 4 of this administrative regulation.

(4) A full investigation shall continue until:

(a) Appropriate legal action is initiated; or

(b) The investigation is discontinued because of insufficient evidence to support the allegation of unacceptable practice; or

(c) The case is returned to the department for administrative action.

(5) At any time during a preliminary or full investigation, the department may make an administrative determination that a provider has committed an act of unacceptable practice based on receipt of reliable evidence. The Commissioner of the Department for Medicaid Services shall issue a written notice of a determination of unacceptable practice to the provider upon which an exclusion or sanctions are intended to be imposed, as specified in Section 9 of this administrative regulation. The notice shall be mailed to the provider's designated payment or correspondence address or last known address and shall clearly state:

(a) The determination made;

(b) The basis and specific reasons for the determination;

(c) The effect of any action to be taken;

(d) The amount of any overpayment or penalty, if any;

(e) The effective date of the action; and

(f) The hearing rights of the provider as outlined in Section 13 of this administrative regulation.

(6) At any time during a preliminary or full investigation, the cabinet may refer the case to the United States Attorney's Office for all action deemed appropriate.

Section 8. Withholding of Payments During Investigation of Fraud

or Willful Misrepresentation. (1) The department may withhold Medicaid payments as provided for in 42 CFR 455.23 upon receipt of reliable evidence that the circumstances giving rise to the need for a withholding of payments involve fraud or willful misrepresentation under the Medicaid Program.

(2) The department may withhold payments without first notifying the provider of its intention to withhold payments.

(3) The department shall mail written notice to the provider at the provider's last known address of its withholding of program payments within five (5) days of the date upon which withholding began.

(a) The notice shall set forth the general allegations of the nature of the withholding action, but may not disclose any specific information concerning its ongoing investigation.

(b) The notice shall advise the provider:

1. That payments are being withheld in accordance with this administrative regulation;

2. The statutory and regulatory basis for withholding and the facts upon which the action is taken;

3. The date upon which withholding began;

4. That withholding shall be for a temporary period;

5. Of the circumstances under which withholding shall be discontinued;

6. Of the type of Medicaid claim, as appropriate, to which withholding shall apply;

7. Of the provider's right to submit written evidence for consideration by the agency; and

8. Of the provider's hearing rights in accordance with Section 13 of this administrative regulation.

(4) Any withholding of payment action under this section shall be temporary and shall not continue after:

(a) The investigation has been discontinued due to insufficient evidence of fraud or willful misrepresentation by the provider; or

(b) Legal proceedings related to the provider's alleged unacceptable practice are completed; or

(c) The matter is resolved between the department and the provider through an administrative determination of unacceptable practice, as specified in Section 7 of this administrative regulation.

(5) Upon completion of the process described in subsection (4)(a) and (b) of this section all monies due on verified claims shall be promptly disbursed to the provider.

Section 9. Sanctions. (1) The cabinet shall comply with the requirements of 42 CFR 1002.

(2) The cabinet shall impose sanctions as provided for in KRS 205.8467, as provided for in this section and in Sections 8 and 10 of this administrative regulation when legal proceedings against a provider have established that the provider has engaged in fraud or abuse or when an administrative determination as provided for in Section 7 of this administrative regulation establishes that the provider has engaged in an unacceptable practice.

(3) The department may hold a provider responsible for the conduct of its affiliates in the administrative determination of unacceptable practice. However, conduct may only be imputed to another if the conduct was accomplished within the course of the duties of the provider to be sanctioned; and

(a) The provider knew or reasonably should have known of the conduct; or

(b) The conduct was effected with the knowledge and consent of the provider.

(4) If the department sanctions a provider, it may also sanction any affiliate of the provider. However, the determination to sanction the affiliate shall be made during the process leading to the administrative determination of unacceptable practice, on a case-by-case basis, after full review and consideration of all relevant facts and circumstances leading to the sanction of the primary provider. The affiliate shall have the same notification and due process rights as any sanctioned provider.

(5) The sanction process may include the termination of the provider from the Medicaid Program; if a termination is made the termination notice shall specify a period of exclusion. In determining the sanction, or the duration of exclusion, the department shall consider as appropriate:

(a) The number and nature of the unacceptable practice incidents;

(b) The nature and extent of any adverse impact the violations had on recipients;

(c) The amount of damages to the program;

(d) Other facts related to the nature and seriousness of the unacceptable practice; and

(e) The previous record of violations by the provider under Medicare, Medicaid and any program administered by the cabinet.

(6) The sanction process shall include liability for civil payments, restitution of overpayments and agency costs as specified in KRS 205.8467.

(7) The cabinet shall use a lien, as specified in KRS 205.8471 to assure payment of restitution and monetary penalties imposed under the administrative determination of fraud.

(8) A provider excluded from the Medicare Program shall be excluded from the Medicaid Program for the same period of time.

(9) The provider shall be notified in writing by the department of any sanctions that are imposed.

Section 10. Provider Participation Termination. (1) Except as provided for in subsection (6) of this section, a provider's participation may be terminated by either the provider or the department upon thirty (30) days written notice to the other without cause or as otherwise specified in the provider agreement.

(2) Except as provided for in subsection (6) of this section, a provider's participation may be terminated and a period of exclusion imposed if an administrative determination is made, as set forth in Section 7 of this administrative regulation, that the provider engaged in an unacceptable practice.

(3) A provider shall provide up-to-date information in accordance with Section 3 of this administrative regulation. Except as provided for in subsection (6) of this section, failure to maintain up-to-date information, or to submit the information within thirty-five (35) days of a request by the department (except as provided for in Section 2 of this administrative regulation) shall result in termination of the provider's participation.

(4) Except as provided for in subsection (6) of this section, a provider's participation shall be terminated immediately if it is found that the information provided at the time of application was incorrect, inaccurate or incomplete and where provision of correct, accurate and complete information would have resulted in the denial of the application based upon one (1) or more of the factors set forth in Section 2 of this administrative regulation.

(5) Except as provided for in subsection (6) of this section, a provider's participation shall be terminated if the provider fails or refuses to pay or enter into an agreement to pay the amount of any penalty imposed, including interest, in accordance with Section 9 of this administrative regulation and KRS 205.8467 within sixty (60) days from the date of the department's notice or the date of a hearing decision (if any).

(6) Before the participation of a nursing facility, as defined in 42 USC 1396r(a), or an intermediate care facility for the mentally retarded, as defined in 42 USC 1396d(d), is terminated, it shall have the right to receive a hearing in accordance with Section 13 of this administrative regulation and 42 CFR 431.151 through 431.154.

(7) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated if the provider fails to submit a completed and signed application within thirty-five (35) days from the date of the notice to provide the application.

(8) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated and a period of exclusion imposed upon a Medicare or Medicaid related conviction

through the judicial process.

(9) A provider's participation in Medicaid shall be terminated in accordance with 42 CFR 1003.105 on the date of termination or suspension from Medicare.

(10) Except as provided for in subsection (6) of this section, a provider's participation in Medicaid shall be terminated as of the date of any termination, revocation or suspension of any registration, certification or license to practice a medical profession, or as required to provide medical care, services or supplies under Medicaid.

(11) Except as provided for in subsection (6) of this section, a provider's participation:

(a) Shall be terminated and a new application required if the ownership or controlling interest of the provider has substantially changed, since acceptance of its enrollment application, due to one (1) or both of the following actions:

1. The addition or elimination of one (1) or more partners in a provider organized as a partnership; or

2. The sale of the business or assets directly related to the provision of health care under the Medicaid Program if such sale will result in a change of ownership or control of any provider;

(b) May be terminated and a new application required if ownership or controlling interest of the provider has substantially changed since the acceptance of its enrollment application due to the sale or exchange of capital stock in a provider organized as a corporation; and

(c) A notice advising of the termination and of the requirements to make a new application for enrollment shall be sent to the provider thirty (30) days prior to its termination from the program.

(12) Notice of termination.

(a) A notice of termination shall be in writing, mailed to the last known address, and contain the following information:

(1) The reason for the termination, if any;

(2) The effective date of the termination;

(3) The date the provider may submit an application for re-enrollment, if appropriate; and

(4) The provider's hearing rights in accordance with Sections 12 and 13 of this administrative regulation.

(b) If notice has been provided in accordance with Section 7(5) of this administrative regulation, no additional notice of termination shall be required.

(13) The department may extend participation or waive termination for any provider of covered medical service if necessary to assure that adequate medical services will be available in the area served by the provider.

(14) The department may terminate a provider immediately if necessary to protect the health or well-being of Medicaid recipients.

Section 11. Provider Reinstatement or Reenrollment Following Termination. (1) A provider whose participation has been terminated under the provisions of this administrative regulation may request reinstatement in accordance with the provisions set forth in the written notice from the department and shall be subject to the enrollment requirements in Section 2 of this administrative regulation. An application for enrollment under this section shall be identified by the provider as a reinstatement application.

(2) The department may only grant reinstatement from an exclusion based on a program violation if the provider can demonstrate and assure the department that the violation which led to the sanction is corrected and shall not be repeated.

(3) If the department approves the request for reinstatement, after imposition of a sanction in accordance with Section 9 of this administrative regulation, the department shall provide written notice to the provider and to all others who were informed of the sanction, specifying the date on which program participation may resume.

(4) A provider terminated from the Medicaid Program and excluded for a specified period of time shall be eligible for re-enrollment upon the expiration of the period of exclusion. In addition, providers excluded on the basis of a conviction for a program related offense shall not be eligible for reenrollment until the conviction is final and unappealable.

Section 12. Resolution of Provider Disputes Prior to Hearing. (1) If a provider disagrees with Medicaid determinations with regard to claims payment, sanctions, participation or other matters covered in this administrative regulation the provider may request in writing within thirty (30) days of the date of notice a resolution meeting; provided, however, any disagreements relating to cost based rates including such items as the rate itself, cost reporting, recoupments, withholding, and any other matter relating to the provider's payments and rates, shall be resolved in accordance with Section 14 of this administrative regulation. A request for a resolution meeting shall not extend the thirty (30) day time period for filing a request for an administrative hearing in accordance with Section 13 of this administrative regulation.

(2) The request from the provider shall clearly identify the disputed issue, the specified basis for believing the department's decision is erroneous, provide any documentation (or a summary supporting the provider's position), and identify the provider's representative(s) expected to attend the resolution meeting.

(3) The agency shall, within five (5) days of receipt of the request, send a written response to the provider identifying the time and place of the meeting which shall be held within thirty (30) days of receipt of the request and identifying the agency's representative(s) expected to attend the meeting.

(4) The resolution meeting shall be conducted in an informal manner as directed by the department's representative with the provider afforded the opportunity to present any evidence or testimony to support his case.

(5) A provider may, within thirty (30) days of the date of the notice, submit any information which the provider wishes considered in relation to the agency determination without requesting a resolution meeting.

(6) The department may rescind, modify or take no action with regard to the disputed issue but shall provide written notice to the provider of the agency's decision within thirty (30) days from the date of the resolution meeting, or from the date the information to be considered was presented to the department if no resolution meeting was requested. The notice of the department shall include the determination and the facts upon which it is based with reference to applicable statutes and regulations.

(7) Information submitted for the purpose of informally resolving a provider dispute shall not be considered a request for an administrative hearing.

Section 13. Administrative Hearing Process. (1) The administrative hearing shall be conducted by an impartial hearing officer knowledgeable of Medicaid policy appointed by the secretary of the cabinet.

(2) This process shall be used in the following situations except as specified in Section 14 of this administrative regulation:

(a) If the provider's participation is terminated as specified in Section 10(2), (3), (4), (5), (6), (7), (8), (10), (11) and (14) of this administrative regulation or if a provider alleges discrimination on the basis of age, race, sex, country of national origin, ethnic group, or disability; or

(b) If the agency imposes a fiscal sanction; or

(c) If the agency requires the repayment of an overpayment or restitution; or

(d) If the provider's payments are being withheld in accordance with Section 8 of this administrative regulation.

(3) A written request for a hearing shall be received by the department within thirty (30) days of the date of the department's notice of adverse determination. This request shall be sent to the Commissioner, Department for Medicaid Services, Cabinet for Human

Resources, 275 East Main Street, Frankfort, Kentucky 40621. The department shall forward to the hearing officer an administrative record which shall include the notice of action taken, the statutory or regulatory basis for the action taken, the department's decision following the resolution process, and any documentary evidence provided by the appellant to the department.

(4) The hearing officer shall schedule the hearing within thirty (30) days of the request from the provider with the hearing to be held not later than thirty (30) days thereafter. Either party may request a prehearing exchange of information and documents or a prehearing conference. At least fifteen (15) calendar days prior to the date of the hearing, written notice shall be sent by the hearing officer to the parties and their representatives. The notice shall inform them of:

(a) The date, time and place of the hearing (with the hearing to be held in Frankfort, Kentucky) and the parties' right to request a postponement;

(b) The manner and means by which a postponement may be requested and granted;

(c) The issues which are to be the subject of the hearing;

(d) The manner in which the hearing will be conducted;

(e) The right of each party to be represented or to represent himself, to testify, to produce witnesses, to present documentary evidence and to examine opposing witnesses; and

(f) The date of the prehearing exchange between the provider and department, if requested.

(5) A prehearing conference may be held at least seven (7) days in advance of the hearing date at which time each party shall disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses.

(6) A request for a hearing shall be considered to be abandoned if the provider does not appear at the hearing on the scheduled date and the hearing has not been rescheduled. A hearing request shall be withdrawn only under the following circumstances:

(a) The hearing officer receives a written statement from the provider stating that the request is withdrawn; or

(b) The provider makes a statement on the record at the hearing withdrawing the request.

(7) Documentary evidence which may be used at the hearing shall be made available in accordance with the following:

(a) If copies of the documentary evidence which the provider plans to use at the hearing have not been provided to the department, an opportunity to examine the documents shall be afforded the department upon request; and

(b) If copies of the documentary evidence which the department plans to use at the hearing have not been provided to the provider, or the provider's representative, an opportunity to examine the documents shall be afforded the provider upon his request. Information relating to the selection of the provider for audit, investigation notes or other material which may reveal auditor investigation techniques, material prepared for submission to a law enforcement or prosecutorial agency, information concerning law enforcement investigations, or judicial proceedings or confidential sources or confidential information shall not be revealed.

(8) The hearing officer shall preside over the hearing and have all the powers conferred by law to require attendance of witnesses and the production of books and records, and to administer oaths and to take testimony.

(9) The provider or representative, counsel or other representative of the department, an interpreter if the appellant is deaf or hearing impaired and an interpreter has been requested, witnesses for both parties, providers who may be called as witnesses by the hearing officer and other providers or members of the public as the hearing officer in his discretion may admit, shall be entitled to be present at the hearing. Staff of the department shall be entitled to observe or to assist the official representative of the department.

(10) The issues and documentation considered at the hearing shall be limited to issues directly relating to the adverse determination.

(a) Formal rules of evidence shall not apply.

(b) Irrelevant and unduly repetitious testimony and cross-examination shall be excluded.

(c) The provider has the burden of showing that the determination of the department was incorrect.

(d) If the determination is based upon an alleged failure of the provider to comply with applicable generally accepted business, accounting, professional or medical practices or standards of health care, the department shall establish the existence of the practice or standard.

(e) The department shall be responsible for notifying the hearing officer of the record of previous relevant violations by the provider under Medicare, Medicaid, and any program administered by the Cabinet for Human Resources which the department wishes the hearing officer to consider in his deliberations.

(11) Witnesses shall testify under oath or affirmation and shall be subject to cross-examination.

(12) The hearing proceedings shall be recorded but not transcribed unless requested by either party. The cost of a court reporter, if utilized, and the transcription shall be the responsibility of the party making the request. If a third party requests a copy of the original transcript, the party requesting the copy shall be responsible for the cost of the copy.

(13) The hearing officer shall consider the facts as presented at the hearing (including supplementary material, if requested) and prepare a decision based on the record consistent with Medicaid policy as expressed in statutes and regulations.

(a) The hearing officer shall prepare a hearing report to be issued within sixty (60) days of the conclusion of the hearing or the closing of the record, and sent to each of the parties.

(b) The hearing report shall include findings of fact, conclusions of law, determination of issues, and the hearing officer's decision and reasons for the determination.

(c) The hearing officer's decision shall be submitted to the secretary of the cabinet. Either party shall have ten (10) days within which to file exceptions to the hearing officer's decision, with the secretary. The secretary shall make the final decision of the agency pursuant to KRS 211.090(2), supported by findings of fact and conclusions of law.

(d) In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review.

(14) The hearing officer may grant an extension of any time frames specified in this section, except the requirement that the request for a hearing be filed in a timely manner, if determined necessary for the efficient administration of the hearing process or to prevent an obvious miscarriage of justice with regard to the provider.

Section 14. Administrative Hearing Process for Use in Appeals Relating to Cost Based Rates. Participating providers reimbursed using a cost based system shall have the right to appeal all issues relating to their rates, cost reporting, recoupments, withholding, and any other matters, except termination, relating to the provider's payments and rates utilizing the process described in this section.

(1) Type of review. This section provides for a program review by the Director, Division of Reimbursement Operations, Department for Medicaid Services, or the director's designee, and an administrative hearing (following the program review) by an administrative hearing officer.

(2) Program review requirements and processes.

(a) Upon receipt of the department's determination with regard to rates, cost reports, withholding, recoupment, or other issues relating to payment rates the provider shall have thirty (30) days, from date of notice by the department, to request a program review of the determination. The department's determination on cost reports shall include the basis for the determination. The request for program review shall be received by the department within the thirty (30) day

period.

(b) The request for review shall be in writing and identify the following:

1. The specific aspects of the determination with which the provider is dissatisfied; and

2. The specific reason the provider believes the determination is incorrect.

(c) The request shall be accompanied by any documentary evidence (or an appropriate summary) which the provider considers necessary to support its position.

(d) The department shall schedule the program review to be held within thirty (30) days after receipt of the request from the provider.

(e) If an audited cost report (including cost reports that have been desk reviewed) or rate of reimbursement is not appealed in a timely manner the provider's appeal rights shall terminate for that cost report or reimbursement rate and the cost report or reimbursement rate shall not be subject to reopening unless the department determines that there was suspected fraud or misrepresentation by the provider or that an error has been made by the department which should be corrected.

(f) A request for program review of a reimbursement rate, desk review, or audited cost report which does not specify the exact item(s) being appealed shall not be accepted.

(g) The program review shall be conducted in the following manner.

1. The program review shall be conducted by the director or his designee. The proceedings shall be recorded and a transcription made. If transcribed by the department, a copy shall be made available to the provider upon payment of the usual fee for copied material; if transcribed for the department by a court reporter, the provider may obtain a copy from the court reporter upon payment of the court reporter's usual fee for a copy.

2. During the hearing the provider shall provide any testimony or documentation which he desires in support of the provider's contention that the department's decision should be amended or nullified. cabinet staff within the merit system who are knowledgeable of the issue shall explain the department's position and present any evidence the staff feels supports the department's position.

3. Merit system staff participating in the program review (or as designated by the director or his designee if necessary) shall prepare and submit to the director or his designee a written opinion and recommendation with findings of fact, and supporting documentation, with regard to the director's or his designee's decision. The director or his designee shall make a decision with regard to the issue within thirty (30) days of the hearing either adopting the recommendation of staff, or, if the director's or his designee's decision is different from the recommendation(s) of merit system staff, the director or his designee shall document his decision and provide, for the record, justification for that decision.

(h) The director or his designee may extend any of the time frames that are specified in subsection (2) of this section, if determined necessary for the efficient administration of the program review process or to prevent an obvious miscarriage of justice with regard to the provider.

(3) Administrative hearing requirements and processes.

(a) Upon receipt of the program review decision of the director or his designee, the provider may appeal the decision (and underlying program issue) by mailing or delivering a request for appeal to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Human Resources, CHR Building, 275 East Main Street, Frankfort, Kentucky, 40621 within thirty (30) days of the decision. The request for a hearing shall be received by the commissioner within the thirty (30) day period; if a request for a hearing is not received within the thirty (30) day period the decision of the director shall be final.

(b) The request shall be in writing and identify the following:

1. The specific aspects of the director's decision with which the provider is dissatisfied;

2. The specific reason the provider believes the decision is incorrect; and

3. Be accompanied by the documentary evidence previously before introduced to the director or his designee (or an appropriate summary) which the provider considers necessary to support its position.

(c) The secretary shall appoint a hearing officer who is knowledgeable of Medicaid regulations and policies. The hearing officer shall schedule a hearing on the record within thirty (30) days of receipt by the cabinet of the provider's request for a hearing with the hearing to be held not later than thirty (30) days thereafter. At least fifteen (15) calendar days prior to the date of the hearing, written notice shall be sent by the hearing officer to the parties and their representatives. The notice shall inform them of the date, time, and place of the hearing and of the issues which are to be the subject of the hearing.

(d) The hearing officer shall restrict the scope of the hearing to the same issues considered and determined during the program review.

(e) The following provisions shall govern the conduct of the hearing.

1. The hearing shall be conducted with the hearing officer responsible for ensuring that a complete and accurate record of the proceedings is made. The provider shall notify the hearing officer sufficiently in advance of the hearing if a transcript is desired, with the transcript provided upon payment of customary fees to the department or court reporter as appropriate.

2. The provider shall be afforded the opportunity to present any testimony and documentary evidence in support of its position, including but not limited to a written statement rebutting the program review findings and decision of the director if desired.

3. The department shall be afforded the opportunity to present any testimony and documentary evidence in support of its position, including but not limited to the transcript of the program review, opinions and recommendations of merit system staff that contributed to the director's decision, and the actual program review decision.

4. The hearing officer shall solicit, through questions to participants in the hearing or any other appropriate manner, any further information that he considers necessary for the resolution of the issue.

(f) The hearing officer shall consider the facts as presented at the hearing (including supplementary material if requested) and prepare a decision based on the record consistent with statutes and regulations.

1. The hearing officer shall prepare a hearing report to be issued within sixty (60) days of the conclusion of the hearing or the closing of the record, and sent to each of the parties.

2. The hearing report shall include findings of fact, conclusions of law, determination of issues, and the hearing officer's decision and reasons for the determination.

3. The hearing officer's decision shall be submitted to the secretary of the cabinet. Either party shall have ten (10) days within which to file exceptions to the hearing officer's decision, with the secretary. The secretary shall make the final decision of the agency pursuant to KRS 211.090(2) supported by findings of fact and conclusions of law.

4. In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review.

(g) The hearing officer may grant an extension of any time frames specified in subsection (3) of this section, except the requirement that the request for a hearing be filed in a timely manner, if determined necessary for the efficient administration of the hearing process or to prevent an obvious miscarriage of justice with regard to the provider.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: December 1, 1994

FILED WITH LRC: December 13, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All medical providers certified to participate in the Medicaid Program.

(2) Direct and indirect costs or savings on the: Providers revenues will be reduced by the amount of agency savings from significantly decreasing fraud and abuse of the Medicaid Program.

(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: No additional documentation or reporting requirements.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $15,000,000 to $25,000,000 (savings).

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Notification and reporting requirements to comply with HB 127 and SB 37.

(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: Statewide implementation (see item 6(b).

(b) Kentucky: The only impact on the provider community from this regulation will be the reduction of provider revenues that would have resulted from fraud, abuse, or other unacceptable practices related to the Medicaid Program.

(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: Provides for the Medicaid agency's state regulatory authority to exclude or suspend providers from the Medicaid Program if the providers pose a threat to Medicaid recipients' health.

(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 the Medicaid agency may be found out of compliance with federal Medicaid requirements and lose federal matching funds. Failure to receive federal matching funds would result in a reduction of medical services to Medicaid recipients with resultant harm to the recipients' health and well being.

(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: This administrative regulation implements statutory requirements of HB 127 and SB 37 to insure the Medicaid Program is effectively managed by reducing fraud and abuse in the Medicaid Program. The administrative regulation is also promulgated to comply with federal requirements relating to administration if the Medicaid Program.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) 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
908 KAR 2:090E

Decriminalization of persons with mental illness who are committed to mental health facilities involuntarily was established by Executive Order on October 8, 1993. The 1994 General Assembly revised the involuntary commitment statute to prevent the jailing of persons detained and authorized funds for paying for the costs associated with this legislation. The community mental health/mental retardation centers entered into contracts with peace officers and other transporters, hospitals, and qualified mental health professionals to implement the law. This administrative regulation establishes procedures for: defining crisis stabilization units and the services provided; transporting individuals detained; using restraints; insuring the privacy of the individuals and their right to communicate; and planning and coordinating responsibilities of the community mental health/mental retardation centers. In order to provide these services and in order to comply with the state mandate requiring immediate implementation, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

**CABINET FOR HUMAN RESOURCES**
**Department for Mental Health**
**and Mental Retardation Services**

**908 KAR 2:090E. Decriminalization of mental illness.**

RELATES TO: KRS Chapters 202A, 202B, 645
STATUTORY AUTHORITY: KRS 194.050, 202A.008, 202A.028(3), (4), 202A.041(1), 202A.051(6), 202A.101(3), 202A.241, 645.120
EFFECTIVE: November 29, 1994
NECESSITY AND FUNCTION: In accordance with the 1994 legislative revisions to KRS Chapters 202A, 202B and 645, the Cabinet for Human Resources has the authority for promulgating administrative regulations to carry out the revisions. This administrative regulation sets forth the cabinet's services and procedures for: providing crisis stabilization units; transporting and holding individuals; using restraints; providing privacy to individuals who are held for evaluation; identifying rights for individuals held to communicate by phone; and planning and coordinating the required services.

Section 1. Definitions. (1) "Community mental health - mental retardation center" or "center" means a facility licensed by the cabinet pursuant to KRS Chapter 216B that provides inpatient, outpatient, psychosocial rehabilitation, emergency and consultation and education services to persons needing mental health, mental retardation and substance abuse services as provided within KRS 210.410 and 908 KAR 2:010.

(2) "Evaluation" means a mental health evaluation performed by a qualified mental health professional, as defined in KRS 202A.011 and 600.020, conducted to determine if an individual meets the criteria for involuntary hospitalization as defined in KRS 202A.026 or 645.090.

(3) "Facility" means any hospital or psychiatric facility as defined in KRS 202A.011 or a mental health facility as defined in KRS 645.020 used for the purpose of conducting an evaluation pursuant to KRS Chapters 202A or 202B or KRS 645.120.

(4) "Hold", "held" or "holding" means the detainment of an individual by a peace officer or a provider of transportation services authorized by the peace officer.

(5) "Individual" means a person who is being held and evaluated under KRS Chapters 202A, 202B or 645.

(6) "Peace officer" means a sheriff or law enforcement officer employed by a city, county, urban-county or state government in the Commonwealth.

(7) "Providers of transportation services" or "providers" means peace officers and ambulance services designated by the cabinet, service providers or agencies on contract with the cabinet. The providers include those service providers or agencies that are approved by the Department for Medicaid Services or the centers to provide emergency or nonemergency transportation services.

Section 2. Crisis Stabilization Unit. (1) Centers may establish crisis stabilization units for the purpose of reducing hospitalization in the treatment of mental illness. Services shall include:

(a) Evaluations;

(b) Crisis intervention and emergency mental health services; and

(c) Referral for follow-up care.

(2) Crisis stabilization units shall be operated as twenty-four (24) hour per day, seven (7) days per week facilities.

(3) Crisis stabilization units may admit individuals who voluntarily seek mental health services or who are in need of evaluation pursuant to KRS Chapters 202A or 202B or KRS 645.120.

Section 3. Transportation. (1) A peace officer shall:

(a) Transport an individual pursuant to KRS Chapter 202A or KRS 645.120 for evaluation; and

(b) Hold the individual until the evaluation is completed.

(2) Following the evaluation, the provider shall transport the individual to:

(a) A hospital if the evaluation criteria are met and so ordered by the court; or

(b) The location of the individual's choice in either the individual's home county or county where the holding originated, if the evaluation criteria are not met.

(3) The provider shall not use sirens or emergency lights of any kind except in a bona fide emergency.

(4) The peace officer who has taken the individual into custody under KRS 202A.041 shall:

(a) Document the behavior of the individual by describing:

1. How the situation was brought to the attention of the peace officer; and

2. The behavior of the individual that was considered a danger to self or others; and

(b) Provide this documentation to the qualified mental health professional evaluating the individual.

(5) Reimbursement of transportation costs may be negotiated by the center in accordance with the center's contract with the cabinet.

(6) Reimbursement for the individual transported to a facility shall be paid by the center if:

(a) The individual is transported pursuant to KRS 202A.02, 202A.041, 202A.051, or 645.120; and

(b) A center or a designated subcontractor of the center conducts the evaluation.

(7) Transportation provided to the individual upon discharge to their home county from the hospital shall be:

(a) Reimbursed by the center, if a provider is the most appropriate means of transportation; or

(b) The responsibility of the hospital, if the hospital determines that an alternate form of transportation is more appropriate.

(8) No payment shall be made by the center if reimbursement of these costs is otherwise available from:

(a) Private insurance;

(b) Other source of payment;

(c) Medicare; or

(d) The Department for Medicaid Services.

(9) The authority of the cabinet to negotiate rates of reimbursement and enter into contracts with providers may be delegated to the center.

Section 4. Use of Restraints. (1) A peace officer, ambulance provider, physician or facility may use restraints only if the individual exhibits or is threatening to exhibit assaultive or self-injurious behavior.

(2) Restraints may be applied through physical contact or devices used by peace officers, ambulance providers, or facilities in a manner consistent with the practice of each profession. Restraint may also be applied through the appropriate use of medications ordered by a licensed physician and administered by a qualified health care professional.

(3) The peace officers, ambulance providers, physician or facility shall document in writing the use of any restraint. The documentation shall include:

(a) The reason for using the restraint;

(b) Type of restraint used;

(c) When the restraint was initiated; and

(d) Length of time the restraint was used, or if medication was used, name of medications, dosage and effect on individual. ( 4 ) Documentation concerning the use of restraint shall be given to:

(a) The qualified mental health professional who performs the evaluation; and

(b) The facility, crisis stabilization unit, or intermediate care facility where the individual is being held or treated.

Section 5. Privacy. (1) A provider or facility shall not disclose the psychiatric condition or other personal information regarding the individual except to:

(a) Persons acting under the provisions of KRS Chapters 202A, 202B and 645;

(b) The individual;

(c) The individual's legal guardian;

(d) The individual's parent(s) or person exercising custodial control or supervision of the individual, if a minor; or

(e) Any person given legal authority to receive that information on the individual's behalf.

(2) Facilities shall provide a private area for the individual.

(3) The qualified mental health professional shall evaluate the individual in an examining room or clinician's office.

(4) The individual or the other persons identified in Section 5(1) of this administrative regulation may receive copies of all documents generated during the transportation and holding as provided in KRS 61.878 and 61.884.

(5) The qualified mental health professional who performed the evaluation or other facility staff shall inform the individual of the availability of the documents and the opportunity to review the individual's medical record.

Section 6. Communication. (1) At the time of holding, the provider shall inform the individual that reasonable access to telephone communication shall be offered at the facility.

(2) The facility shall:

(a) Inform the individual of the availability of phone calls;

(b) Provide telephone communications to the individual at the earliest opportunity available;

(c) Assist the individual in completing phone calls to persons of their choice; and

(d) Pay for no more than two (2) completed long distance phone calls, if the individual has insufficient funds.

Section 7. Community Mental Health - Mental Retardation Centers Responsibilities. (1) Under the authority of KRS 210.040(7) and 210.040(8), the cabinet may delegate to the community mental health - mental retardation centers the responsibility to plan and coordinate services as provided within KRS Chapters 202A and 202B and KRS 645.120.

(2) The center shall:

(a) Designate psychiatric facilities for the purpose of conducting evaluations by qualified mental health professionals;

(b) Notify providers of transportation services, district judges and the cabinet of the identity and location of the facilities that are designated for the purpose of evaluating individuals; and

(c) Make qualified mental health professionals available twenty-four (24) hours per day, seven (7) days per week at designated facilities to perform evaluations.

MASTEN CHILDERS II, Secretary
ELIZABETH REHM WACHTEL, Commissioner
APPROVED BY AGENCY: November 21, 1994
FILED WITH LRC: November 29, 1994 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel

(1) Type and number of entities affected: All 14 community mental health centers that provide mental health, mental retardation and substance abuse services. All peace officers, sheriffs, and ambulance providers in the Commonwealth. All public or private hospitals with psychiatric units.

(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 have been received. The cost of living and employment statewide will not be affected by this administrative regulation since existing providers will be used to implement the law. Jailers will incur savings since involuntarily committed individuals will not be jailed. Peace officers, sheriffs, hospitals and ambulance providers will be negotiated and reimbursed for their services.

(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 have been received. No effect to businesses is anticipated.

(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 program and cost reports from the community mental health centers are being submitted to the Department for Mental Health and Mental Retardation Services. These reports will determine the actual costs for implementing the jail diversion program. Preparing these reports is an insignificant cost to monitor the program. If the demand for services to implement the program is too great, the cost of the program could exceed the availability of funds.

2. Second and subsequent years: The same method of reporting will occur in the second and subsequent years.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

a. Direct and indirect costs or savings:

1. First year: The 1994 session of the General Assembly allocated $2,495,800 for Fiscal Year 1995 to the Department for Mental Health and Mental Retardation Services to implement House Bill 207. These funds have been distributed to the community mental health centers to negotiate and reimburse providers for transportation, evaluation by a qualified mental health professional, and hospitalization of involuntarily committed individuals. There will be direct and indirect costs to implement and monitor these services by the Department for Mental Health and Mental Retardation Services and the community mental health centers. However, since persons with severe mental illness will not be jailed, during the involuntary commitment process, a cost savings to the jails will occur.

2. Second and subsequent years: The 1994 session of the General Assembly allocated $2,620,600 in Fiscal Year 1996 to the Department for Mental Health and Mental Retardation Services to implement House Bill 207.

3. Additional factors increasing or decreasing costs: No additional factors have been identified.

b. Reporting and paperwork requirements: Quarterly fiscal and program reports will be submitted from each of the 14 regions. In addition, a statewide report will be produced and provided to key staff in the Department for Mental Health and Mental Retardation Services. These will assist staff in monitoring the program.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the costs of transportation by peace officers for individuals held for evaluation. Since local jails will not be used to hold individuals during the commitment process, jailers will not incur the expense of serving these individuals.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, Medicare and other private sources of payment.

(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.

(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 alternative methods were considered, because they

are more costly.

(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 individuals held under an involuntary commitment will no longer be jailed, due to their psychiatric disability. As a result, they will not experience the fear and humiliation of being jailed due to an involuntary commitment.

(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 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: None

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency.

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

If yes, complete questions 2-4.

2. State what unit, part or division of local government this administrative regulation will affect. Local law enforcement and hospitals owned by the city and/or county.

3. State the aspect or service of local government to which this administrative regulation relates. The city and county law enforcement officials will transport individuals held for an involuntary commitment evaluation. Local hospitals may be used to evaluate or treat individuals held under an involuntary commitment.

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 (+/-): For the purposes of implementing this law, state general funds allocated for Fiscal Year 1995 and Fiscal Year 1996 are $2,495,800 and $2,620,600 respectively.

Expenditures (+/-): The direct costs will include transportation, mental health evaluations, and hospitalization for detained individuals. The state general funds described above will be used to pay for these services.

Other Explanation: Transportation and inpatient hospitalization services will be reimbursed by either the individual's health insurance, Medicare, Medicaid or the community mental health center.

STATEMENT OF EMERGENCY
909 KAR 1:020E

The administrative regulation 909 KAR 1:020E sets forth the process to be used by the Kentucky Health Policy Board in promulgating the state health plan and causing it to be publicly reviewed and adopted. This administrative regulation will enable the board to obtain public input on its plan for implementing provisions of health care reform legislation enacted by the General Assembly and for review standards and criteria contained in the state health plan and used in the certificate of need process. In order for the board to establish procedures for development, public review and adoption of the state health plan and thereby become operational with regard to mandates in House Bill 250, 1994 Ky. Acts ch. 512 concerning board responsibilities over the state health plan and the certificate of need process, it is necessary to promulgate this emergency administrative regulation. This administrative regulation is also being promulgated as an ordinary administrative regulation.

BRERETON C. JONES, Governor
JACK B. HALL, Chairman

KENTUCKY HEALTH POLICY BOARD

**909 KAR 1:020E. State health plan process.**

RELATES TO: KRS 215B.015(19)
STATUTORY AUTHORITY: KRS 216.2905(1)(b), 216B.040(3)
EFFECTIVE: December 7, 1994
NECESSITY AND FUNCTION: KRS 216B.015 defines the state health plan as a document prepared triennially and updated annually under the direction of the Kentucky Health Policy Board and approved by the Governor. KRS 216.2905 and 216B.040 empower the board to promulgate administrative regulations relative to certificate of need and the state health plan. The purpose of this administrative regulation is to establish the process by which the state health plan is reviewed by the public and adopted by the Health Policy Board and Governor.

Section 1. State Health Plan Public Review. Thirty (30) days prior to meeting to adopt any update or revision of the state health plan, the Kentucky Health Policy Board shall give general notice of the time, date, and place of the meeting and shall afford any interested party the opportunity to review the proposed changes to the state health plan and submit comments for consideration by the board. The board shall allow written and oral comments to be submitted at the board meeting if requested in writing and the request is received by the board ten (10) days prior to the scheduled meeting date.

Section 2. Governor's Review of the State Health Plan. Upon approval by the Kentucky Health Policy Board, the state health plan shall be sent to the Governor for review and approval. If the Governor determines that the proposed state health plan does not effectively meet statewide health needs and disapproves the proposed plan, the Governor shall inform the board of the basis for the determination and shall specify the changes that are necessary to meet the needs. The board shall review the changes in the plan which the Governor specifies and shall effect any revisions and the plan shall be submitted to the Governor within thirty (30) days for approval.

Section 3. State Health Plan Adoption. Upon approval of the state health plan by the Governor, the Kentucky Health Policy Board shall file an administrative regulation with the Legislative Research Commission which incorporates the plan by reference.

JACK B. HALL, Chairman
APPROVED BY AGENCY: December 7, 1994
FILED WITH LRC: December 7, 1994 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack B. Hall

(1) Type and number of entities affected: This regulation affects the Kentucky Health Policy Board, other state agencies and entities that may contribute to preparing the state health plan, and entities wishing to establish or change health care facilities, services and equipment which under KRS Chapter 216B may be subject to certificate of need review standards and criteria customarily published

in the state health plan.

(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: A reduction of personal out-of-pocket costs for health care is one of the major intended outcomes of the health care reforms mandated in House Bill 250 enacted by the 1994 General Assembly and of the certificate of need process, both of which may be addressed in the state health plan. Employment typically increases when certificates of need are approved.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No business costs will result from promulgating this regulation or from adopting a state health plan.

(c) Compliance, reporting and paperwork requirements, including factors increasing and decreasing costs (note any effects on competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: This regulation enables the board to meet a House Bill 250 mandate to prepare and adopt the state health plan.

(a) Direct and indirect costs or savings:

1. First year: Estimated $500 per year in postage and printing of public notice plus staff costs to prepare the state health plan and conduct the public meeting.

2. Continuing costs or savings: Estimated $500 per year in postage and printing of public notice plus staff costs to prepare the state health plan and conduct public meeting.

3. Additional factors increasing or decreasing costs: Staff costs will vary as a function of future decisions concerning content and scope of the state health plan.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None. This regulation will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget of the Commonwealth as established in House Bill 2 enacted by the 1994 General Assembly.

(6) Economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None. The scope of the state health plan is statewide.

( b ) Kentucky: None. The state health plan has only a very indirect relationship to certificate of need decisions and the economic impacts that may result from those decisions.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative was available. KRS 216B.015(9) necessitates the state health plan under the board's authority, and KRS 216.2905 and 216B .040 empower the board to promulgate administrative regulations relative to certificate of need and the state health plan.

(8) Assessment of expected benefits: The regulation will enable the board to carry out its health planning mandates under House Bill 250 as enacted by the General Assembly.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Ability to prepare and adopt the state health plan will enable the board to ensure that policy concerns relating to statewide public and environmental health are addressed in context of health care system reform.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to promulgate a health planning regulation would unacceptably delay implementation of this important aspect of health care reform legislation.

(c) If detrimental effect would result, explain detrimental effect: The board would be unable to adopt or use a state health plan in relation to public and environmental health status improvement goals, health care reform goals, or certificate of need review standards.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplicative: None. KRS Chapter 216B is the only statute which specifically addresses a state health plan.

(a) Necessity of proposed regulation if in conflict: See above.

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

(10) Any additional information or comments: This regulation is successor to 902 KAR 17:020 which placed state health plan authority under the Cabinet for Human Resources.

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation and the state health plan it addresses apply equally to all entities statewide.

STATEMENT OF EMERGENCY
909 KAR 1:070E

Promulgation of this emergency administrative regulation is necessary to comply with the provisions of HB 250, 1994 Ky. Acts ch. 512, requiring the board to inform providers by January 1, 1995 of the data elements, reporting forms, procedures and timetable to be followed in submitting patient data to the board. Its emergency filing is in accordance with the KRS 13A.190 provision for meeting a deadline established by state law. This administrative regulation directs providers to begin collecting data on January 1, 1995, for subsequent submission to the board on the specified timetable. The data submitted will enable the board to meet its statutory obligations to publish reports, beginning on or before July 1, 1996, that will allow consumers to compare charges, quality and outcomes among health care providers, as well as other reports to the Governor and Legislature on these and related topics including minority health care needs. This administrative regulation is also being promulgated as an ordinary administrative regulation.

BRERETON C. JONES, Governor
JACK B. HALL, Chairman

**KENTUCKY HEALTH POLICY BOARD**

**909 KAR 1:070E. Data reporting by health care providers.**

RELATES TO: KRS 216.2905, 216.2920 to 216.2947
STATUTORY AUTHORITY: KRS 216.2905, 216.2925
NECESSITY AND FUNCTION: KRS 216.2905 and 216.2925 mandate the Kentucky Health Policy Board to promulgate administrative regulations requiring specified health care providers to provide the board with data on cost, quality and outcomes of health care services provided in the Commonwealth. This administrative regulation sets forth the data elements, forms, and timetables the board requires to carry out this mandate.

Section 1. Definitions. (1) "Board" means the Kentucky Health Policy Board.

(2) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay and discharge date, and further identified by a provider-assigned patient control number unique to that inpatient episode. Excluded from this definition are inpatient services a hospital may provide in swing, dual licensed, nursing facility, skilled, intermediate or personal care beds, and major ambulatory procedures notwithstanding that these may occur in hospitals.

(3) "Major ambulatory procedure" means the provision to an ambulatory patient of any ambulatory surgery, any cardiac catheterization, or any patient service using lithotripsy, magnetic resonance imaging or megavoltage radiation by linear accelerator or cobalt 60.

Major ambulatory procedures may be related or unrelated to hospitalizations, may involve the use of either fixed or mobile medical equipment, and may occur in a physician office, a clinic, a hospital emergency, ambulatory or outpatient department by any name, or any other noninpatient situation or location where a major ambulatory procedure is provided.

(4) "Major ambulatory surgery" means the following specific surgeries:

Dilation and curettage
Hernia repair
Gastroscopy
Bronchoscopy
Vasectomy
Laser surgery (eye)
Angioplasty
Hemorrhoid surgery
Colposcopy with or without conization
Laparoscopic cholecystectomy
Arteriogram with or without angioplasty
Myringotomy with or without ventilation tubes
Colonoscopy
Cystoscopy with or without retrograde urography
Tubal ligation
Cataract surgery
Arthroscopy
Septoplasty
Lymph node biopsy
Breast biopsy
Carpal tunnel release
Tonsillectomy

(5) "UB-92" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1450, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations and ambulatory encounters, as incorporated by reference in Section 9 of this administrative regulation.

(6) "HCFA-1500" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1500, approved by the American Medical Association Council on Medical Service and commonly used to bill for ambulatory patient encounters, as incorporated by reference in Section 9 of this administrative regulation.

(7) "Coding and transmission specifications" means the technical directives the board issues concerning technical and technological matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the UB-92 and HCFA-1500 and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(8) "Record" means the documentation of a hospitalization or major ambulatory procedure in the format of a UB-92 or HCFA-1500 regardless whether constituted as a paper form or on a computer-readable electronic medium.

(9) "Agent" means any entity with which the board may contract pursuant to carrying out its statutory mandates and may designate to act on behalf of the board to collect, edit or analyze data from providers.

(10) "Provider" means a hospital, ambulatory facility, physician office, clinic or other entity of any nature providing hospitalizations or major ambulatory procedures as defined in this administrative regulation.

Section 2. Data Collection. (1) Hospitalization records. Beginning January 1, 1995, hospitals shall document on a UB-92 record each hospitalization they provide, and shall from every record copy and provide to the board or its agent not less than the data specified in Section 7 of this administrative regulation.

(2) Major ambulatory procedure and mammography records.

(a) Beginning January 1, 1995, ambulatory facilities and hospitals providing major ambulatory procedures or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the board, every major ambulatory procedure and mammogram they provide, and shall from every record copy and provide to the board or its agent not less than the data specified in Section 7 of this administrative regulation.

(b) Beginning July 1, 1995, physician offices, clinics and other entities of any nature providing major ambulatory procedures or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the board, the major ambulatory procedures and mammograms they provide, except that reporting of surgeries shall be limited to major ambulatory surgeries as defined in this administrative regulation, and shall from every record copy and provide to the board or its agent not less than the data specified in Section 7 of this administrative regulation.

(3) Data collection on all patients. Providers shall submit all required data on every patient as provided in this administrative regulation, regardless whether a bill is to be generated or the services are to remain unbilled.

Section 3. Data Finalization and Submission. (1) Submission of final data. Data shall be deemed final for purposes of submission to the board or its agent as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless whether the record has actually been submitted to a payor.

(a) Finalized data shall not be withheld from submission to the board on grounds that it remains subject to adjudication by a payor.

(b) Data on hospitalizations shall not be submitted to the board or its agent before a patient is discharged or before the record is sufficiently final that it could be used for billing.

(2) Submission responsibility. When a patient is served by a mobile health service, specialized medical technology service, or other situations where one provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the board or its agent shall reside with the entity that bills for the service or otherwise would do so in the event a service is unbilled.

(3) Transmission of records.

(a) Data submitted to the board or its agent shall be uniformly completed and formatted according to coding and transmission specifications issued by the board.

(b) Hospitals shall submit data on computer-readable electronic media, and all other providers with capability to submit records on computer-readable electronic media shall do so.

(c) All providers shall provide backup security against accidental erasure or loss of the data until incomplete or inaccurate records identified by the board, if any, have been corrected and resubmitted.

(d) Any data submitted by mail shall be by registered mail.

(e) Any provider who submits records in the form of paper copies shall either deliver the copies to the board or its agent, or send them in secure packaging by mail postmarked no later than the due date.

(f) Personal identification fields including the patient's name, Social Security number, street address and four (4) digit ZIP code suffix if any (but not city or five (5) digit ZIP code) shall be rendered unreadable on paper copies before the copies are submitted to the board, and shall not be included with electronically submitted data.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of all data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the board.

(b) The board or its agent shall periodically, by electronic message or mail, verify to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the board of any discrepancy between the provider's date log and a verification notice.

Section 4. Data Submission Timetable. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall contain data from all records which during that quarter became final as specified in Section 3(1) of this administrative regulation, and shall be submitted to the board not later than thirty (30) days after the last day of the quarter.

(a) If the 30th day falls on a weekend or holiday the submission due date shall become the next following working day.

(b) Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(c) The latest date for the first required data submission under this administrative regulation shall be April 30, 1995 for the quarter ending March 31, 1995. The earliest date on which data will be accepted from providers shall be March 1, 1995 unless the board issues other instructions relative to initial start-up of this data collection system.

(2) Submissions more frequent than quarterly. After April 1, 1995, providers may submit data at any time after records become final as specified in Section 3(1) of this administrative regulation, and at any frequency each provider deems convenient for accumulating and submitting batch data.

Section 5. Data Corrections. (1) Editing. All data received by the board or its agent will upon receipt be edited to ensure completeness and validity of the data for further processing. Computer editing routines will identify for correction every record in which the submitted contents of required fields are not consistent with the board's coding and transmission specifications.

(2) Time permitted for corrections. The board shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the board or its agent identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the board's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by either electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the board or its agent shall be uniformly completed and formatted according to the board's coding and transmission specifications.

(d) During the start-up months between January 1, 1995 and September 30, 1995, the board may in its discretion grant a provider an extension of time to submit corrections, provided that the provider has informed the board of significant problems in performing the corrections and has formally requested an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the board or its agent shall identify and return to the provider for correction every record in which any one (1) or more required data elements fails to pass the edit, and shall count the total number of required data elements returned to be corrected as 100 percent of the data elements for that submission subject to correction by the provider.

(b) When editing data that a provider has resubmitted following corrections, the board or its agent shall check for a remaining error rate no greater than one (1) percent of the data elements originally returned to the provider for correction.

(c) The board may return for further correction(s) any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate of ninety-nine (99) percent or greater of the data elements originally returned to the provider to be corrected.

(4) Postsubmission data changes. A provider shall initiate, as a correction, a resubmission of data previously submitted to the board if at any time up to six (6) months after the original submission date the provider issues a rebilling in which the rebilled record contains one (1) or more changes from the originally submitted data as follows:

(a) Any change which constitutes an aggregate change of the originally submitted total charge by at least three (3) percent or $500, whichever is greater, if a hospitalization; or ten (10) percent or $100, whichever is greater, if an ambulatory encounter; or

(b) Any change of or addition to primary or secondary diagnoses or procedures.

Section 6. Working Contacts. (1) Beginning January 20, 1995 and annually thereafter by January 1, each provider who is required by this administrative regulation to submit data shall report by letter to the board the names and telephone numbers of a designated working contact person and a backup person to facilitate technical staff follow-up in dealing with daily working details by employees of the board or its agent. A provider's designated contact and backup may not be the chief executive officer unless no other person(s) employed by the provider has the requisite technical expertise.

(2) If the chief executive officer, designated contact person or backup person changes during the year the name of the replacing person shall be reported immediately to the board.

Section 7. Required Data Elements. (1) UB-92 data. Providers shall ensure that each copy of UB-92 data submitted to the board contains at least the following data elements as provided for on the UB-92 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the board's coding and transmission specifications.

| Field # | Data Element Label |
|---|---|
| 2 | *Ethnicity |
| 3 | *Provider Assigned Patient Control Number |
| 4 | *Type of Bill (inpatient, outpatient or other) |
| 5 | *Federal Tax Number or Employer Identification Number (EIN) |
| 6 | *Statement Covers Period |
| 11 | Patient Birth Weight (state-reserved field) |
| 13 | *Patient City and Zip Code |
| 14 | *Patient Birthdate |
| 15 | *Patient Sex |
| 16 | Patient Marital Status |
| 17 | *Admission/Start of Care Date |
| 18 | Admission Hour |
| 19 | *Type of Admission |
| 20 | *Source of Admission |
| 21 | Discharge Hour |
| 22 | *Patient Status (at end of service or discharge) |
| 23 | *Provider Assigned Medical Record Number |
| 32-35 | *Occurrence Codes & Dates |
| 36 | *Occurrence Span Codes & Dates |
| 39-41 | *Value Codes and Amounts |
| 42 | *Revenue Codes/Groups |
| 46 | *Units of Service |
| 47 | *Total Charges by Revenue Code Category |
| 50 | *Payor Identification |
| 56 | KenPAC Authorization (Provider) Number |
| 67 | *Principal Diagnosis Code |
| 68-75 | *Secondary and Other Diagnosis Codes |
| 76 | *Admitting Diagnosis Code |
| 78a | Unusual Occurrence: Readmission |
| 78b | Unusual Occurrence: Nosocomial Infection |
| 79 | *Procedure Coding Method Used |
| 80 | *Principal Procedure Code & Date |
| 81 | *Secondary and Other Procedure Codes & Date |
| 82 | *Attending Physician Unique Physician Identification Number (UPIN) or alternate number |
| 83 | *Other Physician UPIN or alternate number |

(2) HCFA-1500 data. Providers shall ensure that each copy of HCFA-1500 data submitted to the board contains at least the following data elements as provided for on the HCFA-1500 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the board's coding and transmission specifications.

| Field # | Data Element Label |
|---|---|
| 1 | *Payor Identification |
| 3 | *Patient Birthdate and Patient Sex |
| 5 | *Patient City and Zip Code |
| 8 | Patient Marital Status |
| 10a | Patient Condition Related to Employment |
| 10b | Patient Condition Related to Auto Accident |
| 10c | Patient Condition Related to Other Accident |
| 14 | *Date of Current Illness, Injury, or Pregnancy |
| 15 | First Date of Previous Same/Similar Illness |
| 17a | *Referring/Ordering Physician UPIN or alternate number |
| 18 | Hospitalization Dates Related to Current Services |
| 19 | *Ethnicity |
| 20 | Outside Lab Use & Charges |
| 21 | *Diagnosis or Nature of Illness or Injury |
| 24a | *Date(s) of Each Procedure/Service/Supply |
| 24b | *Place of Service Code |
| 24d | *CPT/HCPCS Code for Each Procedure/Service/Supply |
| 24e | Diagnosis Code |
| 24f | *Dollar Charges for Each Procedure/Service/Supply |
| 24g | *Number of Days or Units |
| 25 | *Provider's (Physician/Supplier) Federal Tax Identification Number (EIN) |
| 26 | *Provider (Physician/Supplier)-assigned Patient Account Number |
| 28 | *Total Charges for Services |

Section 8. Noncompliance and Penalties. (1) Failure to comply. As provided in KRS 216.2923(4), the board may impose civil fines on a provider who fails to provide required data or information after the board has provided written notice to the provider that the provider is in violation of a requirement specified in Sections 2 through 7 of this administrative regulation and has specified a due date by which the provider is to cease the violation(s).

(2) Multiple fines. In determining the number of fines that may be levied, the board may count each violation of the requirements in Sections 2 through 7 as constituting a separate violation, may count each day in violation of a single requirement as constituting a separate violation, and may stipulate that multiple fines continue to accrue until the provider ceases the violation(s).

(3) A provider who complies with all data correction requirements in Section 5 of this administrative regulation shall not be held in violation or noncompliance with regard to uncorrected data elements.

Section 9. Incorporations by Reference. (1) As defined in Section 1 of this administrative regulation, Form UB-92 and Form HCFA-1500 are incorporated by reference.

(2) These forms may be inspected or copied at the Kentucky Health Policy Board, 3572 Ironworks Pike, Lexington, Kentucky, 40511, from 8 a.m. to 4:30 p.m., Monday through Friday except holidays.

JACK B. HALL, Chairman

APPROVED BY AGENCY: December 15, 1994

FILED WITH LRC: December 15, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack B. Hall

(1) Type and number of entities affected: This administrative regulation affects approximately 123 hospitals, 59 freestanding or mobile facilities providing major ambulatory procedures, and a limited number of physicians providing major ambulatory procedures in their offices.

(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: Indeterminable direct reduction in overall cost of living is expected to accrue to consumers statewide in consequence of their new ability to compare charges, quality and outcomes among health care providers using reports the board will publish based on data collected under this regulation. Employment is not germane to this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: The data required by this regulation will be derived from the patient bills that providers already generate in order to be paid for their services. Since health care providers have not previously been required to submit patient-level data to the state, minor reformatting of some of their billing data in order to transmit a copy to the board may possibly result in one-time setup cost to add this board transmission to their existing data transmissions to payers, and minor ongoing cost thereafter to add the board's data transmissions to their regular billing transmissions.

(c) Compliance, reporting and paperwork requirements, including factors increasing and decreasing costs (note any effects on competition) for the:

1. First year following implementation: Compliance with reporting requirements consists of submitting specified data on a schedule and in conformance with other requirements specified in the regulation. The regulation invites providers to minimize paperwork or eliminate it altogether by transmitting data electronically instead of on paper forms. One-time setup cost, if any, will occur in the first year only.

2. Second and subsequent years: Minor cost of routine data transmissions. Competition among providers is likely to increase as consumers grow more effective at using the board's reports on charges, quality and outcomes to comparison shop among providers.

(3) Effects on the promulgating administrative body: It will be necessary for the board to maintain a data processing system for managing the data received from providers.

(a) Direct and indirect costs or savings:

1. First year: Cost of staff and computer time.

2. Continued costs or savings: Same

3. Additional factors increasing or decreasing costs: Quantity of data received and nature and quantity of reports produced will affect staff cost.

(b) Reporting and paperwork requirements: House Bill 250, which requires promulgation of this regulation, also specifies particular reports that the board must generate using the collected data. The regulation has no reporting or paperwork requirements beyond those specifically directed to the function of collecting data.

(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 budget of the Commonwealth as established in House Bill 2 enacted by the 1994 General Assembly.

(6) Economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: Publication of comparative charges, quality and outcomes across health care providers is likely to enhance economic competition among providers to the benefit of health care consumers.

(b) Kentucky: The regulation is statewide in scope.

(7) Assessment of alternative methods; reasons why alternatives

were rejected: Health care reform statute KRS 216.2925 directs the board to promulgate this regulation.

(8) Assessment of expected benefits: Comparison shopping for health services by consumers and enhanced economic competition among health care providers as noted above is expected to result in gradual containment of health care prices and consequently in improving affordability of and access to health care for persons at all income levels.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public health status of Kentuckians statewide can be expected to improve as a function of the extent to which health data collection and reporting achieve their expected benefits. Environmental health is not affected by this regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The health care reform bill which mandates this regulation embodies the premise that nonavailability of comparative health data for consumers is inherently detrimental to their informed selection of health care services and that public health status is inherently less optimal than can result when consumers are better informed buyers of health care services.

(c) If detrimental effect would result, explain detrimental effect: Detrimental effect is systemic and pervasive as explained in (b) above.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplicative: None; this regulation initiates a new area of endeavor by state government.

(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 is not applied because this regulation applies equally to all affected entities statewide.

# ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

## GENERAL GOVERNMENT CABINET
## Executive Branch Ethics Commission
## (As Amended)

**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 **public servant who wishes to** 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 **as follows:**.

"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.

## GENERAL GOVERNMENT CABINET
## State Board of Elections
## (As Amended)

**31 KAR 4:080. Preclearance counties.**

RELATES TO: **KRS 117.020** **[~~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 **shall be** **[~~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 **shall not be** **[~~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.

**COMPILER'S NOTE:** The following administrative regulation, 40 KAR 2:220, was amended by the promulgating agency and the Interim Joint Committee on State Government, and became effective on November 17, 1994.

**DEPARTMENT OF LAW**
**(As Amended)**

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

RELATES TO KRS [~~Chapter~~] 365.447 [~~(HB 787, §4)~~]
STATUTORY AUTHORITY: KRS 15.180, [~~Chapter~~] 365.447 [~~(HB 787, §4), 367.150(4)~~]
NECESSITY AND FUNCTION: KRS [~~Chapter~~] 365.447 [~~(HB 787, §4)~~] requires in pertinent part the Office of the Attorney General to promulgate administrative regulations pertaining to applications by any party for more than two (2) going-out-of-business sale permits during a four (4) year period. This administrative regulation sets forth the procedures for applying for a subsequent permit, the investigation to be initiated and conducted by the Attorney General, and charges to the applicant, pursuant to KRS [~~Chapter~~] 365.447 [~~(HB 787, §4)~~].

Section 1. Application Procedure for Excess Permits. When any individual, partnership, corporation or other firm seeks a permit to conduct more than two (2) going-out-of-business sales within a four (4) year period, such party shall obtain, complete, and submit to the Office of the Attorney General, Division of Consumer Protection, an application form to obtain such permit.

Section 2. Investigation to Determine Legitimate Business Purpose. (1) Upon receipt of such application, the Office of the Attorney General, Division of Consumer Protection, shall initiate and conduct an investigation to determine if there is a legitimate business reason to conduct more than two (2) going-out-of-business sales within a four (4) year period. The Division of Consumer Protection shall investigate the circumstances of all previous going-out-of-business sales conducted by the applicant within the previous four (4) years and consider all relevant information in reaching its decision. Relevant business records and information shall include information relating to activities and going-out-of-business sales conducted in other jurisdictions. The Attorney General may request additional information and relevant business records from the applicant in determining the legitimacy of the business reason for the application.

(2) The Attorney General shall determine if there is a legitimate business reason for the applicant's request for any excess permits and deny or grant the permit within thirty (30) days of receiving the application.

(3) Valid business reasons for conducting more than two (2) going-out-of-business sales within a four (4) year period shall include:

(a) Insolvency of the business or owner(s);

(b) Unprofitability or inadequate profitability of the business;

(c) Retirement of the owner(s);

(d) Intent of the owner(s) to engage in other enterprises or endeavors;

(e) Termination of the business to free assets to pay any judgment of any court;

(f) Death of the owner(s), and the representatives of the estate(s), or their heirs, distributees, devisees, legatees, or their successors and assigns seek to terminate the business;

(g) Where the business is required or compelled to be discontinued because:

1. The premises upon which it is being conducted have been taken by eminent domain; or

2. The premises upon which it is being conducted must be vacated pursuant to court order pursuant to a legal or judicial proceeding; or

3. The business's lease on the premises upon which it is operating has been terminated by the landlord, or the landlord will not renew the lease.

(4) Business reasons which are not legitimate for the purposes of KRS 365.447 shall include, but not be limited to:

(a) Opening the business with intent to conduct a going-out-of-business sale with inventory brought in for that purpose, whether such inventory is owned by the business owner(s) or not, more than ninety (90) days prior to the application for the **permit** [~~license~~];

(b) Buying into an existing business with the intent to conduct a going-out-of-business sale, and bringing in large quantities of goods for that purpose, whether such inventory is owned by the business owner(s) or not, more than ninety (90) days prior to the application for the **permit** [~~license~~].

Section 3. The Applicant May be Charged the Costs of the Investigation. The Attorney General may charge the applicant for the costs of the investigation. The actual costs shall be assessed the applicant by the Attorney General, however the minimum charge shall be twenty-five (25) dollars, and the maximum charge $250.

Section 4. Any applicant whose application is denied by the Attorney General following investigation may seek appeal of the denial pursuant to 40 KAR 2:230 and 40 KAR 2:240.

BRENT L. CALDWELL, Deputy Attorney General
APPROVED BY AGENCY: July 8, 1994
FILED WITH LRC: July 8, 1994 at 2 p.m.

**PETROLEUM STORAGE TANK**
**ENVIRONMENTAL ASSURANCE FUND COMMISSION**
**(As Amended)**

**415 KAR 1:060. Financial responsibility account.**

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280
STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130
NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by state and federal administrative regulations for the payment of the costs of corrective action and third-party liability. This regulation establishes the eligibility requirements for the financial responsibility account, and establishes the procedure for eligible storage tank owners and operators to receive a certification of eligibility for this account.

Section 1. Applicability. An owner or operator of a facility with petroleum storage tanks in operation meeting the following requirements shall be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by the commission, pursuant to 415 KAR 1:020 (1991), 415 KAR 1:060 (1992) or 415 KAR 1:060 [~~160~~] (1993), prior to the effective date of this administrative regulation may [~~shall~~] be [~~pursuant to 415 KAR 1:020 (1991) is~~] eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2)[~~(a), (b), (d), (e) and (f)~~] of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certificate of eligibility, prior to the effective date of this administrative regulation [~~for the facility pursuant to 415 KAR 1:020 (1991)~~] shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040, or be permanently closed in compliance with 401 KAR 42:070 [~~40 CFR 280.71~~] or temporarily closed in compliance with 401 KAR 42:070 [~~40 CFR 280.70~~] [~~401 KAR 42:070~~];

(c) Not have a release for which corrective action is required at the time of certification;

(d) Have corrosion protection as required by 401 KAR 42:030;

(e) Have paid all annual fees required to be paid pursuant to KRS 224.60-150; [~~and~~]

(f) Have tanks "in operation" on or after the compliance dates set forth in **401 KAR 42:090** [~~40 CFR 280.91~~] and be mandated by **401 KAR 42:090** [~~40 CFR 280.90~~] to demonstrate financial responsibility as specified under **401 KAR 42:090** [~~40 CFR 280.93~~]; and

(g) Have demonstrated financial responsibility, as required, in the amount of entry level to the fund established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator may be eligible for payment from the financial responsibility account if:

(a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation; and [~~or the owner or operator was issued a certificate of eligibility prior to the effective date of this administrative regulation pursuant to 415 KAR 1:020 (1991);~~]

(b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; and

(c) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991), 415 KAR 1:060 (1992) or 415 KAR 1:060 (1993) may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred on or after April 9, 1990 upon reissuance of a certificate of eligibility pursuant to this administrative regulation. An owner or operator performing ongoing corrective action and participating in the financial responsibility account under a previously issued certificate of eligibility shall not be denied a certificate of eligibility, pursuant to this administrative regulation, if the requirements of Sections 1(2)(a), (b), (d), (e), (f), (g) and 5 of this administrative regulation are met;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation may be eligible for payment of costs of corrective action and third-party liability for bodily injury or property damage incurred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the commission a copy of the Eligibility and State Financial Responsibility Affidavit form dated July 1994 [~~October 1992~~,] hereby incorporated by reference. Copies of this form may be obtained [~~copied~~] and inspected at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive [~~59 Fountain Place~~], Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday. The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the commission.

[~~(3) An owner or operator issued a written notification of eligibility by the commission pursuant to 415 KAR 1:020 (1991) is eligible to participate in the financial responsibility account for facilities that comply with the requirements of Section 1(1) of this administrative regulation without the issuance of a new certificate of eligibility pursuant to this administrative regulation.~~]

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400. **For the purpose of potential eligibility for participation in the financial responsibility account, in no event shall the report of the release be made to the cabinet more than seven (7) days after discovery** [~~For the purpose of potential eligibility for participation in the financial responsibility account [fund], in no event shall the report of the release be made to the cabinet more than seven (7) [thirty (30)] days after discovery~~]; and [~~.~~]

(2) Implement initial abatement procedures required by 401 KAR 42:060 within twenty (20) days after detection of the release, or as directed in writing by the cabinet; and

(3) Comply with the requirements of 401 KAR 42:060 as directed in writing by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at $1,000 [~~10,000~~] per occurrence for taking corrective action and [~~$10,000 per occurrence for~~] compensating third parties for bodily injury and property damage.

(2) The entry level for participation in the financial responsibility account for an owner or operator of six (6) to ten (10) [~~or more~~] tanks shall be established and maintained at $5,000 [~~25,000~~] per occurrence for taking corrective action and $5,000 [~~25,000~~] per occurrence for compensating third parties for bodily injury and property damage.

(3) The entry level for participation in the financial responsibility account for an owner or operator of eleven (11) or more tanks shall be established and maintained at $25,000 per occurrence for taking corrective action and $25,000 per occurrence for compensating third parties for bodily injury and property damage.

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or any combination of the options listed in subsection (2) of this section. This certification shall be provided to the commission on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level may be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the commission;

(c) A guarantor with a [~~direct or indirect~~] controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the commission in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance.

Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from owning or operating petroleum storage tanks; and

(f) Qualification as a self-insurer with prior approval of the commission if the owner or operator has certified to the commission the following:

1. The owner or operators' annual year-end financial statements; and

2. The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.

Section 8. Change of Eligibility. An owner or operator shall report any change in the eligibility requirements contained in this administrative regulation to the commission within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If at any time, prior to a release, the commission determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the commission shall notify the owner or operator of the noncompliance.

(2) A facility shall be deemed ineligible to receive payment from the financial responsibility account under a certificate of eligibility issued pursuant to this administrative regulation, if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation and a release occurs during the period of noncompliance.

(a) An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the actions necessary to bring the facility into compliance with cabinet regulations.

(b) If the commission places the facility in the petroleum storage tank account then the commission shall deny eligibility of reimbursable remediation costs in the following amounts:

1. Failure to maintain compliance with release detection as required by 401 KAR 42:040, five (5) percent of their average adjusted gross income not to exceed $25,000;

**2. If a final determination is made by the cabinet that the facility has failed to report a release as required by KRS 224.01-400, five (5) percent of their average gross income for the past five (5) years not to exceed $25,000;** ~~[If the facility is referred by the cabinet to the Division of Waste Management Enforcement Branch or the Cabinet's Department of Law for failure to report the release, as required by KRS 224.01-400, five (5) percent of their adjusted gross income not to exceed $25,000;]~~

**3. If a final determination is made by the cabinet that the facility failed to comply with cabinet direction for corrective action as required by 401 KAR 42:060, five (5) percent of their average adjusted gross income for the past five (5) years not to exceed $25,000;** ~~[If the facility is referred by the cabinet to the Division of Waste Management Enforcement Branch or the Cabinet's Department of Law for failure to comply with cabinet direction for corrective action as required by 401 KAR 42:060E, five (5) percent of their adjusted gross income not to exceed $25,000.]~~

4. The owner or operator shall not be eligible for payment of the costs of third party liability.

(3) A facility shall ~~[may]~~ be deemed ineligible to receive payment from the financial responsibility account, pursuant to a previously approved assistance agreement or a certificate of eligibility issued pursuant to this administrative regulation, ~~[in the event of a release]~~ if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation during the ongoing corrective action and a release occurs during the period of noncompliance ~~[with the eligibility requirements of this administrative regulation]~~.

(a) An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the facility is brought into compliance with cabinet administrative regulations ~~[if the actions necessary to bring the facility into compliance are made to the satisfaction of the cabinet]~~.

(b) If the commission places the facility in the petroleum storage tank account then the commission shall deny eligibility of a percentage of the ~~[total]~~ reimbursable remediation costs in the following amounts:

1. Failure to maintain compliance with release detection as required by 401 KAR 42:040, ten (10) percent;

**2. If a final determination is made by the cabinet that the facility has failed to report a release as required by KRS 224.01-400, ten (10) percent;** ~~[If the facility is referred by the cabinet to the Division of Waste Management Enforcement Branch or the Cabinet's Department of Law for failure to report a [the] release as required by KRS 224.01-400 [401 KAR 42:050], ten (10) percent;]~~

**3. If a final determination is made by the cabinet that the facility failed to comply with cabinet direction for corrective action as required by 401 KAR 42:060, ten (10) percent;** ~~[If the facility is referred by the cabinet to the Division of Waste Management Enforcement Branch or the Cabinet's Department of Law for failure to comply with cabinet direction for corrective action as required by 401 KAR 42:060,] [Failure to comply with cabinet direction for corrective action as required by 401 KAR 42:060,] [[ten (10) percent.]~~

4. The owner or operator shall not be eligible for payment of the costs of third-party liability ~~[for releases occurring before the facility is brought back into compliance]~~.

(4) ~~[(3)]~~ An owner or operator may be determined ineligible to receive payment from the financial responsibility account if the owner or operator has intentionally submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(5) ~~[(4)]~~ The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

(6)[ ~~[(5)] [A facility issued a certificate of eligibility for the financial responsibility account pursuant to Section 3(2) of this administrative regulation shall not be eligible to participate in the petroleum storage tank account.~~

~~(6)]~~ An owner or operator issued or reissued a certificate of eligibility for the financial responsibility account pursuant to this administrative regulation ~~[pursuant to 415 KAR 1:020 (1991)]~~ may be eligible to participate in the petroleum storage tank account ~~[for facilities that do not qualify for eligibility in the financial responsibility~~

~~account if the eligibility requirements of 415 KAR 1:070 are met.~~]

(7) [~~(6)~~] [~~(7)~~] Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than $1,500,000 to ensure a $1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a $500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. When funds are withdrawn for emergency abatement actions by the cabinet, the commission shall replace the amount immediately.

(2) If the unobligated balance of the financial responsibility account is $1,500,000, or less, or the obligation [~~payment~~] of a claim shall cause the unobligated balance of the fund to be less than $1,500,000, the commission shall immediately suspend the obligation [~~payment~~] of claims until the unobligated balance is greater than $1,500,000. Obligations submitted for approval [~~Claims approved for payment~~] by the commission at the time of suspension shall be obligated [~~paid~~] in accordance with the date of initial submission [~~final approval~~] of the obligation [~~claims~~] when the suspension is lifted.

JACK B. HALL, Executive Director
APPROVED BY AGENCY: November 10, 1994
FILED WITH LRC: November 11, 1994 at 10 a.m.

**TRANSPORTATION CABINET**
**Department of Highways**
**Division of Traffic**
**(As Amended)**

**603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.**

RELATES TO: KRS 189.337
STATUTORY AUTHORITY: KRS 189.337
NECESSITY AND FUNCTION: KRS 189.337 requires the Department of Highways to establish standards for the placement of signs within highway right-of-way of a public road. The Transportation Cabinet has promulgated 603 KAR 5:050 which deals with all traffic control devices by incorporating the Manual on Uniform Traffic Control Devices by reference. The Manual on Uniform Traffic Control Devices allows for the erection of tourist oriented directional signs (TODS) to provide directional information for tourist activities offering goods and services that are of significant interest to the traveling public within certain parameters, but requires each jurisdiction to establish policies for those areas not covered in the manual. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of TODS.

Section 1. Definitions. (1) "Clear zone" means the area between the edge of the driving-lane of a public road and an imaginary line running parallel to the road but thirty (30) feet (9.12 meters) away from the road.

(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 1:101 to administer the tourist oriented directional signs program in Kentucky. The activities of the contractor shall include but not be limited to marketing, determination of business eligibility, maintenance, erection and removal of the information panels and TODS.

(3) "Contractor year" means a one (1) year period beginning January 1, of each calendar year.

(4) "Cover" means a protective shield over a TODS sign which prohibits viewing of the sign.

(5) [~~(4)~~] "Department" means the Kentucky Department of Highways.

(6) [~~(5)~~] "Eligibility distance" means the distance from the at-grade intersection of the state highway at the point where the directional sign is located to the entrance driveway to the business.

(7) [~~(5)~~] "Illegal sign" means an advertising device which has been determined to be illegal according to the provisions of 603 KAR 3:080.

(8) [~~(6)~~] "Information panel" means an official sign placed within the highway right-of-way with **[**~~the legend "TOURIST ACTIVITIES" and~~**]** space for one (1) or more individual TODS to be attached to it **and which may display the legend "TOURIST ACTIVITIES"**.

(9) [~~(7)~~] "Interstate or parkway" means a highway that has fully-controlled access as defined in 603 KAR 5:025.

(10) [~~(8)~~] "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.

(11) [~~(9)~~] "MUTCD" means the Federal Highway Administration's Manual On Uniform Traffic Control Devices incorporated by reference in 603 KAR 5:050.

(12) [~~(10)~~] "Public road" means all state-maintained roads other than interstate or parkway highways.

(13) **"TOD trailblazer" means a reduced-sized TODS used in areas where the speed limit is posted with a limit of forty-five (45) miles per hour or less (seventy-two and four-tenths (72.4) kilometers per hours) to direct the traveling public to a tourist attraction.**

**(14)** [~~(11)~~] "Tourist activity" means a public or private activity which provides a tourist attraction or motorist service to the traveling public.

**(15) [**~~(14)~~**]** [~~(12)~~] "Tourist attraction" means:

(a) A cultural, historical, recreational, agricultural, educational or entertainment activity; or

(b) A commercial activity which is unique and local or indigenous in nature.

**(16) [**~~(15)~~**]** [~~(13)~~] "Tourist oriented directional sign" or "TODS" means an individual tourist information sign paid for and owned by the tourist activity and fabricated to the standards set forth in this administrative regulation and located on an information panel on the right-of-way of a public road. The TODS may provide the official name, directional information, and distance to a specific tourist activity.

Section 2. General Provisions. The Department of Highways shall control the erection and maintenance of information panels and TODS in accordance with the MUTCD and the provisions of this administrative regulation.

Section 3. Applications and Contracts for TODS. (1) An application for an activity or business to place a TODS **or TOD trailblazer** sign on an information panel shall be made on **an** "Application for Highway Tourist Oriented Directional Signing (TODS)" form**[s]** prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. This form is incorporated by reference as a part of this administrative regulation.

(2) The notice by an activity or business to the Department of Highways' contractor of the number, type, and placement of each TODS shall be on "TODS Program Billing Information" forms prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. This form is incorporated by reference as a part of this administrative regulation.

(3) The contract to be entered into between the participating activity or business and the Department of Highways' contractor shall be the "Highway TODS Program Agreement" form prepared by the Kentucky Logo Sign Group, Inc. in May, 1994. Addenda to this form may be included in the contract where appropriate. This form is incorporated by reference as a part of this administrative regulation.

(4) All forms incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank

Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646. The forms may also be viewed, copied, or obtained from the State Highway Engineer's Office, Permits [Division of Traffic], 501 High Street, Mail code 11-2 [1-3], Frankfort, Kentucky 40622. The telephone number is (502) 564-4105 [3020] and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.

Section 4. Information Panels for TODS. (1) General requirements for information panels.

(a) The information panels shall be located to:

1. Take advantage of natural terrain;

2. Have the least impact on the scenic environment; and

3. Avoid visual conflict with other signs within the highway right-of-way.

(b) Information panels for TODS shall not be erected:

1. On interstates or parkways;

2. On the on/off ramps of interstates or parkways;

3. At a grade-separated juncture of two (2) highways or on public roads with a grade separation;

4. Where there is insufficient space to locate both other traffic control devices and the information panels; and

5. **Except for TOD trailblazers,** on those sections of public road with a speed limit of forty-five (45) miles (seventy-two and four-tenths (72.4) kilometers) per hour or less[, except an information panel and TODS may be allowed regardless of the speed limit for activities which have purchased a tourist attraction logo pursuant to 603 KAR 4:035].

(c) Unprotected information panel supports located within the clear zone shall be of a breakaway design.

(d) An information panel may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right-of-way.

(e) The location of any other traffic control device shall at all times take precedence over the location of an information panel.

(2) Intersection approach information panels.

(a) Information panels may be erected at the approach of an intersection on a public road.

(b) Each intersection approach information panel shall be located at least 200 feet (sixty and eight-tenths (60.8) meters) from the intersection.

(c) An intersection approach information panel shall be spaced at least 200 feet (sixty and eight-tenths (60.8) meters) from any other traffic control device including another intersection approach information panel.

(d) A [1. More than three (3) information panels shall not be installed on an approach to an intersection.

2.] Separate information panel shall [s may] be installed for each of the directions of traffic on an approach to an intersection at which TODS will be placed for the identification of tourist activities. The directions of traffic are the following:

1. [which involve] A right turn;

2. A left turn;

3. [or] No turn if [, i.e.,] the activity or business is located ahead if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) [3.] In the direction of traffic, the order of placement for separate information panels shall be for facilities to the left, to the right and straight ahead.

(f) [4.] If the AHEAD sign is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, but it shall not obstruct the driver's critical viewing of other traffic control devices.

[(e) Intersection approach information panels shall not be installed at an intersection if advance information panels have been installed.]

(3) Advance information panels.

(a) Advance information panels may be installed only in situations where sight distance, intersection vehicle maneuvers or other vehicle operation characteristics require advance notification of the service to reduce vehicle conflicts and improve highway safety;

(b) The last of the advance information panels to be driven past shall be located at least one-half (1/2) mile (eight-tenths (0.8) kilometers) from the intersection.

(c) Advance information panels shall have a minimum of 800 feet (243.2 meters) between the panels.

(d) A [1. More than three (3) advance information panels shall not be installed prior to the approach to an intersection.

2.] separate advance information panel shall [s may] be installed for each of the directions of traffic on an prior to the approach to an intersection at which TODS will be placed for the identification of tourist activities. The directions of traffic are the following:

1. [which involve] A right turn;

2. A left turn;

3. [or] No turn if [, i.e.,] the activity or business is located ahead and if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) [3.] In the direction of traffic, the order of placement for separate advance information panels shall be for facilities to the left, to the right and straight ahead.

(f) [4.] If the AHEAD sign is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, and it shall not obstruct the driver's critical viewing of other traffic control devices.

[(e) Advance information panels shall not be installed at an intersection if intersection approach information panels have been installed.]

Section 5. TODS Design and Composition. (1) Each TODS shall:

(a) Be rectangular in shape;

(b) Have a white legend and border on a blue background;

(c) Have reflective legends, arrows, backgrounds and borders;

(d) Contain the name of the business in not more than two (2) lines of legend which shall not include promotional advertising.

(2) Each TODS on an intersection approach information panel shall have:

(a) A separate directional arrow as set forth in Section 2D-8 of the MUTCD;

(b) The distance to the activity or business shown beneath the arrow;

(c) Arrows pointing to the right at the extreme right of the TODS; and

(d) Arrows pointing to the left or up at the extreme left of the TODS.

(3)(a) The arrangement of the tourist oriented directional signs on the advance information panel shall be the same as the arrangement on the intersection information panel except the directional arrows and distance shall be omitted.

(b) The appropriate legend NEXT RIGHT, NEXT LEFT, or AHEAD in letters of the same sign legends should be placed on the information panels above the TODS.

(c) The legend "RIGHT X MILE", "LEFT X KILOMETERS", or similarly worded legend may be used when there are intervening minor roads.

(4) More than four (4) TODS shall not be installed on a single information panel.

(5) TODS shall be arranged vertically on an information panel when appropriate located so that the right turn signs are closer to the intersection. When not more than four (4) TODS are to be installed on an approach to an intersection, the TODS may be combined on the same information panel with the TODS for left turns placed above the TODS for right turns.

(6) The standard lettering for tourist oriented directional signs shall be in upper case letters of the type provided in the "Standard Alphabets for Highway Signs and Pavement Markings" book. Capital

letters shall be six (6) inches (152.4 millimeters) in height. Spacing between characters shall conform to the tables in the metric edition of "Standard Alphabets for Highway Signs and Pavement Markings" published in 1977 by the U.S. Department of Transportation. This document is incorporated by reference as a part of this administrative regulation.

(7)(a) A TODS sign shall not exceed seventy-two (72) inches (1828.8 millimeters) wide and eighteen (18) inches (457.2 millimeters) tall.

(b) The TODS signs on the same information panel shall all be the same width.

(c) The directional arrow with the distance to the activity or business underneath shall not exceed sixteen (16) inches (406.4 millimeters) wide and sixteen (16) inches (406.4 millimeters) tall.

(d) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) white border surrounding the sign and separating the directional arrow and legend.

(e) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) spacing between the border and legend and two (2) inch (fifty and eight-tenths (50.8) millimeters) spacing between lines of legend.

(f) The maximum length of the legend shall be five feet four inches (5'4") (1.64 meters) per line.

(8) Clearance of panels should be governed by Sections 2A and 2D of the MUTCD.

(9) The document incorporated by reference in subsection (6) of this section as a part of this administrative regulation may be viewed or copied at the Kentucky Logo Sign Group, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646. The document may also be viewed or copied from the Office of the State Highway Engineer, Permits [~~Division of Traffic~~], 501 High Street, Mail code 11-2 [~~1-3~~], Frankfort, Kentucky 40622. The telephone number is (502) 564-4105 [~~3020~~] and the hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. The document may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. by referring to document number 620-809/71.

Section 6. AHEAD Signing. (1) The legend "AHEAD" may be used in lieu of the up directional arrow set forth in Section 5(2)(d) of this administrative regulation.

(2) Signing for tourist activities in the AHEAD direction shall be considered only under the following circumstances:

(a) There is signing for a similar facility in either the right or left direction;

(b) Through traffic is not the normal traffic pattern; or

(c) The visibility of the establishment is obscured until a motorist is within 800 feet (243.2 meters) of the entrance.

Section 7. **Trailblazer Signs. (1) At each turn required to be made by the traveling public when proceeding from a TODS to the tourist attraction, a legal sign shall be in place directing the turn. This may be accomplished by purchasing an additional TODS or TOD trailblazer sign.**

**(2) The Transportation Cabinet, based on engineering judgment, shall establish the size and location of each TOD trailblazer sign.**

**(3) The Transportation Cabinet shall approve the proposed trailblazing route for each tourist activity seeking trailblazing signs prior to the submission of the application for permit is required by Section 15 of this administrative regulation.**

**Section 8.** Tourist Activity Eligibility. A tourist activity shall meet the following requirements to qualify for tourist oriented directional signing. A TODS sign shall not be erected until the tourist activity or site has been approved in accordance with this administrative regulation.

(1) A tourist activity shall be of significant interest to the traveling public. The types of activities or sites which are of significant interest to the traveling public are gas, food, lodging, camping, and tourist attractions, if at least one-third (1/3) of the income or visitors at the tourist activity are derived during the normal business season from visitors not residing within twenty (20) miles (32.18 kilometers) of the activity.

(2) The tourist activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(3) Approval shall not be granted if the tourist activity is using an illegal sign any place in the Commonwealth of Kentucky.

(4) Each tourist activity shall comply with all applicable local, state, and federal statutes and regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin. Each tourist activity identified on a tourist oriented directional sign shall provide assurance of its conformance with all applicable federal, state or local laws and regulations. If a tourist activity is in noncompliance of any of these laws or regulations, it may be considered ineligible for participation in this program and its signs may be removed, with no return of any fees.

(5) The tourist activity shall be conducted in an appropriate building or area. The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance or the tourist activity is a bed and breakfast lodging. The building or area shall be maintained in a manner consistent with standards generally accepted for that type of business or activity.

(6) Any tourist activity which operates on a seasonal basis shall make provisions **with the department's contractor to remove or cover the tourist activity's** [~~for removing or covering its~~] TODS sign during the off season [~~with the contractor~~]. The tourist activity shall in writing notify the department's contractor at least thirty (30) days before the opening or closing occurs.

(7) A TODS shall not be displayed which would misinform the traveling public or is unsightly, badly faded, or in a state of dilapidation. In these instances the business shall make arrangements for a new TODS.

(8) The department shall have no responsibility for business lost due to TODS or information panels becoming temporarily out of service.

(9) The display of the tourist activity sign on the department's TODS structure shall not be considered an endorsement or recommendation by the State of Kentucky on behalf of the tourist activity.

(10) To qualify for a "GAS" TODS sign, a business shall:

(a) Be in continuous operation at least twelve (12) hours per day, six (6) days a week, twelve (12) months a year;

(b) Provide regular and unleaded fuel, oil, air and water;

(c) Have restroom facilities, drinking water, and telephone available to the traveling public;

(d) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(11) To qualify for a "FOOD" TODS sign, a business shall:

(a) Be in continuous operation to serve two (2) meals a day, twelve (12) hours a day, six (6) days a week, anytime the TODS sign is displayed; [~~and twelve (12) months a year;~~]

(b) Provide a telephone and restroom facilities for the traveling public; and

(c) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(12) To qualify for a "LODGING" TODS sign, a business shall:

(a) Have off-street parking and at least two (2) rooms for sleeping accommodations;

(b) Be in [~~continuous~~] operation anytime the TODS sign is displayed [~~year-round~~];

(c) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less; and

(d) Have a private bathroom for each sleeping room with the exception of bed and breakfast establishments.

(13) To qualify for a "CAMPING" TODS sign, a business shall:

(a) Have a minimum of ten (10) individual campsites and parking space for each;

(b) Have modern sanitary facilities and telephone available to its guests;

(c) Be in continuous operation for the time the sign is displayed; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

(14) To qualify for a "TOURIST ATTRACTION" TODS sign, a business or activity shall:

(a) Be open a minimum of eight (8) hours a day, five (5) days a week, one (1) of which is a weekend, any time the TODS sign is displayed;

(b) Have adequate parking for the facility with a minimum of fifteen (15) spaces;

(c) Be listed on the state or national Register of Historic Sites if the tourist attraction is a historic site; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

Section 9. [~~8.~~] Bumping. If a nonparticipating tourist activity becomes qualified nearer the intersection than one which already has a tourist activity sign displayed on a fully utilized information panel, the new tourist activity may apply to have its sign displayed at the beginning of the next contract year. The tourist activity farther from the intersection shall have its TODS removed at the end of the contract year if the closer tourist activity has applied to have its sign displayed and has been approved for the program, except under the following circumstances:

(1) A tourist attraction shall not be replaced by a motorist service;

(2) A seasonal tourist attraction shall not be replaced by a year-round motorist service;

(3) A year-round tourist attraction shall not be replaced by a seasonal tourist attraction; and

(4) A year-round motorist service shall not be replaced by a seasonal motorist service. [~~and~~

~~(2) A year-round activity shall not be replaced by a seasonal activity.~~]

Section 10. [~~9.~~] Changes. (1) When a participation business changes ownership, a new contract shall be signed at no additional cost to the business for the remainder of the contract year.

(2) When a participating business is sold and the new owner changes its name, if the new owner wants to continue on the program, a new application and contract shall be completed. This is considered a new business and the applicant shall pay the annual fee, prorated according to time remaining in the contract year.

(3) If a participating business changes its name, a new application and contract may [~~shall~~] be completed.

(4) If a participating business changes its name only, a new application and contract shall not be required.

(5) A reinstallation fee shall be charged for the placement of a [~~the~~] new TODS, if needed.

Section 11. [~~10.~~] Fees. (1)**(a) Except as provided by in paragraph (c) of this subsection,** the qualifying business shall pay to the department's contractor an annual fee of $216 [~~$150~~], in advance, for each TODS placed on the right-of-way.

**(b) Except as provided in paragraph (c) of this subsection, the qualifying business shall pay to the department's contractor an annual fee of $216, in advance for each TOD trailblazer placed on the right-of-way.**

**(c) If the qualifying business has a "tourist attraction" logo as set forth in 603 KAR 4:035, the annual fee for each TOD trailblazing sign or TODS from the logo to the tourist activity shall be $150.**

(2) The annual fee for the first year shall accompany the initial application.

(3) The first year's annual fee may be prorated on a monthly basis with each portion of a month the TODS is in place on the information panel requiring payment of one-twelfth (1/12) of the fee.

(4) The yearly renewal fee shall be due forty-five (45) days prior to the annual renewal date.

(5) The payment of the initial or renewal fee guarantees that the TODS **or TOD trailblazer sign** will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of its agreement with the Department of Highways' contractor and is approved by the Transportation Cabinet.

(6) If the signs for a seasonal tourist activity are removed or covered by the department's contractor, a fee of $200 shall be charged for the removal or covering of all of the TODS **or TOD trailblazer signs** for the specific business.

(7) If the signs for a tourist activity are removed [~~from an intersection~~] for any reason, a fee of 200 [~~$100~~] shall be charged for the reinstallation of all of the TODS [~~at that intersection~~] for the specific business.

(8) The fee for the reinstallation, removal, or covering of TODS shall be paid to the department's contractor within thirty (30) days of the postmarked date of the invoice.

(9) [~~(7)~~] The tourist activity shall be responsible for damages to its TODS **or TOD trailblazer** signs caused by acts of vandalism or natural causes which require repair or replacement of the TODS **or TOD trailblazer sign**.

Section 11. Revocation or Suspension. The contract between the department's contractor and the tourist activity may be revoked or suspended if:

(1) The activity no longer meets the eligibility requirements set forth in this administrative regulation;

(2) The owner or responsible operator of the activity willfully makes a false, deceptive, or fraudulent statement in its application or in other information submitted for review;

(3) The owner or responsible operator of the activity or an agent thereof revises or modifies a TODS sign erected by the department or its agents;

(4) The owner or responsible operator of the business or activity has engaged in a deceptive or fraudulent business practice;

(5) An illegal billboard advertising device advertising the business is located in the state of Kentucky; [~~or~~]

(6) Payment is not received on time or is otherwise delinquent;

(7) The owner or responsible operator of the business or activity fails to notify the department's contractor of its seasonal closing; or

(8) The owner or responsible operator of the business or activity is a habitual violator of the provisions of this administrative regulation.

Section 12. Measurements. (1) Measurements taken to determine the qualifications or priority of tourist activities shall be from the juncture of the center line of the highway, measured between the center edges of the main traveled way of the route on which the sign is to be placed and the center line of the crossroad.

(2) Measurements for the qualification of tourist activities for display of TODS shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad to the particular tourist activity.

Section 13. TODS Contract. (1)(a) A TODS contract between a particular tourist activity and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of the TODS.

(b) Each TODS and contract shall be subject to review by the Transportation Cabinet at any time.

(c) Failure to comply with any of the requirements set forth herein including nonpayment by the participating tourist activity shall be cause for the revocation of the TODS contract.

(d) If the contract is revoked for cause, the prepaid fees for the contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that a tourist activity does not comply with the requirement of this administrative regulation, the Department of Highways' contractor shall notify the tourist activity in writing of the violations.

(3) If the tourist activity fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the TODS.

Section 14. Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new information panel proposed to be erected or removed from the state-owned right-of-way.

Section 15. Appeal of the Department of Highways Action. (1) Any business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for the formal hearing shall:

(a) Be filed in writing with the Commissioner of the Department of Highways, 501 High Street, Frankfort, Kentucky 40622; and

(b) Set forth the nature of the complaint and the grounds for the appeal.

(3) Upon request of a request for a hearing, the general counsel of the Transportation Cabinet shall assign the matter to a hearing examiner.

(4) The hearing examiner shall schedule a date for the hearing as soon as the schedules of the parties needed at the hearing allow provided that the time shall not exceed sixty (60) days after receipt of the request for hearing.

(5) The hearing shall be recorded.

(6) The rules of evidence shall not apply.

(7)(a) The hearing examiner shall prepare and submit his report with a recommendation within sixty (60) days of the hearing.

(b) The report and recommendations shall be submitted to the commissioner of highways with copies served to the party which requested the hearing.

(8) Any party to the hearing may within twenty (20) days file with the Commissioner of Highways his exceptions to the report and recommendation of the hearing examiner.

(9) The commissioner shall within ten (10) days of receiving the exceptions and within thirty (30) days of receiving the report and recommendation of the hearing examiner issue an Official Order setting forth the final action of the Department of Highways.

J.M. YOWELL, P.E., State Highway Engineer
JERRY ANGLIN, Deputy Secretary, Commissioner of Highways
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: November 2, 1994
FILED WITH LRC: November 4, 1994 at 9 a.m.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Mines and Minerals**
**(As Amended)**

**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 **this administrative regulation and with the applicable standards set out in** 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 **shall be** [~~are~~] subject to approval by the department.

(2) [~~No~~] Electrical or permissibility work shall **not** 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~~]. **Each licensed mine using electrical equipment shall employ a qualified and certified worker.** [~~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 **one (1) working day** [~~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 **this administrative regulation and with the applicable standards set out in** 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 **this administrative regulation and with the applicable standards set out in** 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 **this administrative regulation and with the applicable standards set out in** 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 **on the surface** 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 **surface** 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 **this administrative regulation and with the applicable standards** [~~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 transformer.

(6) Stationary electrical equipment located on the surface shall be grounded by a method approved by the department [~~or~~] in accordance with **this administrative regulation and with the applicable standards** [~~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 **this administrative regulation and with the applicable standards** [~~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 **this administrative regulation and with the applicable standards** [~~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 **this administrative regulation and with the applicable standards** [~~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 **in accordance with this administrative regulation and with the applicable standards set out in** [~~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 **in accordance with this administrative regulation and with the applicable standards set out in** [~~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 **in accordance with this administrative regulation and with the applicable standards set out in** [~~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 **this administrative regulation and with the applicable** 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 **used to cut, mine, or load coal or** 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 and calibrated 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 and calibrations shall be performed in accordance with manufacturers' specifications and a record of them kept in a book approved by the department.** [~~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 **shall be** [~~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. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.**

Section 24. 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.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Department of Housing, Buildings and Construction**
**Division of Building Codes Enforcement**
**(As Amended)**

**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 **13** [**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.

## ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

**GENERAL GOVERNMENT CABINET**
**Department of Agriculture**
**Division of Weights and Measures**
**(Amended After Hearing)**

**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: **This administrative regulation is necessary** to establish procedures to implement and administer an inspection and testing program for the quality of motor fuels to ensure compliance with **KRS 363.902** **[~~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 **or other oxygenates blended in accordance with U.S. EPA (Environmental Protection Agency) standards** 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.

**(f) A statement that the motor fuel meets all standards and specifications in accordance with the applicable ASTM standards.**

(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 **may** ~~[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 **shall be** ~~[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 **may** ~~[shall]~~ result in a stop-sale order issued by the department, Division of Weights and Measures.

(4) Any person **receiving a notice of violation from** ~~[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 **shall be** ~~[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: December 12, 1994
FILED WITH LRC: December 12, 1994 at 4 p.m.

**EDUCATION, ARTS, AND HUMANITIES CABINET**
**Department of Education**
**Office of District Support Services**
**(Amended After Hearing)**

**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 **certified to the local school district** 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) **cents** [~~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) **cents** [~~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 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 (3) [~~(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: December 12, 1994
FILED WITH LRC: Decmeber 12, 1994 at noon

## PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 15, 1994

### DEPARTMENT OF PERSONNEL
### (Proposed Amendment)

**101 KAR 2:036. Compensation plan and pay incentive systems.**

RELATES TO: KRS 18A.030, 18A.110, 18A.165
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Appointments. (1) Initial appointment shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes a higher rate due to recruitment difficulties or the appointment of a highly qualified applicant at a rate above the minimum.

(2) An appointing authority may, due to the difficulty in recruiting a specifically qualified applicant or applicants, request the appointment of an applicant at a salary not to exceed the midpoint provided all other agency employees with the similar qualifications in the same job class and work county shall have their salaries adjusted by the appointing authority to that rate.

(3) An appointing authority may also request that a highly qualified applicant be given increased credit for relevant education and experience that is beyond the minimum requirements established for the job classification. The maximum allowable rate shall be five (5) percent for each year the applicant's education and experience exceeds the minimum requirements but the maximum number of years for which credit may be allowed shall not exceed four (4) years of relevant education or experience in excess of the minimum requirements. If approved by the commissioner, the appointing authority shall raise the salaries of all agency employees in the same job classification and work county to the same rate if they possess qualifications similar to those of the applicant. [~~Initial appointments shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and experience over and above the minimum requirements set for the job classification. Employees possessing qualifications similar to the applicant being appointed that are employed in the same job classification, by the same agency, in the same county shall have their salaries adjusted by the appointing authority to the same rate granted in the in range appointment if that rate is higher than their current salaries.~~]

Section 2. Reentrance to State Service. (1) Appointing authorities, with the approval of the commissioner, may place reemployed, reinstated, or former employee probationally appointed at a salary:

(a) Which is the same as that paid at the time of separation from state service if such salary is within the current pay grade;

(b) Higher than that paid at the time of separation from state service due to salary schedule or pay grade adjustments;

(c) In accordance with the standards used for making new appointments; or

(d) Lower than that paid at the time of separation from the classified service if such salary is within the current pay grade.

(2) Former employees who were separated from state service by layoff and who are reinstated or reemployed in the same or a similar job classification within five (5) years from the date of layoff may receive the salary they were receiving at the time of layoff, even if such salary is above the maximum of the pay grade.

(3) Former employees reemployed, reinstated or probation-ally appointed to a salary:

(a) Below the midpoint of the pay grade shall be considered for a probationary increment at the time of completion of the probationary period;

(b) Which equals or exceeds the midpoint of the pay grade may be considered for a probationary increment at the time of completion of the probationary period. If such employee is not considered for an increment upon completion of the probationary period, he shall be considered for an increment at the beginning of the month following completion of twelve (12) months service from the date of reemployment, reinstatement or appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of not less than five (5) percent upon promotion. In no case shall the employee's salary be below the minimum of the higher grade following promotion. Employees completing a promotional probationary period may receive a five (5) percent promotional increase at the beginning of the month following completion of the probationary period. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a ten (10) percent or fifteen (15) percent salary increase over the employee's previous salary. A promotional increase shall not change the employee's regular increment date.

(2) Demotion. An employee who is demoted may have his salary changed to a rate which is in the pay grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.

(3) Reclassification. An employee who is advanced to a higher pay grade through reclassification shall receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the new pay grade. An employee who is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification.

(4) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade. An employee who is placed in a lower pay grade through reallocation shall receive the same salary he was receiving prior to reallocation.

(5) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 2:070, Section 2, may receive a five (5) percent increase upon detail to a higher job classification, except that in no case shall the employee's salary after such increase be below minimum of the higher pay grade.

(6) Reversion.

(a) An employee who is reverted while serving a promotional probationary period following promotion, or following detail to special duty to a higher job classification, shall have his salary changed to the rate received prior to such promotion or detail to special duty and is entitled to all salary advancements and adjustments he would have received had he not left the job classification.

(b) An employee who is reverted to a position in the classified service from a position in the unclassified service shall have his salary changed to the rate received at the time he left the classified

service and is entitled to all salary advancements and adjustments he would have received had he not left the classified service.

(c) If an employee's salary is adjusted as the result of participation in a pilot program authorized by KRS 18A.400 through 18A.445, he shall retain that salary as long as he is employed by the agency.

(7) Pay grade changes. An employee who is advanced to a higher pay grade through a class reevaluation and grade adjustment under Section 7 of this administrative regulation may receive a salary increase as outlined below except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade:

(a) Five (5) percent uniformly applied within the agency;

(b) Ten (10) percent uniformly applied within the agency;

(c) A dollar amount determined by the Commissioner of Personnel uniformly applied in the class within the same agency. [~~An employee who is advanced to a higher pay grade through a class reevaluation and grade adjustment under Section 7 of this regulation may receive a salary increase of five (5) percent or ten (10) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade.~~]

(8) Other salary adjustments.

(a) An appointing authority, with the approval of the commissioner, may grant a salary adjustment to an employee who was eligible for but did not receive at least a five (5) percent salary advancement due to [~~as the result of any of the following actions: promotional increase,~~] reallocation to a higher grade, implementation of a special entrance rate, [~~or~~] class grade changes, effective on or after January 3, 1986 or completion of a promotional probationary period. [~~, may have his salary adjusted upon request by the appointing authority and approval by the commissioner.~~] In no case may the salary adjustment be more than five (5) percent nor be made retroactive to the original effective date but shall be made effective [~~granted~~] on the first of the month following approval of the commissioner [~~increase~~].

(b) Subject to approval by the commissioner, an appointing authority may request a five (5) percent salary adjustment when a special entrance rate is established under Section 7(3) of this regulation.

Section 4. Salary Advancements. (1) Probationary increments. Full-time and part-time employees who complete an initial probationary period with satisfactory performance shall be granted an increment at the beginning of the month following completion of the probationary period, except as specified under Section 2(3) of this regulation. The service may be provisional or probationary.

(2) Annual increment dates shall be established:

(a) Following completion of an initial probationary period, with satisfactory performance, or following completion of twelve (12) months service from the date of appointment, reinstatement, or reemployment, pursuant to Section 2(3) of this regulation.

(b) When an employee returns from leave without pay pursuant to subsection (4) of this section.

(3) 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) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; or

(i) Is promoted or receives a promotional increase after completion of a promotional probationary period.

(4) Return from leave without pay. Employees returning to duty from leave without pay shall receive an annual increment when they have completed twelve (12) months of service since the date they last received an annual increment.

(5) Service computation. In computing service for the purpose of determining annual increment eligibility, in those cases where an employee is changed from part time to full time, part-time service shall be counted in determining increment eligibility for a full-time employee. In those cases where an employee is changed from full time to part time, full-time service shall be counted in determining increment eligibility for a part-time employee.

Section 5. Educational Achievement Award. The participation of an appointing authority in the program for educational achievement awards is contingent upon adequate funding, to be determined by the appointing authority through the budgetary process, for all eligibles within the agency. Upon request of the appointing authority and subject to the approval of the commissioner, a permanent employee, with status may receive one (1) lump sum educational achievement award per fiscal year:

(1) For satisfactorily completing outside of work hours 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses, must have been completed after a merit employee initially gained permanent status in state government. Employees shall not receive credit for courses taken while on educational leave, for hours paid for by the agency through tuition assistance, or for courses which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than $2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) For receiving outside of work hours an approved high school diploma, high school equivalency certificate, or a passing score on the GED test. The approved diploma, certificate, or passing score must have been obtained on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the GED test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than $2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the GED test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) To apply for an educational achievement award an employee shall submit the educational achievement request form DPT-10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent together with official transcripts or grade reports for the courses completed) to the appointing authority or his designee. In compliance with the standards set forth in this regulation, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval. A lump sum educational achievement award shall not be added to the employee's base salary or wages.

Section 6. Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades. The commissioner may authorize a salary increase for those employees who are at or above the minimum rate based upon the availability of funds. [~~The percentage of~~] Such increase shall be determined by the commissioner by pay grade, and shall be uniform for all eligible employees within each pay grade.

Section 7. Class Reevaluation and Grade Adjustment. (1) Class reevaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in subsection (1) of this section, the commissioner may make a new or different pay grade applicable to a class of positions. Persons currently employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary adjustment under Section 3(7) of this regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees in a class assigned to a lower pay grade through class reevaluation shall retain their current salary.

(3) Recruitment difficulties. Whenever the commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may, at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same county are adjusted in salary to the same rate.

Section 8. Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100, Section 4, and the Fair Labor Standards Act 29 USC §201, et seq. and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime payments shall not be added to base salary or wages.

Section 9. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such maintenance shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the commissioner after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 10. Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those job classifications in which employees are directed to work an evening or night shift. Once authorized, this premium shall apply to those employees directed to work an evening or night shift in a job classification in the agency for which the shift premium was approved. However, no employee shall receive a supplemental shift premium subsequent to shift reassignment or to a transfer, promotion or demotion to a position that is ineligible for a shift differential premium payment.

Section 11. Distinguished Service Award. (1) Appointing authorities may utilize up to fifty (50) percent of funds saved through a combination of high performance levels and staff reduction to grant distinguished service awards to employees. No more than twenty-five (25) percent of the employees in an agency shall be eligible for a distinguished service award in a fiscal year. Distinguished service awards shall also be contingent upon the availability of surplus funds within the appointing authority's budget and shall be within the sole discretion of the appointing authority. A distinguished service award shall equal three (3) percent of the midpoint of the grade level of the employee and shall be added to the employee's base salary, if that salary is below the midpoint, or paid in a lump sum if the employee's salary exceeds the midpoint.

(2) An employee may be eligible for a distinguished service award if:

a. The employee has at least forty-eight (48) months service, twenty-four (24) of which must be current; and

b. Has demonstrated a sustained level of exceptional job performance; or

c. Has assumed a significant level of additional job responsibilities or duties and performed them in an acceptable manner; or

d. The appointing authority feels that the employee acts or ideas have resulted in a significant financial savings or improvement in services to the Commonwealth and its citizens.

(3) An employee shall be eligible for only one (1) distinguished service award in a twenty-four (24) month period.

(4) In order to grant a distinguished service award the appointing authority must submit the personnel action form and written justification. The award shall not be granted until the request is approved by the Commissioner of Personnel.

LOWELL W. CLARK, Commissioner
BRERETON C. JONES, Governor

APPROVED BY AGENCY: November 18, 1994
FILED WITH LRC: December 5, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1995 at 10 a.m. in Conference Room 508, at 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1995 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, Managing Attorney, Department of Personnel, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, (502) 564-7430.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: All executive branch, classified employees in the merit system governed by KRS Chapter 18A.

(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 anticipated.

(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 seen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Not applicable.

2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant savings or costs anticipated.

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

No significant impact is seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were proposed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical are in which implemented and on Kentucky: No public health or environmental impact seen.

(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: Not applicable.

(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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to permit appointing authorities greater flexibility in regarding employees for performance and to enable them to be more competitive in recruiting and retaining highly qualified employees.

(11) Tiering: Is tiering applied? Yes. This regulation applies only to the classified employees under KRS Chapter 18A. A separate regulation applicable to that group is being promulgated concurrently.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2§CER Par 825).

2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

**DEPARTMENT OF PERSONNEL**
**(Proposed Amendment)**

**101 KAR 3:045. Unclassified service; classification and compensation incentive systems.**

RELATES TO: KRS 18A.155

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.155

NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. Nothing herein shall be construed to preclude the optional use of regulations promulgated under 101 KAR 2:036 [~~this section~~] on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.155 and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This regulation complies with and implements this statutory provision [~~and replaces 101 KAR 3:040~~].

Section 1. Classification Plan. (1) The commissioner shall, after consultation with the appointing authorities, prepare and recommend to the Governor a classification plan for adoption. The plan shall be based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. Each position shall be allocated to its proper class in the classification plan after consultation with appointing authorities. The classification plan shall include for each class of position an appropriate title, description of duties and responsibilities, and the required education, experience and other qualifications.

(2) The principles and provisions of 101 KAR 2:020 shall apply to positions in the unclassified service.

Section 2. Compensation Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, develop a pay plan for all aforementioned employees

in the unclassified service, taking into account such factors as:

(a) The relative levels of duties and responsibilities of various classes of positions;

(b) Rates paid for comparable positions elsewhere; and

(c) The state's financial resources.

Such pay plan shall become effective only after it has been approved by the Governor after submission to him by the commissioner through the Secretary of the Department of Finance. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the position in which he is employed.

(2) With the exception of the provision relating to probationary increments[~~, and outstanding merit increases under 101 KAR 3:045,~~] the principles and provisions of 101 KAR 2:036 [~~5~~] shall apply to employees and positions in the unclassified service. An employee in the unclassified service who completes the initial six (6) month period following appointment with satisfactory performance may be granted a statutory increment at the beginning of the month following completion of such period.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Inasmuch as the appointing authority has the option of not providing salary increases under this section, an eligible employee whose salary is not adjusted is not considered to have been penalized and therefore shall have no basis for appeal.

(c) An appointing authority, with the approval of the commissioner, may grant a salary adjustment, equivalent to the budgeted annual increment for classified employees, to seasonal, temporary, FFTL and other unclassified employees who have completed twelve (12) months total full-time employment in the classified or unclassified service without a salary increase. Such salary adjustment, if granted, shall be effective on the first day of the month following approval of the increase.

(3) Physicians, employed as such and pursuant to KRS 64.655, are exempted from the provisions of 101 KAR 2:036 [~~2:035~~], Section 1, and may be appointed to any rate within the pay range when justified in writing by the appointing authority and approved by the commissioner.

Section 3. Educational Achievement Award. Upon request of the appointing authority and subject to the approval of the commissioner:

(1) An employee may receive one (1) lump sum educational achievement award per fiscal year for satisfactorily completing outside of work hours, 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses must have been completed after an employee initially served six (6) months in state government. Employees shall not receive credit for hours taken while on educational leave, for hours paid for by the agency through tuition assistance, or for hours which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than $2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) An employee may receive one (1) lump sum educational achievement award for earning an approved diploma, high school equivalency certificate, or a passing score on the G.E.D. test. The approved high school diploma, certificate, or passing score shall have been obtained by the state employee on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than $2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) To apply for an educational achievement award an employee shall submit supporting documentation to the appointing authority or his designee a DPT Form 10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent) together with official transcripts or grade reports for the courses completed. In compliance with the standards set forth in this section, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval.

~~[Section 4. Outstanding Merit Increase. (1) Subject to the approval of the commissioner and contingent upon the availability of sufficient budgeted funds, an appointing authority may within his sole discretion, recommend any full-time, unclassified employee whose service credit began prior to July 1, 1987 with at least twelve (12) months continuous service for an outstanding merit increase equal to three (3) percent of his base pay. An outstanding merit increase shall consist of a lump sum payment which shall not be added to base pay.~~

~~(2) An employee may be recommended for an outstanding merit increase if:~~

~~(a) His job performance is judged to be outstanding by the appointing authority; or~~

~~(b) In the discretion of the appointing authority, the employee's acts or ideas have resulted in significant financial savings or improvement in services to the Commonwealth and its citizens.~~

~~(3) An employee shall not be eligible for recommendation for an outstanding merit increase if he has received an outstanding merit increase within the preceding twelve (12) months.~~

~~(4) The appointing authority shall submit written justification to the commissioner and the personnel action form shall be approved by the appointing authority and the commissioner to be effective.]~~

LOWELL W. CLARK, Commissioner
BRERETON C. JONES, Governor

APPROVED BY AGENCY: November 18, 1994

FILED WITH LRC: December 5, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1995 at 10 a.m. in Conference Room 508, at 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, Managing Attorney, Department of Personnel, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, (502) 564-7430.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: All executive branch, unclassified employees governed by KRS Chapter 18A.

(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 anticipated.

(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 seen.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Not applicable.

2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant savings or costs anticipated.

1. First Year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact is seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are not enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were proposed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical are in which implemented and on Kentucky: No public health or environmental impact seen.

(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: Not applicable.

(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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This amendment is designed to permit appointing authorities greater flexibility in regarding employees for performance and to enable them to be more competitive in recruiting and retaining highly qualified employees.

(11) TIERING: Is tiering applied? Yes. This regulation applies only to the unclassified employees under KRS Chapter 18A. A separate regulation applicable to that group is being promulgated concurrently.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983). P.L. 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2 CER Par 825).

2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

**GENERAL GOVERNMENT CABINET**
**State Board of Embalmers & Funeral Directors**
**(Proposed Amendment)**

**201 KAR 15:050. Apprenticeship requirements.**

RELATES TO: KRS 316.040, 316.090

STATUTORY AUTHORITY: KRS 316.210(4)

NECESSITY AND FUNCTION: The necessity of promulgating this administrative regulation is to comply with the provisions of KRS Chapter 13A. The function of this administrative regulation is to establish the requirements for apprentices seeking to qualify for licensure as an embalmer or funeral director. [~~Sets forth apprenticeship requirements in order to be eligible to take the examination for~~

~~licensure as either an embalmer or funeral director.~~]

Section 1. [~~Apprenticeship Requirements.~~] (1) On or before May 1 and November 1 of each year, every registered apprentice shall file with the board [~~Secretary of the Board of Embalmers and Funeral Directors~~] a statement of the training the apprentice [~~he~~] has received during the six (6) month[~~s~~] period ending with the preceding middle of April or middle of October respectively, on a form available from the board. [~~indicating the licensed funeral director and licensed embalmer under whom he worked by their sworn signature.~~]

(2) Failure of the apprentice to timely file a completed form with the board in compliance with this administrative regulation and KRS 316.040 may, in the discretion of the board, [~~such statements within the prescribed time will~~] cause the forfeiture of the apprenticeship served during the reportable period.

(3) Failure of the apprentice to have all report forms completed and filed with [~~due, during the entire training period in the hands of the secretary of~~] the board at the time of making application for examination shall [~~will automatically~~] disqualify the applicant from taking the embalmer and funeral director [~~of~~] examinations.

Section 2. [~~(2)~~] The apprenticeship report forms [~~shall be furnished to the trainee by the board and~~] shall require the apprentice to provide [~~include~~] the following [~~detailed~~] information:

(1) [~~(a)~~] The name of at least one (1) professional magazine read by the apprentice [~~regularly~~] each month;

(2) [~~(b)~~] The name of at least one (1) textbook studied by the apprentice during each [~~in the~~] six (6) month[~~s~~] period;

(3) [~~(c)~~] An attached review written by the apprentice of at least one (1) [~~said~~] textbook studied by the apprentice during each six (6) month period; [~~or other related study material.~~]

(4) [~~(d) Report for funeral director; state~~] The number of funeral services in which the apprentice funeral director [~~trainee has~~] assisted during each six (6) month period;

(5) [~~(e) Report for embalmer; state~~] The number of cases in which the apprentice embalmer [~~trainee has~~] assisted with the care and preparation during each six (6) month period; and [~~.~~]

(6) [~~(f)~~] The name of the service items in which the apprentice [~~trainee has~~] assisted during each six (6) month period.

Section 3. (1) [~~(3)~~] The apprenticeship report forms provided [~~furnished~~] by the board to the apprentice [~~trainee~~] shall be accompanied by a written [~~an~~] explanation of the training program to ensure that [~~in order that both~~] the apprentice [~~trainee~~] and the sponsoring funeral director and embalmer [~~shall~~] fully understand the [~~its~~] objectives of the training program.

(2) The report forms filed by each apprentice shall be reviewed [~~scrutinized~~] by the board to [~~which shall then~~] determine whether [~~or not~~] the training was [~~is~~] adequate and in conformity with the requirements of KRS Chapter 316 and this administrative regulation. [~~such standards as will indicate that the trainee is actually receiving proper training.~~]

EDD PRESTON, President

APPROVED BY AGENCY: October 3, 1994

FILED WITH LRC: November 29, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 23rd day of January, 1995, at 9 a.m., in the Capitol Annex, 1st Floor, 701 Capitol Avenue, Room 141, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by the 18th day of January, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William B. Pettus, Assistant Attorney General, Office of Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency contact: William B. Pettus

(1) Type and number of entities affected: Approximately 213 apprentice embalmers and funeral directors in Kentucky.

(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 clarify apprenticeship requirements. 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 apprentices are treated uniformly under the law.

## GENERAL GOVERNMENT CABINET
### State Board of Embalmers & Funeral Directors
### (Proposed Amendment)

**201 KAR 15:060. Annual license renewal, late renewal, and reinstatement.**

RELATES TO: KRS 316.130

STATUTORY AUTHORITY: KRS 316.210(4) [~~316.130~~]

NECESSITY AND FUNCTION: Sets forth the requirement, pursuant to KRS 316.130, that a funeral director's license and embalmer's license shall [~~must~~] be renewed annually.

Section 1. Annual Renewal of Licenses. (1) Every licensed embalmer and every licensed funeral director who desires to continue to practice shall file a completed application form for renewal with the secretary of the board on or before July 1 of each year. The form shall be accompanied by an annual renewal fee established by statute.

(2) Applicants who timely satisfy the annual renewal requirements shall be eligible to have their name appear in the official list of licensees published by the board.

Section 2. Late Renewal of Licenses. Every licensed embalmer and every licensed funeral director who fails to timely renew their license shall be eligible to have their license renewed if a completed application form, prescribed renewal fee(s) for all previous years, and any prescribed penalty fee is filed with the secretary of the board within three (3) years of the expiration of the license.

Section 3. Reinstatement. (1) The board shall not renew a license of a funeral director or embalmer which has been expired for three (3) years or more.

(2) The applicant may have their license reinstated provided the applicant satisfies the requirements set forth in Section 2 of this administrative regulation and demonstrates reasonable competency as a funeral director, embalmer, or both, depending on the license sought to be reinstated.

(3) In determining competency, the board, in its discretion, may require the applicant to successfully complete all or any part of the licensing examination. [~~All licenses issued by the board expire on the 31st day of July, next, following their issuance and must be renewed annually. Application for renewal of license must be made to the secretary of the board thirty (30) days preceding the expiration of the license, upon printed forms prescribed by the board and must be accompanied by a license fee of twenty (20) dollars as prescribed by law. The applicant will be entitled to have his name appear in the official list published and issued by the board.~~]

EDD PRESTON, President

APPROVED BY AGENCY: October 3, 1994

FILED WITH LRC: November 29, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 23rd day of January, 1995, at 9 a.m., in the Capitol Annex, 1st Floor, 701 Capitol Avenue, Room 141, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by the 18th day of January, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William B. Pettus, Assistant Attorney General, Office of Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 564-7600.

### REGULATORY IMPACT ANALYSIS

Agency contact: William B. Pettus

(1) Type and number of entities affected: Approximately 1825 persons licensed as embalmers or funeral directors.

(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 licensees are treated uniformly under the law.

**GENERAL GOVERNMENT CABINET**
**State Board of Embalmers & Funeral Directors**
**(Proposed Amendment)**

**201 KAR 15:080. Complaints of violations.**

RELATES TO: KRS 316.150

STATUTORY AUTHORITY: KRS 316.210(4)

NECESSITY AND FUNCTION: The necessity of promulgating this administrative regulation is to comply with the provisions of KRS Chapter 13A. The function of this administrative regulation is to establish [~~Sets forth~~] the procedure for filing [~~whereby~~] complaints [~~and/or charges~~] of violations of KRS Chapter 316 and the administrative [~~rules and~~] regulations promulgated pursuant to KRS Chapter 316 with [~~governing~~] the Kentucky State Board of Embalmers and Funeral Directors [~~shall be made~~].

Section 1. Complaint. (1) A complaint that a person (respondent) has failed or refused to obey the requirements of KRS Chapter 316 or the administrative regulations of the board shall be made in writing to the board.

(2) The complaint shall be signed by the person (complainant) making the complaint.

(3) The complainant need not be a licensed embalmer or funeral director.

Section 2. Notice to Respondent. (1) The board may send a notice with a copy of the complaint to the respondent requesting a reply to the complaint.

(2) Upon request, respondent shall file a reply to the complaint with the board within twenty (20) days after receipt of notice of the complaint.

(3) Failure of the respondent to file a timely reply to the complaint shall constitute a violation of a board order and an administrative regulation of the board and shall be grounds for disciplinary action under KRS 316.150(1)(g).

Section 3. Investigation of Complaint. (1) 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.

(2) 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 316 or the administrative regulations of the board.

(3) 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 316 or the administrative regulations of the board. [~~Violations. Complaints and charges of violations of the law and the rules and regulations of the board governing embalmers and funeral directing, or both, shall, upon request of the board, be made by the complainant upon printed forms prescribed by the board and furnished by the secretary of the board, to the person complaining, which forms shall be filled in by the complainants, signed, sworn to and properly filed with the secretary of the board.~~]

EDD PRESTON, President

APPROVED BY AGENCY: October 3, 1994

FILED WITH LRC: November 29, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 23rd day of January, 1995, at 9 a.m., in the Capitol Annex, 1st Floor, 701 Capitol Avenue, Room 141, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by the 18th day of January, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William B. Pettus, Assistant Attorney General, Office of Attorney General, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: William B. Pettus

(1) Type and number of entities affected: Approximately 1825 persons licensed as embalmers or funeral directors.

(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 licensees are treated uniformly under the law.

**GENERAL GOVERNMENT CABINET**
**Kentucky Board of Nursing**
**(Proposed Amendment)**

**201 KAR 20:085. Licensure periods.**

RELATES TO: KRS 314.041, 314.051, 314.073

STATUTORY AUTHORITY: KRS Chapter 314

NECESSITY AND FUNCTION: To provide for licensure periods for licenses issued. To provide for expiration dates of licenses.

Section 1. The licensure periods of licenses issued shall be as follows:

(1) Registered nurse licenses.

(a) [~~Registered nurse licenses issued July 1, 1984 through June 30, 1986 shall expire on October 31, 1986.~~

~~(b)~~] Registered nurse licenses issued during the first nineteen (19) [~~twenty (20)~~] months of a biennial licensure period shall expire at the end (October 31) of the current biennial licensure period.

(b) [~~(c)~~] Registered nurse licenses issued during the last five (5) [~~four (4)~~] months of a biennial licensure period shall expire at the end (October 31) of the succeeding biennial licensure period.

(2) Practical nurse licenses.

(a) [~~Licensed practical nurse licenses issued July 1, 1983 through June 30, 1985 shall expire on October 31, 1985.~~

~~(b)~~] Licensed practical nurse licenses issued during the first nineteen (19) [~~twenty (20)~~] months of a biennial licensure period shall expire at the end (October 31) of the current biennial licensure period.

(b) [~~(c)~~] Licensed practical nurse licenses issued during the last five (5) [~~four (4)~~] months of a biennial licensure period shall expire at the end (October 31) of the succeeding biennial licensure period.

Section 2. Biennial Licensure Periods. (1) The biennial licensure period for licensed practical nurse licenses shall be November 1 of uneven years through October 31 of the following uneven years.

(2) The biennial licensure period for registered nurse licenses shall be November 1 of even years through October 31 of the following even years.

PATRICIA B. BURGE, President

APPROVED BY AGENCY: December 9, 1994

FILED WITH LRC: December 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1995 at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1995, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: An unknown number of registered nurse and licensed practical nurse applicants for licensure.

(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: N/A

(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: N/A

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: $50 per individual.
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: 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: N/A

(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: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were applicable.

(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 effect.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No effect.

(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:

(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) Tiering is not applicable as all licensees are treated equally.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Environmental Protection**
**Division for Air Quality**
**(Proposed Amendment)**

**401 KAR 50:010. Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.**

RELATES TO: KRS 224.01-010, 224.01-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS ~~[13A.222(4)(e),]~~ 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms to be used in Title 401, Chapters 50 to 65.

Section 1. Definitions. All terms not defined in this administrative regulation or in subsequent regulations, shall have the meaning given them in KRS 224.01-010 or by commonly accepted usage. As used in the administrative regulations of the Division for Air Quality, unless the content clearly indicates otherwise, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in Section 4 of this administrative regulation, and the affected facility's basis, as defined by Section 1012 of the Internal Revenue Code which has been incorporated by reference in Section 4 of this administrative regulation. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) "Existing source" means a source which is not a new source.

(22) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal

or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) "$PM_{10}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "$PM_{10}$ emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a 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 or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific regulation or chapter.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe

nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the regulations of the Division for Air Quality.

(55) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68)) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57)"State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1,-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of Title 401, Chapters 50 to 65, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
oC - Degree Celsius (centigrade)
Cal - calorie
cfm - Cubic feet per minute
CFR - Code of Federal Regulations
$CH_4$ - methane
CO - Carbon monoxide
$CO_2$ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
oF - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
$H_2O$ - water
$H_2S$ - Hydrogen sulfide
$H_2SO_4$ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
$m^3$ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
$N_2$ - Nitrogen
NO - Nitric oxide
$NO_2$ - Nitrogen dioxide
$NO_x$ - Nitrogen oxides
oz - ounce
$O_2$ - oxygen
$O_3$ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second

SIP - State implementation plan
$SO_2$ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard.

Section 3. 401 KAR 50:047 Definitions. As used in 401 KAR 50:047, unless the content clearly indicates otherwise, the following terms shall have the following meanings:

(1) "Capture" means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack or sent to a control device.

(2) "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(3) "Capture efficiency" means the weight per unit time of volatile organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs, expressed as a percentage.

(4) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(5) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(6) "Destruction or removal efficiency" means the efficiency, expressed as a decimal fraction, of a control device in destroying or removing contaminants. It is calculated as one (1) minus the quotient of the amount of VOCs exiting the control device divided by the amount of VOCs entering the control device, i.e., 1-[(VOC exiting)/(VOC entering)].

(7) "Gas-gas method" means either of two (2) methods for determining capture of emissions which rely on only gas phase measurements. One (1) method requires construction of a total temporary enclosure to assure all would-be fugitive emissions are measured; the other method uses the room or building which houses the emission source as an enclosure.

(8) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.

(9) "Liquid-gas method" means either of two (2) methods for determining capture of emissions which require both gas phase and liquid phase measurements and analysis. One (1) liquid-gas method requires construction of a temporary enclosure; the other uses the building or room which houses the facility as an enclosure.

(10) "Overall emission reduction efficiency" means the weight per unit time of VOC removed by a control device divided by the weight per unit time of VOC emitted by an emission source, expressed as a percentage. With the efficiencies expressed as decimal fractions, the overall emission reduction efficiency is the product of the capture efficiency and the control equipment destruction or removal efficiency.

Section 4. Reference Material. (1) Incorporation by Reference. The following documents are incorporated by reference:

(a) Depreciation, IRS Publication 534, catalog number 150640, Department of the Treasury, Internal Revenue Service; and

(b) Section 1012, Basis of Property Cost, Income Tax-Basic Rules, Internal Revenue Code.

(2) The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying, subject to copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 803 Schenkel Lane [~~316 St. Clair Mall~~], Frankfort, Kentucky 40601 (502) 573 [~~564~~]-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105 [~~41101~~], (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 3032 Alvey Park Drive, W. [~~311 West Second Street~~], Owensboro, Kentucky 42303 [~~42301~~], (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 14, 1994

FILED WITH LRC: December 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on January 30, 1995, 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. 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendments to this administrative regulation revise the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The first change is required by the U.S. EPA for the definition to be approvable as part of the State Implementation Plan (SIP) and clarifies that no test method will be acceptable without U.S. EPA prior approval. The next change updates the definition of VOC to include the changes in nomenclature and the additional compounds of negligible photochemical reactivity promulgated by the U.S. EPA in the Federal Register, 59 FR 50696, October 5, 1994. The last change includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The acetone change is being proposed by the cabinet for public comment. The cabinet will not include the acetone change if the U.S. EPA amendment for acetone is not final by the effective date of the cabinet's amendment. No entities are directly affected by the revision to the definition. U.S. EPA prior approval of test methods has always been required. Only the language is being clarified. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity.

(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 are no costs or savings beyond those which are described in the federal final

rulemaking in Federal Register, 59 FR 50696, October 5, 1994, and the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) 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: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: Please see (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state. However, the State's SIP would not be approvable without the clarification for prior U.S. EPA approval on test methods.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The 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? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal requirement that the definition for volatile organic compound (VOC) be revised appears in the Federal Register, 59 FR 32351, June 23, 1994.

2. State compliance standards. The VOC definition shall state that test methods shall have prior approval from the United States Environmental Protection Agency (U.S. EPA).

3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Environmental Protection**
**Division for Air Quality**
**(Proposed Amendment)**

**401 KAR 50:038. 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.

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 [~~5,924,000~~], 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: December 14, 1994

FILED WITH LRC: December 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on January 30, 1995, 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. 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation 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 businesses. 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 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 uses 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: There is no 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.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
### Department for Environmental Protection
### Division for Air Quality
### (Proposed Amendment)

**401 KAR 51:001. Definitions and abbreviations of terms used in 401 KAR Chapter 51.**

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS ~~[13A.222(4)(e),]~~ 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms used in 401 KAR Chapter 51.

Section 1. General Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 51, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is

measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) "Existing source" means a source which is not a new source.

(22) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) "$PM_{10}$" means particulate matter with an aerodynamic

diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "$PM_{10}$ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a 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 or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific regulation.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions":

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC- 115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the

cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 51 shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
$CH_4$ - methane
CO - Carbon monoxide
$CO_2$ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
$H_2O$ - water
$H_2S$ - Hydrogen sulfide
$H_2SO_4$ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
$m^3$ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
$N_2$ - Nitrogen
NO - Nitric oxide
$NO_2$ - Nitrogen dioxide
$NO_x$ - Nitrogen oxides
oz - ounce
$O_2$ - oxygen
$O_3$ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
$SO_2$ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 14, 1994
FILED WITH LRC: December 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on January 30, 1995, 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. 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendments to this administrative regulation revise the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The first change is required by the U.S. EPA for the definition to be approvable as part of the State Implementation Plan (SIP) and clarifies that no test method will be acceptable without U.S. EPA prior approval. The next change updates the definition of VOC to include the changes in nomenclature and the additional compounds of negligible photochemical reactivity promulgated by the U.S. EPA in the Federal Register, 59 FR 50696, October 5, 1994. The last change includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The acetone change is being proposed by the cabinet for public comment. The cabinet will not include the acetone change if the U.S. EPA amendment for acetone is not final by the effective date of the cabinet's amendment. No entities are directly affected by the revision to the definition. U.S. EPA prior approval of test methods has always been required. Only the language is being clarified. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity.

(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 are no costs or savings beyond those which are described in the federal final rulemaking in Federal Register, 59 FR 50696, October 5, 1994, and the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a)

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: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: Please see (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state. However, the State's SIP would not be approvable without the clarification for prior U.S. EPA approval on test methods.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The 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? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal requirement that the definition for volatile organic compound (VOC) be revised appears in the Federal Register, 59 FR 32351, June 23, 1994.

2. State compliance standards. The VOC definition shall state that test methods shall have prior approval from the United States Environmental Protection Agency (U.S. EPA).

3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
### Department for Environmental Protection
### Division for Air Quality
### (Proposed Amendment)

**401 KAR 59:001. Definitions and abbreviations of terms used in 401 KAR Chapter 59.**

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS ~~[13A.222(4)(e),]~~ 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms used in 401 KAR Chapter 59.

Section 1. General Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 59, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation,

road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Design capacity" means the maximum rate at which a unit was designed to operate.

(17) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) "District" has the meaning given it in KRS 224.01-010.

(19) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(20) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(21) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) "Existing source" means a source which is not a new source.

(23) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(26) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(27) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(30) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(31) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(32) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(33) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(34) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(35) "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(36) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(37) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(40) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(41) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(42) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(43) "$PM_{10}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(44) "$PM_{10}$ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(45) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a 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 or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(46) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(47) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific regulation.

(48) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(49) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(50) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(51) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) "Shutdown" means the cessation of an operation.

(53) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(54) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the administrative regulations of the Division for Air Quality.

(56) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(57) "Start-up" means the setting in operation of an affected facility.

(58) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(59) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(60) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(61) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect

to the administrative regulations of the Division for Air Quality.

(62) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of Title 401, Chapter 59, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
oC - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
$CH_4$ - methane
CO - Carbon monoxide
$CO_2$ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
oF - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
$H_2O$ - water
$H_2S$ - Hydrogen sulfide
$H_2SO_4$ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
$m^3$ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
$N_2$ - Nitrogen
NO - Nitric oxide
$NO_2$ - Nitrogen dioxide
$NO_x$ - Nitrogen oxides
oz - ounce
$O_2$ - oxygen
$O_3$ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
$SO_2$ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: December 14, 1994

FILED WITH LRC: December 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on January 30, 1995, 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. 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendments to this

administrative regulation revise the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The first change is required by the U.S. EPA for the definition to be approvable as part of the State Implementation Plan (SIP) and clarifies that no test method will be acceptable without U.S. EPA prior approval. The next change updates the definition of VOC to include the changes in nomenclature and the additional compounds of negligible photochemical reactivity promulgated by the U.S. EPA in the Federal Register, 59 FR 50696, October 5, 1994. The last change includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The acetone change is being proposed by the cabinet for public comment. The cabinet will not include the acetone change if the U.S. EPA amendment for acetone is not final by the effective date of the cabinet's amendment. No entities are directly affected by the revision to the definition. U.S. EPA prior approval of test methods has always been required. Only the language is being clarified. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity.

(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 are no costs or savings beyond those which are described in the federal final rulemaking in Federal Register, 59 FR 50696, October 5, 1994, and the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) 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: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: Please see (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state. However, the State's SIP would not be approvable without the clarification for prior U.S. EPA approval on test methods.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The 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? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal requirement that the definition for volatile organic compound (VOC) be revised appears in the Federal Register, 59 FR 32351, June 23, 1994.

2. State compliance standards. The VOC definition shall state that test methods shall have prior approval from the United States Environmental Protection Agency (U.S. EPA).

3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.

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

beyond those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Environmental Protection**
**Division for Air Quality**
**(Proposed Amendment)**

**401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61.**

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS ~~[13A.222(4)(e)]~~ 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms used in 401 KAR Chapter 61.

Section 1. General definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 61, unless the content clearly indicates otherwise in a specific administrative regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Design capacity" means the maximum rate at which a unit was designed to operated.

(17) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) "District" has the meaning given it in KRS 224.01-100.

(19) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(20) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(21) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) "Existing source" means a source which is not a new source.

(23) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(26) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(27) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(30) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(31) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(32) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(33) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(34) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(35) "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(36) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(37) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(40) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(41) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(42) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(43) "$PM_{10}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(44) "$PM_{10}$ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(45) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a 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 or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(46) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(47) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific regulation.

(48) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(49) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(50) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(51) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) "Shutdown" means the cessation of an operation.

(53) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be

considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(54) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(56) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(57) "Start-up" means the setting in operation of an affected facility.

(58) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(59) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(60) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(61) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(62) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-a); dichlorofluoroethane (HCFC-b); chlorodifluoroethane (HCFC-b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-a); 1,1-difluoroethane (HFC-a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 61, shall have the following meanings:

AC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
$CH_4$ - methane
CO - Carbon monoxide
$CO_2$ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
$H_2O$ - water
$H_2S$ - Hydrogen sulfide
$H_2SO_4$ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
$m^3$ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
$N_2$ - Nitrogen
NO - Nitric oxide
$NO_2$ - Nitrogen dioxide
$NO_x$ - Nitrogen oxides
oz - ounce
$O_2$ - oxygen
$O_3$ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
$SO_2$ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry

TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 14, 1994
FILED WITH LRC: December 14, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on January 30, 1995, 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. 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director
(1) Type and number of entities affected: The amendments to this administrative regulation revise the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The first change is required by the U.S. EPA for the definition to be approvable as part of the State Implementation Plan (SIP) and clarifies that no test method will be acceptable without U.S. EPA prior approval. The next change updates the definition of VOC to include the changes in nomenclature and the additional compounds of negligible photochemical reactivity promulgated by the U.S. EPA in the Federal Register, 59 FR 50696, October 5, 1994. The last change includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The acetone change is being proposed by the cabinet for public comment. The cabinet will not include the acetone change if the U.S. EPA amendment for acetone is not final by the effective date of the cabinet's amendment. No entities are directly affected by the revision to the definition. U.S. EPA prior approval of test methods has always been required. Only the language is being clarified. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity.
(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 are no costs or savings beyond those which are described in the federal final rulemaking in Federal Register, 59 FR 50696, October 5, 1994, and the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) 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: There are no compliance, reporting, or paperwork requirements in this administrative regulation.
2. Second and subsequent years: Please see (2)(c)1 above.
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.
2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1 and 2 above.
(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.
(6) Economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.
(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.
(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.
(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.
(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state. However, the State's SIP would not be approvable without the clarification for prior U.S. EPA approval on test methods.
(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.
(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.
(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The 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? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No
2. State what unit, part or division of local government this

administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal requirement that the definition for volatile organic compound (VOC) be revised appears in the Federal Register, 59 FR 32351, June 23, 1994.

2. State compliance standards. The VOC definition shall state that test methods shall have prior approval from the United States Environmental Protection Agency (U.S. EPA).

3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Environmental Protection**
**Division for Air Quality**
**(Proposed Amendment)**

**401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63.**

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS ~~[13A.222(4)(e),]~~ 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the definition of terms used in 401 KAR Chapter 63.

Section 1. General Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 63, unless the content clearly indicates otherwise in a specific administrative regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) "Existing source" means a source which is not a new source.

(22) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or other entity.

(42) "$PM_{10}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "$PM_{10}$ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a 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 or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401

KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 63, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
$CH_4$ - methane
CO - Carbon monoxide
$CO_2$ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
$H_2O$ - water
$H_2S$ - Hydrogen sulfide
$H_2SO_4$ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter

lb - pound
m - meter
$m^3$ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
$N_2$ - Nitrogen
NO - Nitric oxide
$NO_2$ - Nitrogen dioxide
$NO_x$ - Nitrogen oxides
oz - ounce
$O_2$ - oxygen
$O_3$ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gauge
S - at standard conditions
sec - second
SIP - State implementation plan
$SO_2$ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 14, 1994
FILED WITH LRC: December 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on January 30, 1995, 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. 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: The amendments to this administrative regulation revise the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The first change is required by the U.S. EPA for the definition to be approvable as part of the State Implementation Plan (SIP) and clarifies that no test method will be acceptable without U.S. EPA prior approval. The next change updates the definition of VOC to include the changes in nomenclature and the additional compounds of negligible photochemical reactivity promulgated by the U.S. EPA in the Federal Register, 59 FR 50696, October 5, 1994. The last change includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The acetone change is being proposed by the cabinet for public comment. The cabinet will not include the acetone change if the U.S. EPA amendment for acetone is not final by the effective date of the cabinet's amendment. No entities are directly affected by the revision to the definition. U.S. EPA prior approval of test methods has always been required. Only the language is being clarified. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity.

(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 are no costs or savings beyond those which are described in the federal final rulemaking in Federal Register, 59 FR 50696, October 5, 1994, and the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) 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: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: Please see (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state. However, the state's SIP would not be approvable without the clarification for prior U.S. EPA approval on test methods.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The 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? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal requirement that the definition for volatile organic compound (VOC) be revised appears in the Federal Register, 59 FR 32351, June 23, 1994.

2. State compliance standards. The VOC definition shall state that test methods shall have prior approval from the United States Environmental Protection Agency (U.S. EPA).

3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**
**Department for Environmental Protection**
**Division for Air Quality**
**(Proposed Amendment)**

**401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65.**

RELATES TO: KRS 224.01-010, 224.10-100, 40 CFR ch. I, Appendices B and A to 40 CFR 50, 40 CFR 53, [~~55~~], 60, 42 USC 7410

STATUTORY AUTHORITY: KRS [~~13A.222(4)(e),~~] 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms to be used in 401 KAR Chapter 65.

Section 1. General definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 65, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

(1) "Air contaminant" has the meaning given it in KRS 224.01-010.

(2) "Air pollutant" means an air contaminant.

(3) "Air pollution" has the meaning given it in KRS 224.01-010.

(4) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(5) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(6) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(7) "Cabinet" has the meaning given it in KRS 224.01-010.

(8) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(9) "District" has the meaning given it in KRS 224.01-010.

(10) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(11) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(12) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(13) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(14) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(15) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(16) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(17) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(18) "Particulate matter" means a material, except uncombined

water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(19) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.

(20) "$PM_{10}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(21) "$PM_{10}$ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.

(22) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(23) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(24) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(25) "Standard conditions."

(a) For source measurements means twenty (20) degrees Celsius (sixty- eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(26) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(27) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(28) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(29) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(30) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(31) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate[s]; methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane [~~trichlorotrifluoroethane~~] (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); acetone; parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. [~~Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA.~~] If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 65 shall have the following meanings:

[~~(32)~~] "AOAC" means Association of Official Analytical Chemists
[~~(33)~~] "ANSI" means American National Standards Institute.
[~~(34)~~] "ASTM" means American Society for Testing and Materials.
[~~(35)~~] "BOD" means Biochemical oxidant demand.
[~~(36)~~] "BTU" means British Thermal Unit.
[~~(37)~~] "°C" means Degree Celsius (centigrade).
[~~(38)~~] "Cal" means calorie.
[~~(39)~~] "cfm" means cubic feet per minute.
[~~(40)~~] "CFR" means Code of Federal Regulations.
[~~(41)~~] "$CH_4$" means methane.
[~~(42)~~] "CO" means Carbon monoxide.
[~~(43)~~] "$CO_2$" means Carbon dioxide.
[~~(44)~~] "COD" means Chemical oxidant demand.
[~~(45)~~] "dscf" means dry cubic feet at standard conditions.
[~~(46)~~] "dscm" means dry cubic meter at standard conditions.
[~~(47)~~] "°F" means Degree Fahrenheit.
[~~(48)~~] "ft" means feet.
[~~(49)~~] "g" means gram.
[~~(50)~~] "gal" means gallon.
[~~(51)~~] "gr" means grain.
[~~(52)~~] "hr" means hour.
[~~(53)~~] "HCl" means Hydrochloric acid.
[~~(54)~~] "Hg" means mercury.
[~~(55)~~] "HF" means Hydrogen fluoride.
[~~(56)~~] "$H_2O$" means water.
[~~(57)~~] "$H_2S$" means Hydrogen sulfide.
[~~(58)~~] "$H_2SO_4$" means Sulfuric acid.
[~~(59)~~] "in" means inch.
[~~(60)~~] "J" means joule.
[~~(61)~~] "KAR" means Kentucky Administrative Regulations.
[~~(62)~~] "kg" means kilogram.
[~~(63)~~] "KRS" means Kentucky Revised Statutes.
[~~(64)~~] "l" means liter.
[~~(65)~~] "lb" means pound.
[~~(66)~~] "m" means meter.
[~~(67)~~] "$m^3$" means cubic meter.
[~~(68)~~] "min" means minute.
[~~(69)~~] "mg" means milligram.
[~~(70)~~] "MJ" means megajoules.
[~~(71)~~] "MM" means million.
[~~(72)~~] "mm" means millimeter.

[~~(73)~~] "mo" means month.
[~~(74)~~] "Ng" means nanograms.
[~~(75)~~] "$N_2$" means Nitrogen.
[~~(76)~~] "NO" means Nitric oxide.
[~~(77)~~] "$NO_2$" means Nitrogen dioxide.
[~~(78)~~] "$NO_x$" means Nitrogen oxides.
[~~(79)~~] "oz" means ounce.
[~~(80)~~] "$O_2$" means oxygen.
[~~(81)~~] "$O_3$" means ozone.
[~~(82)~~] "ppb" means parts per billion.
[~~(83)~~] "ppm" means parts per million.
[~~(84)~~] "ppm (w/w)" means parts per million (weight by weight).
[~~(85)~~] "µg" means microgram.
[~~(86)~~] "psia" means pounds per square inch absolute.
[~~(87)~~] "psig" means pounds per square inch gage.
[~~(88)~~] "S" means at standard conditions.
[~~(89)~~] "sec" means second.
[~~(90)~~] "SIP" means State implementation plan.
[~~(91)~~] "$SO_2$" means Sulfur dioxide.
[~~(92)~~] "sq" means square.
[~~(93)~~] "TAPPI" means Technical Association of the Pulp and Paper Industry.
[~~(94)~~] "TSP" means Total suspended particulates.
[~~(95)~~] "TSS" means Total suspended solids.
[~~(96)~~] "U.S. EPA" means United States Environmental Protection Agency.
[~~(97)~~] "UTM" means Universal Transverse Mercator.
[~~(98)~~] "VOC" means Volatile organic compound.
[~~(99)~~] "yd" means yard.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: December 14, 1994
FILED WITH LRC: December 14, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing to receive comments on the proposed amendment will be conducted on January 30, 1995, 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. 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director
(1) Type and number of entities affected: The amendments to this administrative regulation revise the definition of volatile organic compound (VOC) to be compatible with the United States Environmental Protection Agency (U.S. EPA) definition. The first change is required by the U.S. EPA for the definition to be approvable as part of the State Implementation Plan (SIP) and clarifies that no test method will be acceptable without U.S. EPA prior approval. The next change updates the definition of VOC to include the changes in nomenclature and the additional compounds of negligible photochemical reactivity promulgated by the U.S. EPA in the Federal Register, 59 FR 50696, October 5, 1994. The last change includes an additional compound (acetone) of negligible photochemical reactivity that was proposed by the U.S. EPA in the Federal Register, 59 FR 49882, September 30, 1994. The acetone change is being proposed by the cabinet for public comment. The cabinet will not include the acetone change if the U.S. EPA amendment for acetone is not final by the effective date of the cabinet's amendment. No entities are directly affected by the revision to the definition. U.S. EPA prior approval of test methods has always been required. Only the language is being clarified. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity.
(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 are no costs or savings beyond those which are described in the federal final rulemaking in Federal Register, 59 FR 50696, October 5, 1994, and the federal proposed rulemaking in Federal Register, 59 FR 49882, September 30, 1994.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) 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: There are no compliance, reporting, or paperwork requirements in this administrative regulation.
2. Second and subsequent years: Please see (2)(c)1 above.
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.
2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.
3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.
(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1 and 2 above.
(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.
(6) Economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.
(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions as those located in Kentucky.
(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.
(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.
(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state. However, the state's SIP would not be approvable without the clarification for prior U.S. EPA approval on test methods.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The 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? No. This amendment revises the definition for VOC to be compatible with the U.S. EPA definition. The federal definition applies to all facilities and has no tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal requirement that the definition for volatile organic compound (VOC) be revised appears in the Federal Register, 59 FR 32351, June 23, 1994.

2. State compliance standards. The VOC definition shall state that test methods shall have prior approval from the United States Environmental Protection Agency (U.S. EPA).

3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

**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 December 14 [~~November 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 [~~(Amended 11/14/94)~~] |
| 9.6 | Contraband |
| 9.7 | Storage, Issue and Use of Weapons Including Chemical Agents |
| 9.8 | Search Policy |
| 9.9 | Transportation of Inmates [~~(Amended 11/14/94)~~] |
| 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 11/14/94)~~]
18.5 Custody and Security Guidelines
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
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
18.18 International Transfer of Inmates
19.1 Government Services Projects
19.2 Community Services Projects
19.3 Inmate Wage Program (Amended 12/14/94)
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 [~~(Amended 11/14/94)~~]
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 (Amended 12/14/94)
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 (Amended 12/14/94)
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: December 14, 1994

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

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 23, 1995, 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 6:070. Kentucky Correctional Institution for Women.**

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 department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. 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 December 14 [~~June 14~~], 1994 are incorporated by reference and shall be referred to as Kentucky Correctional Institution for Women 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 on weekdays between 8 a.m. to 4:30 p.m.

| | |
|---|---|
| KCIW 01-08-01 | News Media Access |
| KCIW 02-01-01 | Comprehensive Insurance Coverage |
| KCIW 02-02-01 | Fiscal Management: Audits |
| KCIW 02-02-04 | Institution Purchasing Procedures |
| KCIW 02-03-01 | Inventory Control of Nonexpendable Personal Property |
| KCIW 02-03-02 | Inventory and Control of Stores |
| KCIW 02-04-01 | Accounting Procedures |
| KCIW 02-05-01 | Inmate Canteen and Staff Canteen |
| KCIW 06-01-01 | Inmate Records [~~(Amended 6/14/94)~~] |
| KCIW 06-01-02 | Transfers to Community Centers and the Minimum Security Unit (Amended 12/14/94) |
| KCIW 06-01-03 | Storage of Expunged Records |
| KCIW 10-01-01 | Special Management Unit General Operation and Regulations |
| KCIW 10-01-02 | Special Management Unit Programs, Placement and Review (Amended 12/14/94) |
| KCIW 10-01-04 | Special Security |
| KCIW 11-01-01 | Food Service Operation Inspections |
| KCIW 11-01-02 | Budgeting, Accounting, and Purchasing Procedures for Food Products |
| KCIW 11-02-01 | Menu Preparation/Special Diets [~~(Amended 6/14/94)~~] |
| KCIW 11-03-01 | General Guidelines for Food Service Workers |
| KCIW 11-04-01 | Health Regulations and General Guidelines for the Food Service Area |
| KCIW 11-07-01 | Special Religious Diets |
| KCIW 12-01-01 | Control of Pests and Vermin |
| KCIW 12-02-01 | Laundry and Clothing Issuance (Amended 12/14/94) |
| KCIW 12-02-03 | Donated Items |
| KCIW 12-04-02 | Hair Care Services (Amended 12/14/94) |
| KCIW 13-01-01 | Provision of Medical and Dental Care |
| KCIW 13-01-02 | Preliminary Health Screening and Appraisal |
| KCIW 13-01-03 | Use of Pharmaceutical Products |
| KCIW 13-03-01 | Emergency Care |
| KCIW 13-03-02 | Infirmary Care and Outside Services |
| KCIW 13-04-01 | Medical Alert System |
| KCIW 13-04-02 | Psychiatric/Psychological Services |
| KCIW 13-06-01 | Informed Consent |
| KCIW 13-07-01 | Detoxification and Alcohol or Chemical Dependency |

| | |
|---|---|
| | Guidelines |
| KCIW 13-08-01 | Medical Examination for Employees (Amended 12/14/94) |
| KCIW 13-09-01 | Suicide Prevention and Intervention Program |
| KCIW 13-11-01 | Infection Control |
| KCIW 14-01-02 | Inmate Rights |
| KCIW 14-02-01 | Access to Attorneys and Designated Counsel Substitutes |
| KCIW 14-04-01 | Inmate Grievance Procedure |
| KCIW 15-06-01 | Restriction Guidelines |
| KCIW 16-01-01 | Inmate Correspondence [(~~Amended 6/14/94~~)] |
| KCIW 16-02-01 | Inmate Access to Telephone (Amended 12/14/94) |
| KCIW 16-03-01 | Inmate Visiting Regulations (Amended 12/14/94) [(~~Amended 6/14/94~~)] |
| KCIW 16-03-02 | Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages |
| KCIW 16-04-01 | Inmate Indigent Fund |
| KCIW 16-05-01 | Inmate Packages (Amended 12/14/94) |
| KCIW 17-01-01 | Assessment Center Operation and Reception Programs |
| KCIW 17-01-02 | Assessment/Classification Center Operations, Rules and Regulations |
| KCIW 17-01-03 | Assessment and Classification Unit Property Guidelines |
| KCIW 17-02-01 | Identification Department Admissions (Amended 12/14/94) |
| KCIW 17-05-01 | Inmate Personal Property Guidelines (Amended 12/14/94) |
| KCIW 18-01-02 | Institutional Housing Assignments (Amended 12/14/94) |
| KCIW 18-01-03 | Honor Program |
| KCIW 18-02-01 | Classification Procedures |
| KCIW 18-05-01 | Special Needs Inmates |
| KCIW 18-06-01 | Institutional Status Codes |
| KCIW 19-01-01 | Inmate Work/Program Assignments |
| KCIW 19-03-01 | Landscape and Maintenance Work Details |
| KCIW 20-01-01 | Education Programs |
| KCIW 20-01-03 | Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program |
| KCIW 20-01-04 | Entry - Exit Vocational School |
| KCIW 20-01-05 | Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records |
| KCIW 20-01-06 | Vocational Education: Staffing Patterns/Requirements |
| KCIW 20-01-07 | Vocational Counselor |
| KCIW 20-01-08 | Vocational Education: Community Resources and the Integration with Academic Progress |
| KCIW 20-01-09 | Vocational Education: Support Equipment |
| KCIW 20-01-10 | Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area |
| KCIW 22-01-04 | Inmate Club Activities |
| KCIW 23-01-01 | Religious Services |
| KCIW 25-02-02 | Furloughs |
| KCIW 25-03-01 | Escorted Community Leave |

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: December 14, 1994

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

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 23, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 151 employees of the correctional institutions, 439 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 December 14, [~~October 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 (Amended 12/14/94)
BCC 02-02-01 Fiscal Responsibility
BCC 02-02-02 Fiscal Management: Accounting Procedures (Amended 12/14/94)
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 14-04-01 Inmate Rights and Responsibilities
BCC 14-05-01 Inmate Claims
BCC 14-06-01 Legal and Support Services for Indigent Inmates
BCC 15-02-02 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 (Amended 12/14/94)
BCC 16-02-01 Inmate Visiting
[~~BCC 16-03-01 Inmate Packages (Deleted 12/14/94)~~]
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 (Amended 12/14/94)
BCC 22-02-01 Privileged Trips (Amended 12/14/94)
BCC 22-03-01 Recreational Employees (Amended 12/14/94)
BCC 22-04-01 Recreation and Inmate Activities (Amended 12/14/94)
BCC 22-04-02 Inmate Clubs and Organizations (Amended 12/14/94)
BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs (Amended 12/14/94)
BCC 22-04-04 Recreation Program Availability (Amended 12/14/94)
BCC 22-04-05 Supervision of Leisure-time Craft Club Activities and Materials (Amended 12/14/94)
BCC 22-06-01 Music Club (Amended 12/14/94)
BCC 22-08-01 Unit Recreation Program (Amended 12/14/94)
BCC 22-09-01 Use of Inmates in Recreation Programs (Amended 12/14/94)
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: December 14, 1994
FILED WITH LRC: December 14, 1994
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 23, 1995, 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.

**EDUCATION, ARTS, AND HUMANITIES CABINET**
**Department of Education**
**Office of District Support Services**
**(Proposed Amendment)**

**702 KAR 3:020. Bond issue approval.**

RELATES TO: KRS 58.150, [~~156.031,~~] 156.070, 156.200, 156.210, 162.080, 162.090, [~~to~~] 162.100, 162.120 to 162.290, 162.300, 162.385

STATUTORY AUTHORITY: KRS 58.150, 156.070, 160.160, 162.160, 162.170, 162.180

NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990;~~] KRS 58.150 authorizes the State Board for Elementary and Secondary Education to allow local school districts to issue revenue bond anticipation notes as an initial financing mechanism; KRS 156.070 gives the State Board the management and control of the common schools; KRS 156.200 and 156.210 require the chief state school officer to receive all reports and supervise all accounts of local boards of education, and to rectify any improper use of school funds; and KRS 160.160, 162.080, 162.090, [~~to~~] 162.100, 162.120 to 162.290, [~~and~~] 162.300, and 162.385 set forth methods and authorizations for school districts to finance capital construction projects through bonds. This administrative regulation sets forth procedures for the approval of bond and bond anticipation note issues by school districts.

Section 1. The chief state school officer shall determine the financial soundness of all school revenue bond issues. He shall supervise all phases of school revenue and voted bonds.

Section 2. The chief state school officer shall disapprove the sale of any school revenue or school voted bond issue which he deems to be not in accord with State Board for Elementary and Secondary Education administrative regulations or financially unsound for the district in question. [~~The chief state school officer at the next special or regular meeting of the State Board for Elementary and Secondary Education shall report the terms and conditions of all school revenue or school voted bond sales and certify that such sales were made in accordance with KRS Chapter 162 and the State Board for Elementary and Secondary Education regulations.~~]

Section 3. Fiscal agents shall be registered with the Department of Financial Institutions [~~Banking and Securities Commission~~] in the Commonwealth of Kentucky. The local board of education shall select the fiscal agent for the proposed revenue bond issue. The fiscal agent shall employ appropriate bond counsel subject to approval of the local board of education. The allowable discount on bonds shall not exceed two (2) percent of the par value of the issue under contract.

Section 4. Twenty (20) percent of the fund to Support Education Excellence in Kentucky (SEEK) capital outlay funds [~~revenues appropriate for bonding purposes~~] shall be set aside as a safety factor in determining the initial bonding potential of a local district. The chief state school officer may allow safety factors below twenty (20) percent to a minimum of ten (10) percent on a case by case basis dependent upon the financial stability of the individual school district. The following sources of revenue shall be [~~are~~] eligible as annual revenues in support of school building revenue bonds or notes:

(1) SEEK capital outlay funds (KRS 157.420) [~~Utility gross receipts license tax (KRS 160.593)~~];

(2) Facilities Support Program of Kentucky funds (KRS 157.440) [~~Occupational income tax (KRS 160.593)~~];

(3) School building funds (KRS 160.476) [~~Excise income tax (KRS 160.593)~~];

(4) Special voted building funds [~~tax~~] (KRS 160.477); and

(5) [~~General fund ad valorem tax (KRS 160.476);~~

~~(6) Facilities support program tax (KRS 157.620);~~

~~(7) Capital outlay funds (KRS 157.5650; and~~

~~(8)~~] Special trust funds (when legal opinion provided by bond counsel).

Section 5. (1) Revenue bond anticipation notes or the reissuance (roll over) of bond anticipation notes shall be issued only upon approval of the State Board for Elementary and Secondary Education on a case by case basis and in accord with KRS 58.150.

(2) Prior to submittal to the State Board for Elementary and Secondary Education for approval, the local school district shall provide the Department of Education the following financial information:

(a) Sources and annual amounts of revenue available for debt service;

(b) Projected debt service of a comparably-sized bond issue using maximum interest rates that the district could support with current available revenues as reflected in subsection (2)(a) of this section; and

(c) Projected debt service on a comparably-sized bond issue based on the then-current market.

(3) The following criteria shall apply to [~~are established for~~] determining the approval of bond anticipation notes or the reissuance (roll over) of bond anticipation notes:

(a) The district shall show evidence that the available fiscal resources could support a twenty (20) year revenue bond issue at the then-current market rates plus one and five-tenths (1.5) percent;

(b) The district shall agree to escrow the difference between a regular revenue bond issue at the then-current market rate twenty (20) year amortization schedule, level principal redemption) and the annual net interest cost of the bond anticipation notes. The escrow account shall be used to reduce the principal of the note at the call date, the termination date, or as is stipulated in the terms and conditions of the issue note;

(c) Notes shall be issued for a period not less than two (2) nor more than four (4) years with a one (1) year call provision; and

(d) Bonds may be required to be issued to replace callable notes should market conditions change such that permanent financing is advisable and warranted.

Section 6. The maximum net interest cost for the sale of school revenue bonds established by the State Board for Elementary and Secondary Education shall be a rate no greater than the most current Bond Buyer's 20 - Bond Index plus one and five-tenths (1.5) percent. In the event a bid on an issue of bonds exceeds the maximum interest rate the chief state school officer may declare an emergency to exist and request the chairman to convene the State Board for Elementary and Secondary Education for the purpose of approving or disapproving his recommendation that the bonds be sold.

[~~Section 7. Required transfers of principal and interest payments shall be made by local school districts to bond and interest redemption accounts, at least ten (10) calendar days prior to the date upon which such payments are due. The paying and transfer agent bank shall notify the chief state school officer, at least eight (8) calendar days prior to the due date should the local district fail to deposit required funds on the required date. The chief state school officer, in accordance with the terms and conditions of the contract of lease and rental agreement of the revenue bond issue of the local school district, shall then resolve the matter with the local school district or intercept appropriate funds due to the local school district and transmit them to the bond and interest redemption account of the local school district.~~]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: December 15, 1994

FILED WITH LRC: December 15, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 1995, 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 January 25, 1995, 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

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

(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.

(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**
**Department of Education**
**Office of District Support Services**
**(Proposed Amendment)**

**702 KAR 4:160. Capital construction process.**

RELATES TO: KRS 156.160, 157.420, 162.060, 162.065, 162.070, 160.160, 322.360

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.420, 162.060, 162.065

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education (SBESE) to prescribe administrative regulations relating to construction of public school buildings and the use of uniform forms. KRS 157.420 requires each school district's capital outlay to be utilized in accordance with the district's facility plan. KRS 162.060 requires approval of all school building plans and specifications by the chief state school officer. KRS 162.065 requires the SBESE to prescribe administrative regulations governing construction managers. KRS 162.070 requires school construction contracts to be awarded to the lowest and best responsible bidder. KRS 322.360 requires a school district, when engaged in the construction of any public work involving engineering, to utilize an architect to directly supervise the preparation of plans and specifications, estimates, and the execution of construction. [~~702 KAR 4:010, 702 KAR 4:020, 702 KAR 4:030, and 702 KAR 4:040 are no longer required because they are being replaced by 702 KAR 4:160.~~] This administrative regulation prescribes the procedures and criteria for the construction of public school buildings.

Section 1. Definitions. (1) "AIA" means the American Institute of Architects.

(2) "Architect" means any design professional licensed in the Commonwealth of Kentucky under KRS Chapters 322, 323, or 323A, which includes architects, engineers, and landscape architects.

(3) "Board" means the local board of education.

(4) "Construction manager" or "CM" means a qualified and experienced contracting organization which provides the services of construction management and possesses a general trades workforce, staff and equipment, financial base, insurance coverage, bonding capability, a minimum of three (3) years' construction management experience on projects of $1,000,000 or more, and the ability to provide the services required.

(5) "Division" means the Division of Facilities Management, Kentucky Department of Education (KDE).

(6) "Emergency" means the loss of use of physical facilities resulting from an unforeseen occurrence which requires prompt action.

(7) "Fixed equipment" means furnishings or equipment which are secured to the wall, floor, or ceiling to operate or function in the manner intended by the product manufacturer. Examples of fixed equipment are bleachers, student lockers, casework with sinks, and plumbing fixtures.

(8) "KERA" means Kentucky Education Reform Act.

(9) "Moveable equipment" means any furnishings or equipment not considered fixed equipment.

(10) "Owner" means the local board of education or financing corporation established for the purpose of financing school construction.

(11) "Superintendent" means the superintendent of the local school district or the employee the superintendent has selected to represent the board regarding construction issues.

Section 2. Construction Project Application. (1) The board shall submit an application on form BG #1 to the division for approval of a proposed construction project.

(2) An application shall be submitted for any project:

(a) Funded by Support Education Excellence in Kentucky (SEEK) capital outlay, special voted building tax funds, Facility Support Program of Kentucky (FSPK) funds as provided by KRS 157.620, School Facilities Construction Commission (SFCC) funds, or building funds as provided by KRS 160.476; or

(b) Proposing construction of a new building, addition, or alteration of an existing building which requires design by an architect for a building or building system.

(3) To initiate a project which is listed in its facility plan or a minor project permitted in subsection (9) of this section, a vote by the board approving the project shall be required.

(4) When SFCC funds are included in the financing plan, projects shall be selected in prioritized order. [~~If SFCC funds multiple categories, then KERA strand priorities shall be considered equivalent to the next category of need listed on the district facility plan.~~] If no SFCC funding is included in the financing plan, the board may select any project on its facility plan without regard to [~~categorical~~] priority number.

(5) If a project exceeds $250,000, the superintendent shall submit the BG #1 in person to the division, and shall discuss the project scope and financing plan.

(6) The BG #1 shall be accompanied by:

(a) A copy of the board's action, either by official board minutes or an unofficial excerpt signed by the board secretary verifying authenticity, approving the application; and

(b) A narrative justification of the construction project selection, including its priority over other projects relative to district goals and maximization of funding and benefits to students.

(7) Within sixty (60) days of receiving the completed application documents, the BG #1 shall be approved by the division, if justified pursuant to the following criteria:

(a) Proposed project is on the facility plan or conforms to minor project criteria in subsection (9) of this section;

(b) SFCC funding does not exceed the SFCC maximum budget established for the project;

(c) Application has original signatures;

(d) A board order; and

(e) The narrative justification.

(8) The Division of Finance, KDE, may give tentative approval based on a review of the board's ability to support the financing plan for the proposed construction budget.

(9) The board may submit a BG #1 for minor projects not listed in the facility plan if the project meets the following criteria:

(a) Expansion of a permanent center or functional center to include a maximum of four (4) classrooms when documentation to support the request is provided for either student population growth or curriculum changes;

(b) Campus enlargement, minor renovation of buildings and building systems, or construction of an additional support space at permanent or functional centers when its need can be documented and justified; or

(c) Projects to comply with statutes and administrative regulations of other agencies having jurisdiction.

(10) If no action is taken by the board within one (1) year from the date of the BG #1 approval, the approval shall be no longer effective.

(11) If the division considers the architect, CM, or board to be nonresponsive or causing undue delays in the design schedule, it may request the chief state school officer to revoke the BG #1 approval.

(12) If an emergency requiring the submission of a BG #1 occurs:

(a) The emergency shall be declared in accordance with KRS 424.260 or 45A.380, whichever is applicable; and

(b) The board shall:

1. Notify the division and request approval to proceed with the plans and corrective action;

2. Submit to the division:

a. BG #1;

b. Copy of board order declaring the emergency; and

c. Copy of the written determination as required by KRS 45A.380 for those districts which have adopted the Model Procurement Code.

Section 3. Local Board Oversight Responsibilities. (1) All construction files and records of:

(a) Board actions;

(b) Proposals;

(c) Contracts;

(d) Correspondence; and

(e) Financial documents shall be maintained by the superintendent in the central office, organized and accessible for review.

(2) If the architect or CM indicates additional funding is necessary or a reduction of physical scope of the project is needed, the board shall approve a board action and forward it to the division.

(3) During the planning and bidding phase of the construction project, the board shall:

(a) Review bidding documents for compliance with statutes and administrative regulations, with particular attention to sales and use tax exemption when purchasing materials direct;

(b) Comply with all submission requirements resulting from the completed plans and specification review by the division;

(c) Not advertise before receipt of written approval from the division;

(d) Advertise in the newspaper having the largest circulation in the school district the following number of days prior to the date established to receive bids:

1. $1,000,000 or less project, a minimum of seven (7) days and a maximum of twenty-one (21) days; or

2. A project in excess of $1,000,000, a minimum of twenty-one (21) days;

(e) Hold the bid opening:

1. In a location accessible to the public;

2. Between 10 a.m. and 3 p.m. (local time); and

3. Within Monday through Friday, excluding holidays;

(f) Accept the architect's and CM's evaluation of the bids and approve or reject their recommendations;

(g) Review any bid package which receives only one (1) bid to ensure specifications allowed open competition. The board may approve the contract if the bid does not exceed 110 percent of the bid estimate and is within the budget for the project;

(h) Ensure the CM completes the KDE noncollusion affidavit;

(i) Hold possession of original bidding documents;

(j) Approve and submit the successful bidders' documents to the division for review and approval of the proposed contract(s) and the financial plan; and

(k) Have in its possession prior to executing the construction contract:

1. Contractor's performance and payment bond;

2. Certificate of required insurance;

3. Written approval from the division; and

4. Bids accepted for the bond sale, when applicable.

(4) During the construction administration of the project, the board

shall:

(a) Name the superintendent to speak on behalf of the board as owner in the contract documents and set the parameters of that responsibility;

(b) Seek the superintendent's recommendation relative to proposed board actions;

(c) Approve all expenditures from the construction account;

(d) Seek SFCC approval of expenditures as applicable;

(e) At least once per month receive and review written inspection and progress reports provided by the architect;

(f) If the construction project is in excess of $250,000, forward to the division a monthly summary of payments and expenditures from the construction account after approval by the board;

(g) Review the need for changes to the contract;

(h) Assign partial or full responsibility to the proper party if additional costs are due to an oversight or omission;

(i) Monitor the administration of the project by its architect and CM to ensure no prepayment is made for their services;

(j) After notifying the division, hire a professional services firm experienced in architectural, engineering, accounting, or construction management services to provide an audit of the construction project if the board suspects nonfeasance or malfeasance;

(k) Secure all required inspections and close out documents for submittal to the appropriate agencies;

(l) Receive an occupancy permit from the Department of Housing, Buildings and Construction prior to occupying the facility;

(m) Retain a minimum five (5) percent retainage of the construction contract until the division has issued a written approval either to reduce the contract retainage or to make final payment on the contract;

(n) Require the superintendent to participate in the year-end warranty inspection and report results of the inspection to the board;

(o) Contact the contractor's bonding company each month the contractor is more than two (2) weeks behind schedule or is not performing in accordance with the contract; and

(p) Not hire additional architectural services outside the architect's contract without approval from the division.

(5) If federal funds or federal agencies are involved, the board may request approval from the chief state school officer to waive or condense procedures to expedite the construction design process.

(6) If a lien is filed with a court and the board is given notice of the lien, the board shall stop partial payments on the contract and contact the division. Payments may begin after:

(a) The lien has been released;

(b) The division has approved a payment schedule which provides for retaining the lien amount being contested; or

(c) The division has approved a payment schedule after a surety bond has been provided to pay the lien.

Section 4. Architectural Services. (1) The board and architect shall negotiate a contract for services required. The board shall either advertise for architectural services or select a minimum of three (3) architectural firms which shall be evaluated through the request for proposal (RFP) process. Advertisement or RFP evaluation of three (3) firms is not required if the project is estimated at less than $500,000 or is the continuation of phased construction at the same site.

(2) The architectural services shall be negotiated using the following documents:

(a) KDE Architect RFP;

(b) AIA B141, or AIA B141-CMa, with KDE amendments;

(c) KDE noncollusion affidavit; and

(d) KDE architect fee guideline, or SFCC fee maximum.

(3) A letter of agreement stating services, terms, and conditions which has been approved by the board shall be acceptable in lieu of the AIA B141 for projects with an estimated construction cost of less than $25,000.

(4) The division shall review and approve the proposed architect's contract based on the following criteria:

(a) Copy of the board action approving the terms of the proposed contract;

(b) Scope and fee conforms to BG #1; and

(c) Submittal of required forms.

(5) The division shall advise the board of:

(a) Apparent deficiencies in completion of the contract;

(b) Discrepancies related to the scope of work and anticipated cost approved on the BG #1;

(c) Compliance of fee to fee schedule; and

(d) Concerns regarding modifications to the contract.

(6) The architect shall:

(a) Provide on-site visitation and inspection of, and reporting on, the construction of the project to the board;

(b) Certify, to the best of his ability, professional judgment, and with due diligence, that all phases of the project have been completed in conformance with the approved plans and specifications and any authorized changes;

(c) Provide professional liability insurance including errors and omission insurance in the following minimum amounts:

1. Projects less than $1,000,000 require $250,000 insurance with a five (5) percent maximum deductible;

2. Projects from $1,000,000 to $10,000,000 require $500,000 insurance with a maximum five (5) percent deductible; and

3. Projects $10,000,000 or greater require $1,000,000 insurance with a maximum five (5) percent deductible;

(d) Require his consultants to retain professional liability insurance including errors and omission insurance in the minimum amount of $250,000 with a maximum five (5) percent deductible;

(e) Provide copies of certificates of insurance to the division;

(f) Assist in preparing the bid advertisement for the board;

(g) List projects estimated in excess of $1,000,000 with a minimum of two (2) Kentucky construction reporting services;

(h) Submit to the board a written inspection report which includes a status of the project, dates and times architect was on site, conditions of the job, problems, delays, and concerns at least monthly after construction begins;

(i) Request payment of construction administration phase fee at the same proportionate percentage as the construction's completion with ten (10) percent of it being retained by the board until the approval of final payment on construction;

(j) Request approval by the board for any reimbursement or additional service prior to the service being rendered or expenditure being made;

(k) When requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request;

(l) Request additional payment for construction time or services which extend beyond the scheduled completion date only if the owner is successful in receiving liquidated damages. Conditions to receive payments shall be:

1. Additional costs were incurred through no fault of the architectural firm and are documented due to the delay of the contractor; and

2. The pro rata share shall be determined by the board as a ratio of validated architect's damages to the total of all documented damages;

(m) Utilize his consultants listed on the contract form for design, construction administration and oversight;

(n) Pay his consultants the same percentage proportion of their fee as he has received from the board;

(o) Pay his consultants eighty (80) percent of the architect's fee based on the construction cost of the consultant's work. If the architect's fee is a lump sum, the consultant shall receive the same proportionate amount;

(p) If a joint venture, list on the contract form, the prime architectural firm accountable to the board and provide the board with a copy of the joint venture contract indicating each party's responsibilities and fees;

(q) Provide independent contract administration over construction contracts awarded to the project's CM; and

(r) Not include in the construction cost calculation change orders to the contract that the board has not requested. Changes to the contract requested by the board that decrease the construction cost shall be calculated at the hourly billing rate schedule or basic fee percentage, whichever is less.

(7) The board shall provide oversight of the architectural services in the following manner:

(a) The architect's contract shall be reviewed and signed by the board's attorney for compliance with the law; and

(b) The board shall submit to the division for approval:

1. The proposed architect contract and completed RFP;
2. A copy of the board order approving the contract;
3. A narrative of the evaluation process; and
4. A copy of the certificate(s) of professional liability insurance.

Section 5. Construction Management Services. (1) A CM shall not be employed on any project estimated at less than $1,000,000 or without the approval of the division if the number of work categories negate the need for full-time, on-site supervision for projects in excess of $1,000,000. The division may approve exceptions as follows:

(a) If the project is a phase of a phased project and the CM is to be employed on all subsequent phases; or

(b) If the project's complexity or fiscal soundness requires it.

(2) In hiring a CM, the board shall either advertise for CM services or select a minimum of three (3) construction management firms which shall be evaluated through the RFP process. Advertisement or RFP evaluation of three (3) firms is not required if the project is the continuation of phased construction at the same site.

(3) The board shall negotiate a contract using the following:

(a) KDE CM RFP;
(b) AIA B801/CMa and KDE amendment;
(c) KDE CM fee guideline or lump sum price;
(d) KDE noncollusion affidavit;
(e) Projected number of months construction;
(f) On-site services fee per month; and
(g) Fee scale for additional construction cost and months.

(4) The number of months in the contract for construction shall not be altered unless:

(a) There is a change in the scope of the work; and

(b) The owner, architect, and CM agree to the revised number of months during the evaluation of construction bids.

(5) The preconstruction phase payment shall be a maximum of ten (10) percent of the total proposed fee.

(6) The CM shall:

(a) Provide a 100 percent performance and payment bond prior to the construction contracts being executed by the board in the amount of the CM fee from an insurance firm authorized to do business in Kentucky and listed in and written within the terms and limits established in 58 Federal Register, p. 35778, 1993;

(b) Provide professional liability insurance with errors and omissions in the following minimum amounts:

1. Projects of $10,000,000 or less, insurance in the amount of $500,000 with a maximum five (5) percent deductible; or
2. For projects in excess of $10,000,000, insurance in the amount of $1,000,000 with a maximum five (5) percent deductible;

(c) Develop bid packaging to ensure at least five (5) known potential bidders are notified on each bid package;

(d) Not transport any bidder's proposal to the bid opening;

(e) Complete a KDE noncollusion affidavit relative to both the superintendent and local board members and the apparent low bidders;

(f) Request approval by the board for any reimbursement or additional service fee prior to the service being rendered or expenditure being made;

(g) When requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request;

(h) Request additional payment for construction time or services which extend beyond the scheduled completion date only if the owner is successful in receiving liquidated damages Conditions to receive payments shall be:

1. Additional costs were incurred through no fault of the construction management firm and are documented due to the delay of the contractor; and
2. The pro rata share shall be determined by the board as a ratio of validated construction manager's damages to the total of all documented damages;

(i) Not include in the construction calculation change orders to the contract that the board has not requested. Changes to the contract requested by the board that decrease the construction cost shall be calculated at the hourly billing rate schedule or basic fee percentage, whichever is less; and

(j) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion with five (5) percent of it being retained by the board until approval of the final payment on construction.

(7) The board shall provide oversight of the CM services in the following manner:

(a) Retain an attorney to:

1. Review the contract as negotiated to ensure compliance with the law;
2. Request modifications to the contract as needed; and
3. Sign the contract form attesting to review;

(b) Take action approving the contract terms and conditions; and

(c) Forward to the division for review and approval:

1. Copy of the RFP and proposed contract;
2. Board order;
3. Narrative of the selection evaluation;
4. Certificate of professional liability insurance; and
5. KDE noncollusion affidavit.

(8) The CM contract shall be reviewed and approved by the division based on the following criteria:

(a) A copy of board order of approval;
(b) Fee based on a lump sum amount or fee guideline;
(c) Modifications to the contract comply with laws; and
(d) Submission of required forms.

Section 6. Plans and Specifications. (1) After approval of the BG #1 application by the division, the division shall provide a procedural checklist to the board that indicates required submissions for the project.

(a) The architect shall prepare schematic plan of the proposed construction from written educational program specifications supplied by the board.

(b) The schematic plans and a copy of the educational program specifications, approved by board action with a copy of the minutes, shall be submitted by the board to the division for review and approval.

(c) The division shall review and approve the schematic plan submittal based on:

1. Site plan: proper siting of the building footprint provides appropriate access, vehicular and pedestrian circulation, separation of bus loading area from other vehicular traffic, utility connections and drainage;
2. Floor plan: number, type, and size of the planned spaces, including support spaces, agree with the programmed spaces listed on the BG #1, the educational specifications, and are in compliance with 702 KAR 1:001 and 702 KAR 4:170 [~~, 702 KAR 4:060, and 702 KAR 4:070~~];
3. Functional aspects: review of the distribution of functions, or program space and the appropriateness for the needs of the facility;
4. Building efficiency: review of the percent of net program area

to gross building area to meet or exceed the guidelines of 702 KAR 1:001;

5. Budget: review of the construction cost (gross area multiplied by the net cost) in relation to the BG #1. If the calculated construction cost exceeds BG #1 cost, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board.

(2) After written approval of the schematic plans is received from the division, the architect shall prepare the design development plans.

(a) The board shall submit to the division for review and approval:

1. Design development plans;
2. Board order approving plans;
3. BG #2; and
4. BG #3.

(b) The division shall review and approve design development plans submittals based on:

1. Site plan: proper siting of the building with respect to vehicular and pedestrian circulation, separation of bus loading area, student play areas, athletic fields, utility construction and site drainage, with details appropriately developed;
2. Floor plan: number, type, and size of the planned spaces consistent with the schematic plan;
3. Enlarged plans and details: appropriate to describe the design intention;
4. Building efficiency: the percent of net program area to gross building area meets or exceeds the guidelines of 702 KAR 1:001;
5. Budget: the probable construction cost, BG #3, is within the approved BG #1 budget. If the probable construction cost exceeds the BG #1 budget, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board;
6. BG #2 form is properly completed and conforms to the educational program specifications; and
7. Design development plans incorporate all previous schematic design review comments.

(3) After written approval of design development plans is received from the division, the completed plans and specifications and project manual shall be prepared by the architect and CM for bidding.

(a) The board shall submit to the division for review and approval:

1. Completed plans and specifications and project manual, if applicable;
2. Board order approving plans and specifications;
3. Revised BG #3; and
4. Proof of submission of completed plans to other agencies having jurisdiction.

(b) The division shall review and approve the completed plans and specifications and project manual submittals based on:

1. Compliance with 702 KAR 4:170 [~~4:060 and 702 KAR 4:070~~], with special concern to reduce change orders during construction;
2. Each plan sheet and cover of specification booklet has the architect's seal and signature affixed;
3. Documents are of sufficient detail and complexity that they may be used:
   a. To obtain a building permit;
   b. As instruments in the competitive bidding process; and
   c. By a general contractor to construct the project;
4. BG-3 does not exceed by ten (10) percent the approved BG #1 budget;
5. Deed, certificate of title insurance to the property, deed of easements for all utilities, and proof of road and utility access for the project are filed with the division;
6. Proposed floor elevation is a minimum of one (1) foot above the 100-year flood plain elevation for new construction and no state funds are proposed for renovation below the 100-year flood plain elevation;
7. Construction documents include the following forms to the extent applicable with KDE amendments appropriate for general construction or construction management:
   a. AIA A201, general conditions;
   b. AIA A201/CMa, general conditions with CM;
   c. AIA A101, owner-contractor contract;
   d. AIA A101/CMa, owner-contractor contract with CM;
   e. AIA A701, instructions to bidders;
   f. KDE form of proposal;
   g. AIA A312, performance and payment bond;
   h. AIA G702, application for payment;
   i. AIA G702/CMa, application for payment with CM;
   j. AIA G701, change order;
   k. AIA G701/CMa, change order with CM;
   l. AIA G704, certificate of substantial completion;
   m. AIA G704/CMa, certificate of substantial completion with CM;
   n. AIA G706, contractors' affidavit of payment;
   o. AIA G706A, contractors' affidavit of release of liens;
   p. AIA G707, consent of surety to final payment; and
   q. AIA G707A, consent of surety to retainage reduction.
8. A 100 percent performance and payment bond is required for any contract in excess of $25,000 and on all contracts using CM process from an insurance firm authorized to do business in Kentucky. The insurance firm shall be listed in and the performance and payment bond shall be written within the terms and limits established in 58 Federal Register, P. 35778, 1993.
9. Contractor(s) are to carry all insurance required by law and by contract to hold the board safe from loss until the project is completed or an occupancy permit is received by the board. In the event the board elects to carry a portion of the necessary insurance, notification shall be given to the architect and CM and written into the bidding documents; and
10. Notification of other state and local agencies having jurisdiction, including:
    (a) Department of Housing, Buildings and Construction;
    (b) Division of Code Enforcement;
    (c) Division of Plumbing;
    (d) Division of Water;
    (e) Division of Air Quality;
    (f) Local health department; and
    (g) Local building inspector.

(4) The board shall receive written approval of the construction bidding documents and authorization to bid from the division prior to advertisement for bids.

(5) Performance specification procedures may be used by the board for proposed capital construction projects. The proposed performance specifications as prepared by the board shall be approved in writing by the division prior to advertisement for bids.

(6) Leases, lease purchases, or leases with an option to purchase by a board for fixed equipment, capital construction, or alterations to existing buildings and building systems shall require the submittal of plans and specifications and lease documents to the division for review and approval.

Section 7. Construction Bidding and Contracting. (1) A minimum of ten (10) working days prior to the scheduled bond sale date, the board shall submit to KDE for review and approval:

(a) To the division:

1. Bid tabulation(s);
2. Bid security(ies);
3. Proposal form of successful bidder(s);
4. Proposed contract(s) or purchase order(s) (unsigned); and
5. Revised financial form (BG #1, page 3) to coincide with proposed construction costs; and

(b) To the Division of Finance, KDE:

1. Preliminary official statement;
2. Notice of bond sale; and
3. Official terms and conditions.

(2) If the submitted documents are not in an approvable form at least five (5) working days before the scheduled bond sale, the sale date shall be postponed.

(3) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and selling requirements for securing the financial approval of KDE when school revenue bonds are proposed for sale.

(4)(a) Bids for school revenue bond sales shall be received in Frankfort, Kentucky, at:

1. Kentucky Department of Education, Office of District Support Services, 15th Floor, Capital Plaza Tower; or

2. SFCC, Capital Annex, if SFCC funds are involved.

(b) A KDE or SFCC staff member shall be present to receive the bids.

(c) Bids shall be delivered by mail, in person, by telephone, or by facsimile (fax) machine. If the apparent winning bid is telephoned, the bid shall be reaffirmed by fax within thirty (30) minutes after the bid opening.

(5) The division shall approve a proposed construction contract based on:

(a) Submission of tabulation of bids, form of proposal, bid security and proposed contract;

(b) Board indicating low bid was accepted or written justification provided where other than low bid is proposed;

(c) Proposed construction contract is within approved budget; and

(d) Form of proposal is completed in accordance with the instructions to bidders.

(6)(a) Any discrepancies between the proposed contract and bidding documents shall be remedied prior to approval.

(b) The board's desire to waive irregularities and informalities as to a bid shall be reviewed and final judgement made by the division prior to approval of the contract and financing plan.

(c) Approval of the proposed contract by division shall not indicate the contract is the best or the most reasonable.

(7) The Division of Finance, KDE, shall issue the final approval for the financing plan, authorize the bond sale, and prepare the letter for the chief state school officer's approval.

(8) No negotiation of the bid price shall be allowed, except in accordance with KRS 45A.375 for those districts under the Model Procurement Code.

(9) Construction account expenditures that are subject to bidding shall be approved by the division, except for expenditures for moveable equipment.

(10) The board shall submit to the division:

(a) Copy of the executed contract(s) and purchase order(s);

(b) Insurance certificate(s); and

(c) Copy of the 100 percent performance and payment bond(s).

Section 8. Contract Change Orders. (1)(a) Changes in the contract which do not substantially alter the nature of the contract, or may be regarded as incidental to or which relate to an integral part of the original contract and specifications, may be approved by the division.

(b) A copy of any change order using the forms AIA G701 or AIA G701/CMa issued in connection with the project shall be signed by the appropriate parties as a recommendation and shall be subject to approval by the board.

(c) All change orders shall be submitted to the division.

(2) Any additive or deductive change order proposal in excess of $2,500 shall be subject to approval by the division prior to authorization by the board. All change order forms shall be accompanied with the following:

(a) Copy of local board action approving the change order;

(b) Properly completed KDE change order supplemental information; and

(c) Cost breakdown which separates labor, material, profit and overhead. If unit prices are utilized, this cost breakdown shall not be necessary.

(3) Approval of proposed change orders over $2,500 shall be based upon:

(a) Completed supplemental information form, board order, and cost breakdown;

(b) Cost is calculated according to contract unit prices or alternative method documentation is provided to support cost;

(c) The change order scope and cost is considered within the norms based upon the information submitted; and

(d) Cumulative cost of contract and all change orders are within the approved budget.

(4) The division approval shall not indicate the change order cost is the best cost or the requested change order is the most appropriate action.

Section 9. Construction Contract Retainage. (1)(a) Until the construction contract is substantially performed, the board shall withhold ten (10) percent of the first $1,000,000 and five (5) percent of the completed performance above $1,000,000.

(b) Upon substantial completion of the work, the ten (10) percent retainage may be reduced to five (5) percent with certification of the architect and approval of the board.

(c) No part of the five (5) percent retainage shall be paid until the division has made a final inspection of the completed construction and has provided written approval.

(d) If after receipt of the punch list, reasons for reduction of the retainage are certified in writing by the architect and approved by the board, a reduction to a lump sum amount less than the five (5) percent retainage may be approved by the division when deemed reasonable and advisable. The minimum lump sum amount shall be twice the estimated cost to correct the punch list items.

(e) The board shall request the final inspection after approval of the architect's certification of substantial completion.

(2) The investment earnings resulting from any agreement entered into by a board involving the construction account, including the construction contract retainage for an approved project, shall be invested in such a manner that any additional income from the investment shall accrue only to the board.

Section 10. Construction Dispute Resolution. (1) Unresolved claims between parties arising out of or relating to any contract subject to this administrative regulation shall not utilize arbitration or the American Arbitration Association unless agreed to by all parties.

(2) Prior to the institution of legal proceedings, unresolved claims arising out of or relating to any contract shall be submitted to mediation by the Mediation Center of Kentucky, 201 West Short Street, Suite 301, Lexington, Kentucky or any other nonprofit mediation council approved by the division.

(3) Mediation may be initiated by written request filed by any party.

Section 11. Construction Contract Close-out Process. (1) The architect shall furnish the board a form BG #4 with applicable information requesting final approval.

(2)(a) If the board agrees the construction contract is complete, it shall approve the BG #4 and forward it to the division for approval of the final payment.

(b) If the board does not agree that the construction contract is complete, a letter to the division shall be issued to indicate those items in contention or requiring completion.

(3) Written approval by the division authorizing full payment of the contract shall be given when the completed BG #4 form is approved.

Section 12. Penalties for Malfeasance or Nonfeasance. (1) A determination by the board or the division of malfeasance or nonfeasance by the architect or CM shall be forwarded to the chief state school officer.

(2) The chief state school officer may make a recommendation to the SBESE to determine that the offending firm is ineligible to provide professional services on school construction projects for a period not

to exceed five (5) years.

(3) The SBESE may prescribe alternative penalties.

(4) If the principals of the offending firm become associated with another firm(s) during the penalty period, upon recommendation by the chief state school officer the SBESE may determine that the penalty invoked shall also apply to that firm.

Section 13. Documents Incorporated By Reference. (1) The following documents used in the capital construction process are hereby adopted and incorporated herein by reference:

(a) BG #1-May, 1993, Project Application;

(b) AIA B141-1987, Standard Form of Agreement Between Owner and Architect and KDE Amendment, May, 1993;

(c) AIA B141/CMa-1992, Standard Form of Agreement Between Owner and Architect, Construction Manager-Adviser Edition, and KDE Amendment, May, 1993;

(d) KDE Noncollusion Affidavit, May, 1993;

(e) KDE Architect RFP, May, 1993;

(f) KDE Architect Fee Guideline, May, 1993;

(g) KDE Construction Manager (CM) RFP, May, 1993;

(h) AIA B801/CMa-1992, Standard Form of Agreement Between Owner and Construction Manager and KDE Amendment, May, 1993;

(i) KDE CM Fee Guideline, May, 1993;

(j) BG #2, May, 1993, Outline Specifications;

(k) BG #3, May, 1993, Estimate of Probable Construction Cost;

(l) AIA A201-1987, General Conditions of the Contract for Construction and KDE Amendment, May, 1993;

(m) AIA A201/CMa-1992, General Conditions of the Contract for Construction-Construction Manager-Adviser Edition, and KDE Amendment, May, 1993;

(n) AIA A101-1987, Standard Form of Agreement Between Owner and Contractor and KDE Amendment, May, 1993;

(o) AIA A101/CMa-1992, Standard Form of Agreement Between Owner and Contractor-Construction Manager-Adviser Edition, and KDE amendment, May, 1993;

(p) AIA A701-1987, Instructions to Bidders and KDE amendment, May, 1993;

(q) KDE Form of Proposal, May, 1993;

(r) AIA A312-1984, Performance Bond and Payment Bond and KDE amendment, May, 1993;

(s) AIA G702-1992, Application and Certificate for Payment;

(t) G702/CMa-1992, Application and Certificate for Payment-Construction Manager-Adviser Edition;

(u) AIA G701-1987, Change Order;

(v) AIA G701/CMa-1992, Change Order-Construction Manager-Adviser Edition;

(w) AIA G704-1992, Certificate of Substantial Completion;

(x) AIA G704/CMa-1992, Certificate of Substantial Completion-Construction Manager-Adviser Edition;

(y) AIA G706-4/70, Contractors' Affidavit of Payment of Debts and Claims;

(z) AIA G706A-4/70, Contractors' Affidavit of Release of Liens;

(aa) AIA G707-4/70, Consent of Surety to Final Payment;

(bb) AIA G707A-6/71, Consent of Surety to Reduction in or Partial Release of Retainage;

(cc) 58 Federal Register, p. 35778, 1993;

(dd) KDE Change Order Supplemental Information, May, 1993; and

(ee) BG #4, May, 1993, Final Approval and Payment Application.

(2) These documents are available for inspection, copying (subject to copyright law), and, except for the AIA forms, may be obtained from the Division of Facilities Management, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The AIA forms are available for purchase from the American Institute of Architects by addressing the request to: AIA Order Dept., 9 Jay Gould Court, P. O. Box 753, Waldorf, MD 20604 or by calling 800-365-2724.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: December 15, 1994

FILED WITH LRC: December 15, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 1995, 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 January 25, 1995, 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: Mark Ryles, Director

(1) Type and number of entities affected: 176 local school 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: The proposed change will reduce paperwork reporting and decrease costs to create and check facility plans each year.

2. Second and subsequent years: See above item.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment will simplify administration to facility plans and reduce costs each year.

2. Continuing costs or savings: The proposed amendment will reconcile finance structure and project needs increase the effectiveness of limited construction funds.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The proposed amendment will reduce reporting and paperwork.

(4) Assessment of anticipated effect on state and local revenues: Minor, positive effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is required. Regulation shall be enforced by Department of Education, Facilities Management staff.

(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: N/A

(b) Kentucky: 176 local school districts (entire state).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were reviewed and rejected by constituent groups including school officials.

(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 occur, explain detrimental effect: N/A

(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: 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? (Explain why tiering was or was not used). No. The administrative regulation applies equally to all 176 local school districts.

**PUBLIC PROTECTION AND REGULATION CABINET**
**Kentucky Racing Commission**
**(Proposed Amendment)**

**810 KAR 1:032. Breeders' Award Program.**

RELATES TO: KRS 230.217

STATUTORY AUTHORITY: KRS 230.260(3), (6)

NECESSITY AND FUNCTION: KRS 230.217 requires the Commission to establish a Breeders' Award Program with criteria suitable to disburse the receipts from the Breeders' Award Fund as generated by the funding mechanism created by KRS 230.380.

Section 1. Definitions. (1) "Breeder" means the owner of the dam of a runner at the time the runner was foaled in Kentucky unless the dam was under a lease or foal-sharing agreement at the time of foaling. If there was a lease or foal-sharing agreement, the person that is specified by the lease or agreement shall be considered the breeder. For implementation of this subsection, the records of the Jockey Club shall be used as the official records.

(2) "Purse" means a prize awarded on race day as a result of competing in a live race in Kentucky:

(a) Including:

1. Winnings paid by the track;
2. Entry fees;
3. Kentucky Thoroughbred Development supplements;
4. Corporate supplements; and
5. Breeders' Cup supplements, excluding purses won in Breeders' Cup championship races; and

(b) Excluding bonus supplements that are awarded as a result of multirace winnings.

(3) "Runner" means a thoroughbred horse who is both foaled in Kentucky and sired by a Kentucky Thoroughbred Development Fund registered stallion which was registered with the Kentucky Thoroughbred Development Fund by December 31 of the year the runner was bred and which competes in races conducted in Kentucky. For implementation of this subsection relating to sires, the records of the Kentucky thoroughbred owners and breeders shall be official.

(4) "Stallion" for the purposes of determining the recipient of stallion awards means the sire of a runner provided the stallion is registered no later than December 31 in the year the runner was bred with the Kentucky Thoroughbred Development Fund pursuant to the provisions of KRS 230.400(5)(a). Additionally, the stallion shall be in Kentucky on December 31 and have covered mares in Kentucky during the year the awards were earned unless the stallion was retired, dead, or moved temporarily to the Southern Hemisphere after covering mares in Kentucky during the regular Northern Hemisphere breeding season, in which case he shall be returned to Kentucky for the following year's breeding season no later than March 1st. In the case of a retired or a decreased stallion, he shall have stood in Kentucky and covered mares in his last active year of breeding.

(5) "Stallion owner" means the owner of the sire of a runner when the breeding of the runner on December 31 in the year the awards were earned based on purse money in Kentucky. [~~took place according to the records of the Jockey Club.~~]

Section 2. Stallion and Dam Awards. The available Breeders' Award Funds shall be apportioned with eighty (80) percent being allocated to the breeders and twenty (20) percent being allocated to the owners of the stallions.

Section 3. Timing of Awards. (1) Disbursements from the Breeders' Award Fund shall be made as soon as is practicable after the end of each calendar year.

(2) Awards made in 1994 shall be based on purses according to Section 1 of this administrative regulation in the 1993 calendar year.

(3) For awards earned in 1993 and distributed in 1994, the calculation shall be restricted to purses of runners from the foal crop of 1991 who ran as two (2) year olds in 1993.

(4) For awards earned in 1994 and distributed in 1995, the calculation shall be restricted to purses of runners from the foal crops of 1991 and 1992.

(5) For awards distributed each year after 1995, the calculation shall include one (1) additional year's foal crop and allow for awards to one (1) additional age group of runners.

Section 4. Calculation. (1) Funds available in the state account as of December 31 in each year preceding the actual awards shall be apportioned according to the provisions of Section 2 of this administrative regulation.

(2) Records of purse winnings for all runners shall be obtained from the Jockey Club restricted to the runners' age groups scheduled to benefit from the awards according to Section 3 of this administrative regulation.

(3) The funds apportioned to breeders shall be awarded by:

(a) Assigning the individual runner's purses to the breeder if the runner was foaled in Kentucky and sired by a registered Kentucky stallion;

(b) Dividing the individual breeder's assigned winnings from each runner by the total of all assigned winnings to breeders from all runners; then

(c) Multiplying the ratio from paragraph (b) of this subsection times the total to be awarded to breeders pursuant to the split in Section 2 of this administrative regulation. This product shall be awarded to the breeder.

(4) The funds apportioned to stallion owners shall be awarded by:

(a) Assigning the individual runner's purses to the stallion if the runner was sired by a registered Kentucky stallion and foaled in Kentucky;

(b) Dividing the individual stallion's assigned winnings by the total of all assigned winnings to registered Kentucky stallions; then

(c) Multiplying the ratio from subsection (3)(b) of this section times the total to be awarded to stallion owners pursuant to the split in Section 2 of this administrative regulation. This product shall be awarded to the stallion owner.

(5) All awards shall be given to the breeder or stallion owner as defined in Section 1 of this administrative regulation.

(6) Each individual award as a result of each calculation required by subsections (3)(c) and (4)(c) of this section shall be reduced by

five (5) dollars to cover postage and processing.

Section 5. Application Requirements. (1)(a) After the awards are calculated, the recipients of the awards shall be notified according to last known addresses on file with the Jockey Club, Kentucky Thoroughbred Owners and Breeders, or the Kentucky Racing Commission.

(b) Each potential recipient shall be required to return an application for the award that certifies they are the rightful beneficiary to the award and certifies their taxpayer ID number or Social Security number.

(2) Awards due recipients that cannot be located shall lapse to the Breeders' Award Fund for distribution in the following year. Failure to return the application required by subsection (1) of this section within thirty (30) days of the mailing date shall result in forfeiting any award.

(3) Any contested awards shall be decided by the Breeders' Award Committee. Any appeal from the committee's ruling shall be heard by the hearing officer who shall present findings of fact, conclusions of law, and a recommended order to the Kentucky Racing Commission. If the commission determines a correctable error has occurred, the commission may use available funds in the Breeders' Award Fund to correct an error.

Section 6. Material Incorporated by Reference. (1) "Application for an Award from the Breeders' Award Fund (Rev 12/1/93)" is incorporated by reference.

(2) This form may be inspected, copied, or obtained from the Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, 8 a.m. to 4:30 p.m., Monday through Friday.

WAYNE G. LYSTER III, Chairman

APPROVED BY AGENCY: December 13, 1994

FILED WITH LRC: December 14, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing will be held on January 23, 1995, at 10 a.m. at the offices of the Kentucky Racing Commission located at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mike Fulkerson

(1) Type and number of entities affected: The changes in the regulation will affect as many as 300 owners of stallions.

(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. Again, there is a small savings for the stallion syndicates.

(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. Again, there is a small savings for the stallion syndicates.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: All reporting and paperwork requirements are easier since ownership of a given stallion is now December 31 in one year rather than December 31 for any number of different years.

2. Second and subsequent years: With each passing year, the regulation makes it easier on the stallion syndicates by not having to ascertain different membership rosters of ownership throughout the breeding life of a stallion.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are none.

2. Continuing costs or savings: There are none.

3. Additional factors increasing or decreasing costs: There are none.

(b) Reporting and paperwork requirements: Reporting and paperwork is easier on the stallion syndicates but no change on the administrative body.

(4) Assessment of anticipated effect on state and local revenues: There is no change.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: As always (currently in regulation) there is a $5 charge per sire and dam for each runner for administration costs.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The change will primarily benefit central Kentucky because that's where most stallions are located.

(b) Kentucky: Any economic impact is small but favorable for stallion farms.

(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.

## PUBLIC PROTECTION AND REGULATION CABINET
## Department of Housing, Buildings and Construction
## Office of State Fire Marshal
## (Proposed Amendment)

**815 KAR 30:010. LP Gas license; financial responsibility required.**

RELATES TO: KRS 234.120

STATUTORY AUTHORITY: KRS 234.120(4)

NECESSITY AND FUNCTION: KRS 234.120 requires the Commissioner to promulgate reasonable regulations requiring proof of financial responsibility. This administrative regulation is made to assure persons injured by LP Gas dealers have some assets against which to recoup some of their loss. This amendment is necessary to incorporate the 1994 legislative changes set forth in KRS 234.120. [~~This amendment is necessary to clarify the nature of the insurance required for obtaining an LP gas dealer's license and to specify the information required.~~]

Section 1. Proof of Financial Responsibility, Amount. (1) Prior to the issuance or renewal of a license to engage in the LP gas business as required by KRS 234.120, the applicant shall submit a certificate of insurance certifying that the applicant has a valid commercial general liability insurance policy which includes coverage for completed operations and for damages because of injuries to persons, damage to their property and any other damage or loss resulting from or arising out of the LP gas dealer's business, trade, products, services, premises or operations in the minimum amount of $100,000 for licenses set forth in KRS 234.120(1)(d), [~~per person~~] and $500,000 [~~per occurrence or~~] for licenses set forth in KRS 234.120(1)(b), (c) and (e) [~~(a) through (d)~~] and for the business license set forth in KRS 234.120(1)(a) [~~(e) through (k)~~] in the minimum amount of $1,000,000.

(2) The insurer shall be an authorized insurer as defined by the Kentucky Department of Insurance.

(3) The certificate of insurance shall be executed by a Kentucky licensed agent as follows:

(a) Form LPG-1, Certificate information.

LPG-1 CERTIFICATE OF INSURANCE
LP GAS DEALERS

Policy Period:
Name of Insured:
Address:
Name of Insurer:
Address:
Name of Agent/Broker:
Address:
Policy Coverage: Commercial General Liability, including products and completed operations for LP Gas Dealer Business, in the following amounts: (Check one)
Aggregate minimum limits per incident or occurrence:
☐ $1,000,000 ☐ $500,000 ☐ $100,000 [~~per person~~]
Type of Company: (Check one)
Authorized/Admitted Carrier ☐
The undersigned hereby certifies that the above mentioned insurance protection has been issued in the amounts indicated.
Signature: (KY Licensed Agent)

(b) Alternate certificate. In lieu of Form LPG-1, a standard company certificate of insurance may be used; but, only if all the information listed on the State Fire Marshal's Form LPG-1 is included.

(4) Failure to maintain the required insurance shall void the license.

CHARLES A. COTTON, Commissioner and Chairman
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: December 14, 1994

FILED WITH LRC: December 15, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, January 24, 1995 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 January 19, 1995, (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: LP gas dealers.

(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: Under the statutory changes in KRS 234.120, some dealers must have more insurance and some will need less. The regulation itself has no costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: This administrative regulation has no effect on the cost of doing business in Kentucky.

(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 administrative body.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because this amendment is offered only for purpose of conforming to statute, there are no direct or indirect savings.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional paperwork - certificate provided by license.

(4) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Method not variable as it is prescribed 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: Public safety concerns.

(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:

(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

(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. Some requirements are different depending on the nature of the business; other requirements are the same.

**CABINET FOR HUMAN RESOURCES**
**Department for Health Services**
**Division of Environmental Health and Community Safety**
**(Proposed Amendment)**

**902 KAR 45:110. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, [~~and~~] vending machine companies, and seasonal restricted food concessions.**

RELATES TO: KRS 217.025, 217.035, 217.037, 217.125(2), (3), (4), 217.811

STATUTORY AUTHORITY: KRS 194.050, 217.125(2), (3), (4), 217.811, Acts 1992 c. 462, Part I,G. 52, g

NECESSITY AND FUNCTION: KRS 217.125(2) and [,] 217.811[, ~~and Acts 1992 c. 462, Part I.G. 52.g~~] authorize the Secretary of Human Resources to provide by administrative regulation a schedule of reasonable fees to be paid by food manufacturing plants, food storage warehouses, retail food establishments, salvage distributors, salvage processing plants, [~~and~~] vending machine companies, and seasonal restricted food concessions for permits to operate and inspectional activities carried out by the Cabinet for Human Resources. This administrative regulation sets forth the fee to be charged.

Section 1. Fees. (1)(a) Permit fees are required for inspections conducted by the cabinet or its representatives to determine compliance with:

1. Administrative regulations adopted by the cabinet for salvage distributors and salvage processing plants; and
2. KRS 217.025, 217.035, and 217.037 applicable to food manufacturing plants and food storage warehouses.

(b) A fee according to the total square footage of the establishment shall be assessed as follows:

1. 0 - 5,000 square feet - $60;
2. 5,001 - 30,000 square feet - $110;
3. 30,001 - and over square feet - $210.

(2)(a) A fee shall be assessed for inspections of retail food stores, conducted by the cabinet or its representative to determine compliance with administrative regulations adopted by the cabinet pursuant to KRS 217.025, 217.035, 217.037, and 217.125(2) pertaining to:

1. Adulteration;
2. Misbranding;
3. Packaging; and
4. Labeling of food products.

(b) The fee shall be assessed according to the total square footage of the establishment as follows:

1. 0 - 1,000 square feet - $20;
2. 1,001 - 10,000 square feet - $40; and
3. 10,001 - and over square feet - $70.

(3) With respect to vending machine companies, each application for a permit to operate shall be accompanied by a fee of twenty (20) dollars for each vending commissary plus a fee for the total number of vending machines operated by the applicant as follows:

(a) 1-25 machines - $80;
(b) 26-50 machines - $120;
(c) 51-100 machines - $160;
(d) 101-150 machines - $190; and
(e) 151 and over machines - $310.

(4) With respect to food service establishments, each application for a permit to operate shall be accompanied by a fee of forty-five (45) dollars plus the following:

(a) Permanent food service establishments with no seats or twenty-five (25) seats or less - forty-five (45) dollars per year.

(b) Permanent food service establishments with twenty-six (26) to fifty (50) seats - sixty-five (65) dollars per year.

(c) Permanent food service establishments with more than fifty (50) seats - seventy-five (75) dollars per year.

(5) With respect to temporary food service establishments, each application for a permit to operate shall be accompanied by a fee of twenty (20) dollars.

(6) With respect to seasonal restricted food concessions, each application for a permit to operate shall be accompanied by a fee of twenty-five (25) dollars.

Section 2. Payment of Fees. Payment of fees shall be made to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury.

~~[Section 3. Exemptions. State and local government agencies shall be exempt from the payment of fees.]~~

RICE C. LEACH, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: December 7, 1994
FILED WITH LRC: December 12, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for January 23, 1995 at 9 a.m. in the Health Services Auditorium located on the 1st Floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 18, 1995 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: John Draper

(1) Type and number of entities affected: Estimated 500 seasonal concessions.

(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 public hearing was requested.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No public hearing was requested.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition):

1. First year following implementation: No public hearing requested. Minor reporting and paperwork requirements.
2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minor
2. Continuing costs or savings: Minor
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues. $12,500 will be returned to the local health departments to offset their cost of inspections.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Trust and agency funds.

(6) Economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented. No public hearing held.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternative methods were rejected. 902 KAR 45:005 was amended to include seasonal restricted food concessions. Alternatives to setting a statewide permit fee were not considered due to the number of

facilities affected.

(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 public hearing was requested.

(b) State whether a detrimental effect on environment and public health would result if not implemented: 902 KAR 45:005 as amended contains the provisions for assuring a safe food supply for Kentucky citizens obtaining foods from a seasonal restricted food concession. This action sets a statewide permit fee to help offset the cost of the program for local health departments.

(c) If detrimental effect would result, explain detrimental effect: Local health departments would not receive funds to carry out the surveillance and permit issuance for seasonal restricted food concessions.

(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: None

(11) TIERING: Is tiering applied? Tiering was not applied due to the number of facilities, the size of the facilities, and the generic operations of the facilities.

## PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, DECEMBER 15, 1994

### GENERAL GOVERNMENT CABINET
### State Board of Elections

**31 KAR 4:090. Mock elections for school children.**

RELATES TO: KRS 117.235
STATUTORY AUTHORITY: KRS 117.235
NECESSITY AND FUNCTION: This administrative regulation is necessary to insure that the regular election process shall not be impaired if a county conducts mock elections for school children.

Section 1. A mock election for school children conducted at the polling place in conjunction with any regular primary or special election shall not interfere with the regular voting process.

Section 2. The precinct election officers shall maintain order at the polls if a mock election for school children is being conducted at the polling place to insure that the regular voting process shall not be impaired.

BOB BABBAGE, Chairman
APPROVED BY AGENCY: December 12, 1994
FILED WITH LRC: December 14, 1994 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 1995 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 January 25, 1995, 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: 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, Executive Director
(1) Type and number of entities affected: 120 county boards of election.
(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 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): There are no reporting or paperwork requirements for the county boards of election as a result of 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: 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.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There is no additional cost to the county boards of election as a result of this administrative regulation; therefore, 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 alternatives were rejected: This administrative regulation simply sets forth restrictions for conducting mock elections for school children. Alternative methods were not considered because it was unnecessary.
(8) Assessment of expected benefits: This administrative regulation will provide guidance to counties conducting mock elections for school children.
(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 duplication: 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? Tiering is unnecessary because this administrative regulation must apply uniformly throughout the state.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect 120 county boards of elections which are charged with

administering the election laws within their counties.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the conduct of elections by county boards of elections.

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 (+/-):

Expenditures (+/-):

Other Explanation:

**TOURISM CABINET**
**Department of Fish and Wildlife Resources**

**301 KAR 2:221. Waterfowl seasons and limits.**

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, CFR Chapter 59 Part 20

STATUTORY AUTHORITY: KRS 150.015, 150.021, 150.170, 150.175, 150.330, 150.340, 150.600, 150.603, CFR Chapter 59 Part 20

NECESSITY AND FUNCTION: To set waterfowl season dates and limits within federal waterfowl hunting frameworks.

Section 1. Zone Descriptions. Hunting zones, special hunt areas and reporting areas are described in 301 KAR 2:224.

Section 2. Gun and Archery Season Dates and Bag Limits for Ducks, Coots and Mergansers. (1) Season dates.

(a) Statewide, November 24 through November 27.

(b) Eastern Duck Zone: December 16 through January 20.

(c) Western Duck Zone: December 10 through January 14.

(2) Gun and archery daily limits.

(a) Three (3) ducks, which shall include no more than:

1. Two (2) mallards, which shall include no more than one (1) hen mallard.

2. Two (2) wood ducks.

3. One (1) black duck.

4. One (1) redhead.

5. One (1) pintail.

6. One (1) canvasback.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall include no more than one (1) hooded merganser.

(d) Possession limits are double daily limits.

Section 3. Gun and Archery Seasons Dates and Bag Limits for Geese. (1) Snow goose and brant season dates: statewide, November 24 through January 31.

(2) Canada goose and white-fronted goose season dates.

(a) Eastern Goose Zone: December 13 through January 31.

(b) Pennyroyal/Coalfield Goose Zone: December 17 through January 20.

(c) Western Goose Zone: December 10 through January 31, or until quotas described in Section 6 of this administrative regulation are reached.

(d) Fulton County: December 10 through February 13, or until quotas described in Section 5 of this administrative regulation are reached.

(e) West-Central and Cave Run Special Hunt Regions: December 17 through December 23.

(3) The following are closed to goose hunting:

(a) Breathitt, Clay, Laurel, Knott, Perry and Whitley counties.

(b) Bell County south of Highway 119 and east of US 25E.

(c) McCreary County east of US 27.

(d) Pulaski County east of US 27.

(e) Cave Run Lake and the lands inside a boundary formed by Highways 801, 1274, 36, 211 and US 60.

(4) Christian County north of Highway 68/80 is closed to Canada goose hunting.

(5) Daily limits.

(a) Except in the Cave Run Special Hunt Region, seven (7) geese, which shall include no more than:

1. Two (2) Canada geese.

2. Two (2) white-fronted geese.

3. Two (2) brant.

(b) In the Cave Run Special Hunt Region, one (1) Canada goose. Persons shall not take snow geese, brant or white-fronted geese.

(6) Possession limits are double daily limits.

Section 4. Shooting Hours. (1) Except as specified in this administrative regulation or on wildlife management areas as stipulated in 301 KAR 2:222, one-half (1/2) hour before sunrise until sunset.

(2) In the Cave Run Special Hunt Area, one-half (1/2) hour before sunrise until 2 p.m.

Section 5. Ballard Wildlife Management Area North of Terrell Landing Road. (1) Ducks, coots and mergansers, December 13 through January 14 or until the Ballard Reporting Area goose quota is reached.

(2) Geese, December 13 through January 31 or until the Ballard Reporting Area quota is reached.

(3) No hunting on Sundays, Mondays, Christmas Day or New Year's Day.

(4) Shooting hours: one-half (1/2) hour before sunrise until noon.

(5) Waterfowl hunters:

(a) Shall apply in advance.

(b) Shall not have more than ten (10) shotgun shells in their possession.

(c) Shall case their guns while using department-supplied transportation to and from blinds.

(d) Shall be accompanied by an adult if under eighteen (18) years old.

(6) More than three (3) person shall not occupy a blind.

(3) The Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area is closed to waterfowl hunting from October 15 through March 15.

Section 6. Falconry Waterfowl Season and Limits. (1) Season: statewide, November 5 through January 31.

(2) Daily limit: three (3) waterfowl.

(3) Possession limit: six (6) waterfowl.

Section 7. Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 14,300 Canada geese in the Ballard Reporting Area before January 31:

(a) Goose season shall close in the Ballard Reporting Area.

(b) In the counties associated with the Ballard Reporting Area, the goose season shall close:

1. Seven (7) days later; or

2. On the scheduled closing date, whichever occurs first.

(2) If hunters reach a quota of 4,200 Canada geese in the Henderson-Union Reporting Area before January 31:

(a) Goose season shall close in the Henderson-Union Reporting Area.

(b) In the counties associated with the Henderson-Union Reporting Area, goose season shall close:

1. Seven (7) days later; or

2. On the scheduled closing date, whichever occurs first.

(3) The department shall provide at least a twenty-four (24) hour notice of the time and date of early closures.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 26,1994

FILED WITH LRC: December 15, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1995 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, Kentuckyiduals interested in attending this hearing shall notify this agency in writing by January 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lauren E. Schaaf, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

## REGULATORY IMPACT ANALYSIS

Contact Person: Lauren Schaaf

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

(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. This administrative regulation should have no impact on costs of living or employment.

(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 impacts are anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

(6) To the extend 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. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(9) Identify and 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: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 59, No 186, Tuesday, September 27, 1994.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season with a 4 bird bag limit or a 40 day season with a 3 bird bag limit between October 1, 1994 and January 20, 1995. The state may be split into 2 zones with no more than 2 segments in each zone. The daily bag limit with a 30 day season is 4 ducks and may not include more than 3 mallards (no more than 1 hen mallard), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The daily bag limit with a 40 day season is 3 ducks and may not include more than 2 mallards (no more than 1 hen mallard), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1994 and February 14, 1995, and season framework for white-fronted geese is between the Saturday nearest October 1, 1994 through January 31, 1995.

The Canada goose season in the Western Goose Zone season may extend for 53 days (66 days in Fulton County) between October 1, 1994 and January 31, 1995 (except February 15, 1995 in Fulton County), or until the harvest of 21,900 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese between the Saturday nearest October 1, 1994 and January 31, 1995. Possession limit is twice the daily bag limit.

The daily bag limit shall be 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant.

Shooting hours shall be one-half (1/2) hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1994 and March 10, 1995 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for light geese and white-fronted geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 36 days or 17 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns.

## TOURISM CABINET
## Department of Fish and Wildlife Resources

### 301 KAR 2:222. Waterfowl hunting requirements.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, CFR Chapter 59 Part 20

STATUTORY AUTHORITY: KRS 150.015, 150.021,150.170, 150.175, 150.330, 150.340, 150.600, 150.603, CFR Chapter 59 Part 20

NECESSITY AND FUNCTION: To establish statewide waterfowl hunting requirements and to specify seasons and other requirements on wildlife management areas. This administrative regulation contains a portion of the substance of 301 KAR 2:220, which it repeals. Substantive changes from 301 KAR 2:220 are: allowing first-come, first-served hunting in blinds in the Duncan and Crenshaw tracts of the Sloughs Wildlife Management Area if permit holders do not occupy blinds by the beginning of shooting hours, permitting waterfowl hunting seven (7) days a week (instead of four (4)) on the Duncan and Crenshaw tracts of the Sloughs Wildlife Management Area and permitting waterfowl hunting on the Beaver Creek Wildlife Management Area.

Section 1. Definitions. (1) "Blind" means:

(a) A concealing enclosure.

(b) A pit.

(c) A boat.

(2) "Permanent blind" means a blind left in place more than twenty-four (24) hours.

(3) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

(4) "Waterfowl" means ducks, geese, coots and mergansers.

Section 2. Waterfowl hunters shall not use or carry:

(1) Shotgun shells containing:

(a) Lead shot; or

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting.

(2) Shot larger than size "T."

(3) Shotshells longer than three and one-half (3-1/2) inches.

Section 3. Requirements for Waterfowl Hunters in the Ballard Reporting Area, as Described in 301 KAR 2:224. (1) Waterfowl hunters:

(a) Shall hunt from blinds unless hunting in flooded, standing timber.

(b) Shall not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line.

(c) Shall not possess more than one (1) shotgun while in a blind.

(2) More than five (5) persons shall not occupy a blind.

Section 4. Blind Restrictions on Wildlife Management Areas. (1) Except as specified in this section or in Section 5 of this administrative regulation, on wildlife management areas:

(a) Waterfowl hunters shall not establish or hunt from:

1. Permanent blinds.

2. Blinds within 200 yards of:

a. Another blind; or

b. A waterfowl refuge.

(b) Persons shall not hunt in designated recreation areas or access points.

(c) More than four (4) persons shall not occupy a blind.

(d) Hunters shall remove decoys and personal effects daily.

(2) Persons wishing to establish permanent blinds on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake and Taylorsville Lake Wildlife Management Areas:

(a) Shall first obtain a permit from the U. S. Army Corps of Engineers.

(b) May designate one (1) other person as a partner.

(c) Shall participate in a drawing for blind permits on the Barkley, Barren, Green, Paintsville, and Taylorsville areas.

(d) Shall present a valid hunting license at the time of the drawing.

(e) Shall not hold more than one (1) permit per area.

(3) Holders of blind permits:

(a) Shall construct blinds before November 20 or forfeit the permit.

(b) Shall not lock blinds.

(c) Unless an extension of time is granted, shall remove blinds within thirty (30) days of the close of waterfowl season or be ineligible for a permit the following year.

(4) Blinds not occupied by the permit holder one-half (1/2) hour before sunrise shall be available to other hunters on a first-come, first-serve basis.

(5) Blind restrictions shall not apply to falconers when gun or archery seasons are not open.

Section 5. Exceptions for Wildlife Management Areas. (1) Statewide waterfowl seasons apply unless otherwise stated in this section.

(2) If specific hunting dates are given in this section, persons may hunt waterfowl only on these dates.

(3) Ballard Wildlife Management Area. Waterfowl hunting requirements are stipulated in 301 KAR 2:221.

(4) Barkley Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) Persons shall establish permanent blinds within ten (10) yards of their assigned and numbered blind markers within:

1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.

2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.

(c) The following refuge areas are closed to the public:

1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light);

a. Including the row of islands on the west side of the main river channel; and

b. Not including Taylor Bay and Jake Fork Bay.

2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.

(d) From October 15 through March 15, persons shall not hunt:

1. Within 200 yards of; or

2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

(5) Barren River Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(6) Buckhorn Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(7) Cane Creek Wildlife Management Area is closed to waterfowl hunting.

(8) Cumberland Lake Wildlife Management Area. The following sections are closed to the public from October 15 through March 15:

(a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.

(b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.

(9) Cyprus-AMEX Wildlife Management Area is closed to waterfowl hunting.

(10) Grayson Lake Wildlife Management Area. Persons shall not hunt waterfowl:

(a) Within the no wake zone at the dam site marina;

(b) From the shores of Camp Webb;

(c) From the shores of the state park; or

(d) On Deer Creek Fork of Grayson Lake.

(11) Green River Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation

(b) Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(12) Higginson-Henry Wildlife Management Area. Portions marked by signs are closed to the public.

(13) Kaler Bottoms Wildlife Management Area. Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(14) Land Between the Lakes.

(a) The following portions are closed to the public from November 1 through March 15:

1. Long Creek Pond.

2. The eastern one-third (1/3) of Smith Bay.

3. The eastern two-thirds (2/3) of Duncan Bay.

(b) The following portions are closed to waterfowl hunting:

1. The Environmental Education Center.

2. Energy Lake.

(c) Persons shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From boats over flooded portions of Land Between the Lakes when lake levels are above elevation 359.

(d) Persons shall not hunt waterfowl on inland areas during quota deer hunts.

(e) Persons shall not establish or use permanent blinds:

1. On inland areas; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) Waterfowl hunters shall remove decoys and personal effects daily.

(15) Mill Creek Wildlife Management Area is closed to waterfowl hunting.

(16) Nolin River Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(17) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.

(18) Ohio River Waterfowl Refuge.

(a) Persons shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a powerline crossing at approximately river mile 911.5.

(b) Stewart Island is closed to the public from October 15 through March 15, except for quota deer hunting.

(19) Peabody Wildlife Management Area.

(a) Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:

1. Gibralter Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road.

2. Sinclair Mine, as bounded by railroad tracks, the haul road and posted signs.

3. Homestead, as bounded by the haul road and the Green River.

(20) Peal Wildlife Management Area. Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(21) Pioneer Weapons Wildlife Management Area.

(a) Waterfowl hunters may use breech-loading shotguns along the shoreline of Cave Run Lake.

(b) Waterfowl hunters shall use muzzle-loading shotguns elsewhere on the area.

(22) Redbird Wildlife Management Area is closed to waterfowl hunting.

(23) The main block of Robinson Forest Wildlife Management Area is closed to waterfowl hunting.

(24) Sloughs Wildlife Management Area.

(a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.

(b) On the Grassy-Pond Powells Lake Unit, waterfowl hunters:

1. Shall use permanent blinds provided by the department.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(c) On the Jenny Hole-Highlands Creek Unit, waterfowl hunters:

1. Shall not establish or hunt from blinds closer than 200 yards from another hunting party.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(d) If the Ohio River reaches a level that requires boat access, waterfowl hunters:

1. May hunt from boats without regard to department blinds.

2. Shall not hunt closer than 200 yards from another boat.

(e) Waterfowl hunters on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from blinds assigned by the department through a drawing.

2. May occupy blinds not claimed by the permittee by the opening of shooting hours.

3. Shall not have more than fifteen (15) shotgun shells in their possession.

(f) The Crenshaw and Duncan tracts are closed to hunting except waterfowl from October 15 through March 15.

(g) The remainder of the Sauerheber Unit is closed to the public from October 15 through March 15.

(25) Swan Lake Wildlife Management Area. Portions marked by signs are closed to the public from October 15 through March 15.

(26) Taylorsville Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) The portion east of Van Buren Boat Ramp as marked by signs is closed to the public from the Monday following the scheduled quota deer hunt through March 15.

(27) Westvaco Wildlife Management Area.

(a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.

(b) The portion south of the Westvaco Road as posted by signs is closed to the public from November 1 through March 15.

(c) Persons shall obtain a Westvaco Permit before hunting.

(28) White City Wildlife Management Area. Shooting hours are from one-half (1/2) hour before sunrise until 2 p.m.

(29) Yellowbank Wildlife Management Area. The area designated by signs and painted boundary markers is closed to the public from October 15 through March 15.

Section 6. 301 KAR 2:220, Hunting seasons for migratory birds, is repealed.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 26,1994

FILED WITH LRC: December 15, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1995 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 January 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lauren E. Schaaf, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Lauren Schaaf

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

(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. This administrative regulation should have no impact on costs of living or employment.

(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 impacts are anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

(6) To the extend 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. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(9) Identify and 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: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and other specialized hunting requirements to various wildlife areas across the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 59, No 186, Tuesday, September 27, 1994.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season with a 4 bird bag limit or a 40 day season with a 3 bird bag limit between October 1, 1994 and January 20, 1995. The state may

be split into 2 zones with no more than 2 segments in each zone. The daily bag limit with a 30 day season is 4 ducks and may not include more than 3 mallards (no more than 1 hen mallard), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The daily bag limit with a 40 day season is 3 ducks and may not include more than 2 mallards (no more than 1 hen mallard), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1994 and February 14, 1995, and season framework for white-fronted geese is between the Saturday nearest October 1, 1994 through January 31, 1995.

The Canada goose season in the Western Goose Zone season may extend for 53 days (66 days in Fulton County) between October 1, 1994 and January 31, 1995 (except February 15, 1995 in Fulton County), or until the harvest of 21,900 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese between the Saturday nearest October 1, 1994 and January 31, 1995. Possession limit is twice the daily bag limit.

The daily bag limit shall be 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant.

Shooting hours shall be one-half (1/2) hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1994 and March 10, 1995 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for light geese and white-fronted geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 36 days or 17 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns.

## TOURISM CABINET
### Department of Fish and Wildlife Resources

### 301 KAR 2:223. Waterfowl reporting requirements.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, CFR 59 Part 20

STATUTORY AUTHORITY: KRS 150.015, 150.021, 150.170, 150.175, 150.300 150.330, 150.600, 150.603, CFR 59 Part 20

NECESSITY AND FUNCTION: Monitoring hunter harvest is necessary because of federally mandated quotas or limited populations in goose restoration areas. This administrative regulation is necessary to assure that complete harvest data are collected in a timely manner. The substance of this administrative regulation was contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A. This administrative regulation imposes no new requirements or restrictions over those contained in 301 KAR 2:220.

Section 1. Definitions. (1) "Commercial waterfowl hunting area" means private lands or waters where a fee is charged for hunting waterfowl.

(2) "Noncommercial waterfowl hunting area" means private land or water where a fee is not charged for hunting waterfowl.

(3) "Operator" means:

(a) The owner, manager or other person in charge of a commercial waterfowl hunting area;

(b) The owner or tenant of a noncommercial waterfowl hunting area; or

(c) A person to whom the owner or tenant has assigned, in writing on forms provided by the department, exclusive control of waterfowl hunting rights on a noncommercial waterfowl hunting area.

Section 2. In the Ballard Reporting Area or the Henderson-Union Reporting Area, as described in 301 KAR 2:224:

(1) Operators of commercial waterfowl hunting areas shall obtain a commercial waterfowl shooting area permit for each area they operate.

(a) A tract of land divided by a public road may operate under one (1) permit.

(b) Tracts of land separated by property belonging to another person shall require separate permits for each tract.

(2) Operators of commercial waterfowl hunting areas shall maintain complete and accurate records of waterfowl harvested on daily waterfowl harvest register forms provided by the department.

(3) Operators of noncommercial waterfowl hunting areas:

(a) Shall obtain a noncommercial migratory goose hunting permit from the department.

(b) Shall display the permit openly on the area.

(c) Shall make daily waterfowl harvest register forms available to goose hunters.

(d) Shall require goose hunters to:

1. Enter their names, addresses, hunting license numbers and the date on the register before hunting; and

2. Enter the number of geese taken by species before leaving the area.

(4) Operators of commercial or noncommercial waterfowl hunting areas:

(a) Shall close each week's waterfowl harvest register after shooting hours on Wednesday.

(b) Shall mail or hand-deliver the original form to the address indicated so that it arrives no later than the following Monday.

(c) Shall retain forms for two (2) months after the close of goose season.

(d) Shall allow agents of the department or the U. S. Fish and Wildlife Service to inspect permits and harvest records.

(5) Persons hunting geese on commercial or noncommercial waterfowl hunting areas:

(a) Shall enter their names, addresses, hunting license numbers and the date on the register form before hunting, and

(b) Shall record the number of geese taken by species on the register form before leaving the area.

(6) Persons hunting geese on public areas, including the Ohio or Mississippi Rivers or their overflow areas, within the Ballard or Henderson-Union Reporting Areas:

(a) Shall obtain a daily waterfowl harvest register from the department.

(b) Before hunting, shall enter on the register:

1. Their names, addresses, hunting license numbers and the date.

2. If an individual is carrying the form for a hunting party, the name, address and hunting license number of each member of the party, and the date.

(c) Shall record on the register the number of geese by species taken each day.

(d) Shall mail or hand deliver the completed register to the address indicated on the form so that it arrives no later than Monday of each week.

Section 3. Persons hunting geese in the West-Central or Cave Run Special Hunt Regions, as defined in 301 KAR 2:224:

(1) Shall carry a permit to hunt Canada Geese on special areas form.

(2) Shall complete and return the harvest survey portion of the permit by January 6.

(3) Shall not be eligible for permits the following year if they do not return harvest surveys by January 6.

Section 4. Items Incorporated by Reference. The following forms are incorporated by reference. They are available for examination or copying from the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 from 8 a.m. until 4:30 p.m. eastern time during business days.

(1) Kentucky permit to hunt canada geese on special areas.

(2) Noncommercial migratory goose hunting permit.

(3) Daily waterfowl harvest register.

(4) Application for commercial waterfowl shooting area permit.

(5) Assignment of waterfowl hunting rights.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 26,1994

FILED WITH LRC: December 15, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1995 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 January 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lauren E. Schaaf, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Lauren Schaaf

(1) Type and number of entities affected: Approximately 500 individuals or businesses will be required to report their goose harvest.

(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. Reporting of goose harvest to determine if quotas are reached is a federal requirement. Waterfowl hunting generates substantial economic activity in the areas of Western Kentucky covered by this administrative regulation, which would be lost if we do not meet this federal requirement.

(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. Costs of obtaining permits and mailing forms, as required by this reguiation, are minimal.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters, as well as operators of commercial and noncommercial waterfowl hunting areas, are required to obtain permits and report goose harvest. This is an existing requirement, so this administrative regulation will neither increase or decrease costs.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This is an existing activity; neither costs nor savings will be impacted by this administrative regulation.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department must print and distribute permits and harvest forms and tabulate waterfowl harvest from returned forms.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and game fund revenues.

(6) To the extend 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. This is a continuing regulation which will have no additional positive or negative economic impact.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a federally mandated requirement. The alternative is not permit Canada goose hunting in two of the areas of the state with high goose populations. This is an unacceptable alternative because geese are a renewable natural resource which provide considerable recreational opportunity and economic benefit in these areas.

(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 environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify and 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: The substance of this administrative regulation was contained in 301 KAR 2:220, which is being repealed and replaced with regulations which meet the formatting and language requirements of KRS 13A. This administrative regulation contains no substantive changes from 301 KAR 2:220.

(11) TIERING: IS tiering applied? (Explain why tiering was or was not used) Tiering was used to the extent that differing requirements are placed on operators of commercial waterfowl hunting areas, operators of noncommercial waterfowl hunting areas, and individual hunters.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 59, No 186, Tuesday, September 27, 1994.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season with a 4 bird bag limit or a 40 day season with a 3 bird bag limit between October 1, 1994 and January 20, 1995. The state may be split into 2 zones with no more than 2 segments in each zone. The daily bag limit with a 30 day season is 4 ducks and may not include more than 3 mallards (no more than 1 hen mallard), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The daily bag limit with a 40 day season is 3 ducks and may not include more than 2 mallards (no more than 1 hen mallard), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1994 and February 14, 1995, and season framework for white-fronted geese is between the Saturday nearest October 1, 1994 through January 31, 1995.

The Canada goose season in the Western Goose Zone season may extend for 53 days (66 days in Fulton County) between October 1, 1994 and January 31, 1995 (except February 15, 1995 in Fulton County), or until the harvest of 21,900 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese between the Saturday nearest October 1, 1994 and January 31, 1995. Possession limit is twice the daily bag limit.

The daily bag limit shall be 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant.

Shooting hours shall be one-half (1/2) hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1994 and March 10, 1995 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for light geese and white-fronted geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 36 days or 17 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns.

**TOURISM CABINET**
**Department of Fish and Wildlife Resources**

**301 KAR 2:224. Waterfowl hunting zones.**

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, CFR Chapter 59 Part 20

STATUTORY AUTHORITY: KRS 150.015, 150.021, 150.170, 150.175, 150.330, 150.600, 150.603, CFR Chapter 59 Part 20

NECESSITY AND FUNCTION: Unevenly distributed waterfowl resources and federal requirements necessitate different season dates and harvest regulations in different sections of the Commonwealth. This administrative regulation establishes waterfowl hunting zones. The substance of this administrative regulation is contained in 301 KAR 2:220, which is being repealed and replaced by regulations which better meet the formatting and language requirements of KRS Chapter 13A. This administrative regulation makes no changes in existing waterfowl hunting zones.

Section 1. Goose Hunting Zones. (1) The Western Goose Zone includes Henderson County and the portion of Kentucky west of:

(a) US 60 from the Henderson-Union County line to US 641;

(b) US 641 to Interstate 24;

(c) Interstate 24 to the Purchase Parkway; and

(d) The Purchase Parkway.

(2) The Ballard Reporting Area includes the portion of Ballard County north or west of:

(a) The Ballard-McCracken County line to State Road 358;

(b) State Road 358 to US 60;

(c) US 60 to the city limits of Wickliffe;

(d) The city limits of Wickliffe to the center of the Mississippi River.

(3) Counties associated with the Ballard Reporting Area include:

(a) The portion of Ballard County not included in the Ballard Reporting Area;

(b) Carlisle and McCracken Counties; and

(c) The portions of Fulton, Graves, Hickman and Marshall Counties in the Western Goose Zone.

(4) The Henderson-Union Reporting Area includes Henderson County and the portion of Union County in the Western Goose Zone.

(5) Counties associated with the Henderson-Union Reporting Area include those portions of Crittenden, Livingston and Lyon Counties in the Western Goose Zone.

(6) The Pennyroyal-Coalfield Goose Zone includes the area between the Western Goose Zone and:

(a) Interstate 65 from the Tennessee line to the Green River Parkway;

(b) The Green River Parkway to the US 60 By-pass at Owensboro;

(c) The U.S. 60 By-pass to U.S. 231; and

(d) U.S. 231 to the Indiana border.

(7) The Eastern Goose Zone includes the portions of Kentucky not included in the Western or Pennyroyal-Coalfield Goose Zones.

(8) The West-Central Special Hunt Region includes:

(a) Muhlenburg County;

(b) Ohio County south of Rough River;

(c) Butler County west of Highway 79 and north of Highway 70;

(d) Hopkins County:

1. East of Highways 814 and 109;

2. South of US 41A between Highways 814 and Madisonville; and

3. South of Highway 85 east of Madisonville.

(9) The Cave Run Special Hunt Region includes Bath, Menifee, Morgan and Rowan Counties, except Paintsville Lake and its shoreline in Morgan County.

Section 2. Duck, Coot, and Merganser Hunting Zones. (1)

"Western Duck Zone" means the portion of Kentucky included in the Western and Pennyroyal-Coalfield Goose Zones.

(2) "Eastern Duck Zone" means the portion of Kentucky not included in the Western Duck Zone.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 26,1994

FILED WITH LRC: December 15, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1995 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 January 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lauren E. Schaaf, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Lauren Schaaf

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

(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. This administrative regulation should have no impact on costs of living or employment.

(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 impacts are anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

(6) To the extend 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. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(9) Identify and 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: The provisions of this regulation were contained in 301 KAR 2:220, which is being repealed and replaced with regulations which better meet the formatting and wording requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 59, No 186, Tuesday, September 27, 1994.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season with a 4 bird bag limit or a 40 day season with a 3 bird bag limit between October 1, 1994 and January 20, 1995. The state may be split into 2 zones with no more than 2 segments in each zone. The daily bag limit with a 30 day season is 4 ducks and may not include more than 3 mallards (no more than 1 hen mallard), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 1 redhead. The daily bag limit with a 40 day season is 3 ducks and may not include more than 2 mallards (no more than 1 hen mallard), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1, 1994 and February 14, 1995, and season framework for white-fronted geese is between the Saturday nearest

October 1, 1994 through January 31, 1995.

The Canada goose season in the Western Goose Zone season may extend for 53 days (66 days in Fulton County) between October 1, 1994 and January 31, 1995 (except February 15, 1995 in Fulton County), or until the harvest of 21,900 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese between the Saturday nearest October 1, 1994 and January 31, 1995. Possession limit is twice the daily bag limit.

The daily bag limit shall be 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese and 2 brant.

Shooting hours shall be one-half (1/2) hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1994 and March 10, 1995 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for light geese and white-fronted geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is for 36 days or 17 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns.

## EDUCATION, ARTS, AND HUMANITIES CABINET
## Kentucky Authority for Educational Television

### 700 KAR 2:010. Gubernatorial forums or debates.

RELATES TO: KRS 121A.100

STATUTORY AUTHORITY: KRS 121A.100

NECESSITY AND FUNCTION: KRS 121A.100 provides that a qualifying slate of candidates that receives public funds shall participate in a reasonable number of televised debates or forums and requires KET to promulgate administrative regulations to establish the procedures to manage the debates or forums.

Section 1. Definitions. "Candidate" means a person seeking either a political party's gubernatorial or Lieutenant Governor nomination in a primary or runoff election or the office of Governor or Lieutenant Governor in a general election and who:

(1) Is required by KRS 121A.100(1) to participate in a televised forum or debate;

(2) Has satisfied the requirements under KRS Chapter 121A to obtain public financing but has declined to receive any public funding; or

(3) Has qualified to have his name appear on an election ballot and is actively conducting a substantial statewide campaign to obtain a political party's nomination in a primary election or be elected in a general election.

Section 2. Primary, Runoffs and General Elections. (1) The Kentucky Authority for Educational Television (KET) shall notify gubernatorial and Lieutenant Governor candidates, in writing, of the number of forums or debates to be held at the KET studio, no less than sixty (60) days prior to the:

(a) May primary elections; and

(b) November general election.

(2) The number of forums or debates shall be based on the number of slates of candidates seeking nomination or election to the offices of Governor and Lieutenant Governor and the limitations contained in KRS 121A.100(1).

(3) Formats for each of the democratic and republican primary election programs shall be designed according to the number of candidates participating in the forum or debate.

(4) If there is a runoff primary election, KET shall schedule one (1) gubernatorial forum or debate to be held two (2) weeks prior to the runoff primary date.

Section 3. (1) Prior to the primaries, runoff and general elections, KET shall schedule separate forums or debates for the candidates for Lieutenant Governor.

(2) The forums or debates for candidates for Lieutenant Governor shall follow the guidelines established by the provisions of this administrative regulation.

Section 4. (1) No less than thirty (30) days prior to the primary and general elections, and fifteen (15) days prior to a runoff primary election, KET shall notify each candidate in writing prior to the broadcast of the:

(a) Date, location and time of the live scheduled broadcast;

(b) Length of the broadcast;

(c) Format of the broadcast; and

(d) That the candidate shall submit accurate and thorough biographical information from which introductions may be made by the program host.

(2) No less than one (1) week prior to the broadcast, KET shall notify the candidates in writing of the:

(a) Names of candidates participating in the KET program;

(b) Location of each candidate on the studio set;

(c) Details describing how the studio set will be arranged; and

(d) If applicable, the names of the journalists scheduled to participate in the forum or debate.

(3) Participating journalists shall be:

(a) Selected by KET; and

(b) Representative of the Kentucky print and electronic media.

(4) If a journalist is unable to participate in the scheduled program, KET shall select a substitute journalist.

Section 5. (1) On the day of the broadcast:

(a) KET may elect to inform or brief candidates about issues or topics to be discussed in advance of the scheduled air time. If KET designates a format which includes briefing candidates in advance of the air time, it shall:

1. Notify each candidate in writing of the topics or issues to be discussed; and

2. Designate the initial round, or subsequent rounds, to which the issue or topic relates.

(b) The candidates shall be instructed how studio time cues shall be given by KET technical personnel during the broadcast. A timekeeper and visual warning device shall be provided.

(c) On the afternoon of the broadcast, each candidate or a representative shall be allowed fifteen (15) minutes to inspect the studio set.

(2) During the broadcast candidates shall not:

(a) Hold, wear, or use any props such as visual materials, charts, photographs, articles or similar items.

(b) Wear campaign pins or name identification pins; or

(c) Bring prepared notes for use during the program. Paper and pen shall be available for note-taking during the program.

(3)(a) The KET studio shall not be open during the program

broadcast to members of the general public who are not participating in the debate or forum.

(b) A limited number of guests of the candidates, as determined by KET, shall be provided seating in the KET Visitor's Center to view the program on television monitors.

(c) The number of participating candidates and availability of seating space shall determine how many guests each candidate may request to be present.

(4) Members of the electronic and print media shall:

(a) Not be allotted time while the candidates are in the KET studio prior to the broadcast to conduct interviews with the candidates;

(b) Be allowed in the studio during the program contingent upon availability of space;

(c) Have access to the KET Network Center where audio and video feeds are available; and

(d) Be permitted to question candidates who agree to an interview after the broadcast.

(5) The televised candidate forum or debate shall air live from the KET studios in Lexington at a time specified in the notice required in Section 1(1) of this administrative regulation.

(a) Candidates shall be notified in writing of their requested arrival time at the KET Network Center.

(b) The total number of participating candidates shall determine the amount of time needed for prebroadcast activities.

(c) Designated prebroadcast time shall be used for:

1. Candidate make-up;

2. Review of format and guidelines; and

3. Random drawing to determine the order in which candidates shall speak.

(d) A KET makeup artist shall be available for forum or debate participants.

(e) If a forum or debate participant does not wish to use a KET makeup artist, he shall notify KET at least twenty-four (24) hours prior to the broadcast.

(6)(a) KET televised candidate forums or debates shall be offered to the electronic media across the Commonwealth for simulcast or rebroadcast.

(b) A delayed broadcast shall be aired:

1. Within seven (7) days of the original broadcast; and

2. As an uninterrupted program without commercial sponsorship.

(7) The program shall be broadcast with closed captioning for the deaf and hearing impaired.

(8) KET shall make all necessary accommodations for candidates with disabilities.

(9) KET shall select the location if remote site viewing is utilized by KET for citizen participation in the program via satellite or microwave transmission.

(10) VHS tapes of the broadcast may be purchased from KET.

Section 6. The forum or debate host or moderator shall:

(1) Be selected by KET fifteen (15) days prior to the program;

(2) Impartially insure that the candidates follow the program guidelines and format;

(3) Open and close the program;

(4) Introduce the participants and briefly explain the rules; and

(5) Insure that candidates' answers and statements are made within the allotted times.

Section 7. Format for Debates or Forums. (1) Formats for the debates or forums may include a combination of the following elements:

(a) Opening statements delivered by the candidates;

(b) Questions posed directly to the candidates by representatives of the electronic and print media;

(c) Questions posed directly to the candidates by members of the audience;

(d) Questions submitted by members of the general public and posed by the program host;

(e) Questions posed by opposing candidates;

(f) Informal cross talk between opposing candidates about an issue introduced by the program host;

(g) Timed statements and rebuttals between opposing candidates; and

(h) Closing statements delivered by the candidates.

(2)(a) Candidates shall be initially introduced by their title, if any.

(b) Thereafter, candidates shall be addressed as Mr., Mrs., Miss, or Ms., according to the candidate's preference.

(3) Duration of program elements and time allotted each candidate for statements or responses shall be based on the number of participating candidates.

(4) Members of the general public may participate in the forum or debate through any one (1) of the following:

(a) Live presence in the KET studios;

(b) Live presence at a remote location transmitted to the candidates by satellite or microwave;

(c) Videotaped questions recorded by KET earlier and presented to the candidates during the forum or debate;

(d) Recorded questions phoned in to KET in advance of the forum or debate and played back on air or relayed by the program host; or

(e) Written questions received by KET in advance of the forum or debate and read by the program host.

W. TERRY MCBRAYER, Chairman

APPROVED BY AGENCY: December 6, 1994

FILED WITH LRC: December 12, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1995, at 10 a.m. at the offices of Kentucky Educational Television located at 600 Cooper Drive, Lexington, Kentucky 40502. Individuals interested in being heard at this hearing shall notify KET in writing by January 18, 1995, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for the 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 listed below.

CONTACT PERSON: Sally Hamilton, Deputy Executive Director, 600 Cooper Drive, Lexington, Kentucky 40502, (606) 258-7000.

REGULATORY IMPACT ANALYSIS

Contact Person: Sally Hamilton

(1) Type and number of entities affected: The type of entities affected will include those people who satisfy the requirements under KRS 121A.100 to be considered as a qualifying slate of candidates and therefore required to participate in the forums or debates. In addition challengers to the qualifying set of candidates that are eligible to appear on the election ballot will be affected by this administrative regulation. However, it is impossible to predict the number of individuals that will be affected since that will depend on the number of qualifying candidates and those candidates eligible to appear on each election ballot.

(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: This administrative regulation will create minimal reporting requirements for those individuals who are considered to be a qualifying slate of candidates under KRS 121A.100 and their opponents who are listed on the election ballot.

2. Second and subsequent years: See above answer.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Approximately $25,000.

2. Continuing costs or savings: Approximately $25,000 or more depending on increases in costs due to inflation and the factors noted below.

3. Additional factors increasing or decreasing costs: An increase in costs could result from a larger number of candidates involved with the forums or debates and the number of citizens actively participating in the programs from around the state via satellite.

(b) Reporting and paperwork requirements: KET is required to notify the candidates in writing as to the dates and times of the forums or debates, the format of the debates or forums and the journalists who will appear on the program.

(4) Assessment of anticipated effect on state and local revenues. The anticipated costs associated with one forum or debate is $25,000.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. General operating 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternative methods were rejected. The statute implementing this administrative regulation requires the holding of forums or debates.

(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:

(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 administrative regulation applies uniformly to all qualified candidates.

## EDUCATION, ARTS, AND HUMANITIES CABINET
### Department of Education
### Office of District Support Services

**702 KAR 4:170. Facility programming and construction criteria; repeal of 702 KAR 4:060, 702 KAR 4:070 and 702 KAR 4:080.**

RELATES TO: KRS 156.031, 156.070, 156.160, 162.060

STATUTORY AUTHORITY: KRS 156.070, 156.160, 162.060

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt rules and administrative regulations relating to sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, and school buildings and classrooms. KRS 162.060 requires approval of all plans and specifications for school building construction by the chief state school officer, in accordance with the rules and administrative regulations of the state board. This administrative regulation implements these statutory duties by prescribing various architectural, structural, mechanical, electrical, sanitary, heating and ventilation design specifications to ensure functional, safe and economical operation of the proposed educational facility, and to provide for a healthy and comfortable space for learning. The minimum standards stated in this administrative regulation shall be incorporated into the design of each new school building. Additionally, this administrative regulation repeals and replaces three (3) administrative regulations relating to school district facilities.

Section 1. The "Facility Programming and Construction Criteria Planning Guide", dated July, 1994, is hereby adopted and incorporated by reference. A copy of this planning guide may be photocopied, reviewed and obtained from the Division of Facilities Management, Kentucky Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m.

Section 2. Repeal of 702 KAR 4:060, 702 KAR 4:070 and 702 KAR 4:080. (1) 702 KAR 4:060, Construction criteria, is hereby repealed.

(2) 702 KAR 4:070, Mechanical, electrical, sanitary, heating and ventilation design, is hereby repealed.

(3) 702 KAR 4:080, Temporary or supplemental units, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

Thomas C. Boysen, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: December 15, 1994

FILED WITH LRC: December 15, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 1995, 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 January 25, 1995, 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: Mark Ryles, Director

(1) Type and number of entities affected: 176 local school districts.

(2) Direct and indirect costs or savings on the: Many provisions of this administrative regulation are currently a part of school facility

construction. No appreciable cost variation is anticipated.

(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: No appreciable effect is anticipated.

2. Second and subsequent years: No appreciable effect is anticipated.

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: No projected change in costs.

2. Continuing costs or savings: No projected change in costs.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No significant increase in paperwork requirements over existing regulations.

(4) Assessment of anticipated effect on state and local revenues: No appreciable effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(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: The State Board of Education established this regulation primarily to update facilities criteria in accordance with new KERA programs. The establishment of this new regulation and repeal of 3 existing regulations was the most efficient and required way for the state board to accomplish its objectives.

(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 occur, explain detrimental effect: Not applicable.

(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: None

(11) TIERING: Was tiering applied? No. The administrative regulation applies equally to all 176 local school districts.

## DEPARTMENT OF WORKERS' CLAIMS

**803 KAR 25:160. Charges by medical providers for testimony and reports in workers' compensation claims.**

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.035(4)

NECESSITY AND FUNCTION: KRS 342.035 requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a claim by an injured employee against the employer.

Section 1. Applicability. This administrative regulation shall apply to charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a workers' compensation claim before an administrative law judge.

Section 2. Charges for Medical Reports. (1) Physicians may charge not more than their usual and customary fee up to a maximum of $200 for completion of a Form 107 or Form 108. Forms 107 and 108 are incorporated by reference in 803 KAR 25:011.

(2) Medical providers and other health care professionals may charge not more than their usual and customary fee up to a maximum of seventy-five (75) dollars per page, with a maximum up to but not to exceed $200, for the completion of a narrative report containing brief findings resulting from physical or psychological examination, summary of testing performed, diagnosis, records reviewed, impairment rating as determined under the latest available edition of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association with appropriate references to the chapter and page number involved, restrictions and limitations noted, if any, and whether the condition is the result of the arousal of a preexisting dormant disabling condition.

Section 3. Charges for Depositions. (1) Medical providers or other health care professionals may charge a maximum fee not to exceed their usual and customary fee for testimony, but in no event to exceed a maximum fee of $250 for the first one-half (1/2) hour of testimony, and a maximum fee of $100 for each one-quarter (1/4) hour increment thereafter. These time periods shall include consultation, if any, with attorneys for the parties immediately preceding the deposition but not the time spent reviewing records or otherwise preparing for the deposition.

(2) A party or attorney scheduling a deposition shall notify the medical provider or other health care professional to be deposed of the cancellation of the deposition as soon as practicable after occurrence of an event giving rise to the cancellation. In the event that notice is given to the medical provider or health care professional less than forty-eight (48) hours prior to the time scheduled for the deposition, the medical provider or health care professional may charge a cancellation fee not to exceed $125.

(3) In the event that inclement weather causes the cancellation of a scheduled deposition, a cancellation fee shall not be charged. A cancellation fee may be assessed, however, if the party relying upon inclement weather as grounds for cancellation of a deposition cannot show that a National Weather Service travel advisory was in effect or other indication that severe weather conditions made travel to the deposition site unduly hazardous.

Section 4. Access to Records; Certification and Mailing. (1) A party who is authorized to review records of a medical provider and requests a review pursuant to KRS 342.035(7) shall submit a written request to the medical provider, describing the records to be reviewed, not less than three (3) days in advance of the date on which the review is to take place.

(2) Charges for copies of medical records in a workers' compensation case shall not exceed fifty (50) cents per page plus the actual cost of postage if the records are to be mailed. If a party requests certified copies of medical records, the fee charged by the medical provider for a certification of records shall not exceed a maximum of ten (10) dollars.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: December 15, 1994

FILED WITH LRC: December 15, 1994 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms

ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m., on January 23, 1995. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Valerie L. Salven, General Counsel, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven

(1) Type and number of entities affected: Medical providers and other health care professionals who furnish testimony and medical reports used in the litigation of workers' compensation claims.

(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. The public comments received so far do not indicate that this proposed administrative regulation will affect the cost of living and employment.

(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. The only public comments received so far concerning this proposed administrative regulation express concern about the limitation of 50 cents per page for copies of medical records that was established by KRS 342.035(7). There is considerable concern in the medical community that the 50 cent per page limitation established by statute will not adequately reimburse medical providers for the cost of retrieving, disassembling, copying, and reassembling several different files in order to obtain the records for one patient. As the statement of consideration points out, however, the 50 cent per page limitation was set by the legislature, and if this particular fee is to be increased, it must be increased by the legislature rather than the administrative agency.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Since this establishes a fee schedule for medical testimony and reports, the overall effect should be to reduce the charges for such testimony and reports. Additional reporting and paperwork is not required.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs of printing and distributing informational copies of the regulation to the public are estimated to be not more than $1,000.

2. Continuing costs or savings: Minimal after the first year.

3. Additional factors increasing or decreasing costs: Demand for copies of the administrative regulation.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(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 be implemented throughout the state of Kentucky, and will affect some charges by out-of-state medical providers who render care to Kentucky workers' compensation patients. For further discussion of the economic impact, see Section (2) above.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 342.035 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of workers' compensation claims.

(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 effect.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No effect.

(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: KRS 342.035(7) sets out the photocopying fee limitation of 50 cents per page, and states that medical records may be reviewed by any authorized party "during regular business hours."

(a) Necessity of proposed regulation if in conflict: The agency does not believe there is a conflict. The proposed regulation requires a request to review medical records to be in writing, and for the medical provider to respond within 7 days setting forth the times at which the records may be reviewed. The proposed regulation also points out that the actual cost of postage may be recovered if the records are mailed to a party, and an additional charge not to exceed $10 may be added if certified copies of medical records have been requested.

(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? No. Each medical provider or health care professional whose testimony or medical reports are covered by this proposed regulation is subject to the same maximum limitations for testimony and reports as are other medical providers.

## CABINET FOR HUMAN RESOURCES
### Department for Health Services
### Division of Health Systems Development

**902 KAR 14:030. 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

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 providers defined in KRS 211.950 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) "Air ambulance service" means an ambulance provider licensed by the licensing agency to provide basic, advanced, or specialized levels of emergency and nonemergency medical care, and emergency and nonemergency air transportation as outlined in 902 KAR 14:040 and 902 KAR 14:050 to persons who may require immediate stabilization and continued medical treatment during transit or upon arrival at the patient's destination.

(2) "Ground ambulance service" means an ambulance provider licensed by the licensing agency to provide basic, advanced, or specialized levels of emergency and nonemergency medical care, and emergency and nonemergency ground transportation as outlined in 902 KAR 14:040 to persons who may require immediate stabilization and continued medical treatment during transit or upon arrival at the patient's destination.

(3) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

(4) "Nonemergency health transportation (NEHT) service" means a nonemergency ambulance provider licensed by the licensing agency to provide health care transportation on a scheduled basis to individuals whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during transit or emergency medical treatment upon arrival at the final destination.

Section 2. Licenses. (1) A person shall not establish a ground ambulance service, air ambulance service or a NEHT 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 air ambulance service, ground ambulance service or a NEHT service without first obtaining a license, Form EMS-2, from the licensing agency. Form EMS-2 (12/94) 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 EMS-1 (10/94) or an "Application for License to Operate a Nonemergency Health Transportation Service," Form EMS-1N (12-94), incorporated by reference, shall be filed with the Department for Health Services, Emergency Medical Services Branch, 275 East Main Street, Frankfort, Kentucky 40621. Form EMS-1, "Kentucky Application for Ambulance Service Licensing" and Form EMS-1N "Application for License to Operate a Nonemergency Health Transportation Service" 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 applicable administrative regulations under 902 KAR Chapter 14.

(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 administrative regulations shall be ascertained through on-site inspections of the service by representatives of the licensing agency.

(2) Representatives of the licensing agency shall have access to the service during hours the service operates.

(3) A regulatory violation identified during the inspections shall be transmitted in writing to the service by the licensing agency.

(4)(a) The service 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 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 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 a service 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 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 a service to immediately cease and desist operating an ambulance, or providing services, if the licensing agency has reasonable cause to believe that an 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 provider if an owner of the service is convicted of obtaining a fee by:

1. Fraud or misrepresentation; or
2. 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:

1. Policies and administrative regulations of the board; and
2. 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 in which a majority of the ambulance runs are made by ambulance attendants who do not receive compensation for their work: twenty (20) dollars.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: December 15, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1995 at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1995 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W.K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 300 ground and air ambulance services and approximately 10 nonemergency health transportation 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. A notice of intent was published in the Administrative Register on November 1, 1994. There were no requests for a public hearing. However, this administrative regulation 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. A notice of intent was published in the Administrative Register on November 1, 1994. There were no requests for a public hearing. However, this administrative regulation 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 administrative 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 administrative 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 administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for ground and air ambulances and nonemergency health care transportation 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: A notice of intent was published in the Administrative Register on November 1, 1994. There were no requests for a public hearing. 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: This administrative 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 administrative 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 administrative 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

administrative regulation is to comply with HB 646 passed by the 1994 General Assembly.

(11) TIERING: Is tiering applied? Tiering was not applied because the administrative regulation applies to all ambulance providers in Kentucky regardless of location; all Kentuckians, whether urban or rural, are equally served and protected by this administrative regulation of ambulance providers.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or part or division of that local government if it operates an ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect a local government in any additional manner. It merely moves the licensing and regulatory functions for emergency medical services from the Office of the Inspector General to the Department of Health Services.

**CABINET FOR HUMAN RESOURCES**
**Department for Health Services**
**Division of Health Systems Development**

**902 KAR 14:040. Ground 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

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 transferred the responsibility for licensing, regulating and inspecting ambulance service providers defined in KRS 211.950 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 ambulance providers. This administrative regulation provides for the minimum licensing requirements for ground ambulance service providers.

Section 1. Definitions. (1) "Advanced life support (ALS) service" means an ambulance provider which:

(a) Is licensed by the cabinet; and

(b) Meets the requirements established in Section 8 of this administrative regulation.

(2) "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.

(3) "Basic life support (BLS) service " means an ambulance provider which meets the requirements established in Sections 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.

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "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, which shall include as a minimum one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(6) "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.

(7) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 13:100.

(8) "Emergency medical technician-first responder" means a person certified pursuant to 902 KAR 13:110.

(9) "Employee" means ambulance service personnel who may be paid or volunteer, full time or part time.

(10) "Ground ambulance service" is defined in 902 KAR 14:030.

(11) "Interfacility care" means emergency or nonemergency health care provided to a patient during ambulance transportation between two (2) health care facilities.

(12) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

(13) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 9:136.

(14) "Prehospital care" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(15) "Primary ambulance" means a ground 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.

(16) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(17) "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.).

(18) "Specialized emergency care service" means a BLS or ALS ground or air 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. Ground Ambulance Licensing Requirements. (1) The following licensing requirements shall apply to ground 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 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. A 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 provider 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 provider.

(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 provider 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 provider).

(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 provider shall send the licensing 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. Ground Ambulance Management Requirements. An ambulance service provider shall:

(1) Establish lines of authority to include the designation of an:

(a) Administrator responsible for assuring compliance with this administrative regulation during the daily operation of the 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 ambulance service 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. Ground Ambulance 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 provider.

(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 provider 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 ground 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 provider 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 provider 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 provider shall provide orientation to all drivers and attendants related to communication protocols that have been established by the 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 (EHS-8A) 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 honemergency 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. A ground 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, a ground 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, a ground 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; and

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) Ground ambulance services providers 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) Service Providers. An ALS 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 an 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 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 life support, and certification in advanced trauma life support or 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 Emergency Care Service. (1) A BLS service which complies with Sections 1 through 7 of this administrative regulation, and an ALS service which complies with Section 8 of this administrative regulation, may be allowed variances approved by the licensing agency. If an ALS or BLS service provider operates with approved variances, it may be licensed as a specialized emergency care service.

(2) A specialized license shall specify the limitations of the service provider approved by the cabinet;

(3) In reference to Section 5(1) of this administrative regulation, a specialized emergency care 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 specialized emergency care 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 specialized emergency care service 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 emergency care 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 CHILDERS II, Secretary
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: December 15, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1995 at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1995 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W.K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: 502-564-7900.

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. A notice of intent was published in the Administrative Register on November 1, 1994. There were no requests for a public hearing. However, this administrative regulation 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. A notice of intent was published in the Administrative Register on November 1, 1994. There were no requests for a public hearing. However, this administrative regulation 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 administrative 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 administrative 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 administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative 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: A notice of intent was published in the Administrative Register on November 1, 1994. There were no requests for a public hearing. However, this administrative 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: This administrative 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 administrative 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 administrative 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 this administrative regulation applies to all ground ambulance services in Kentucky regardless of location; all Kentuckians, whether urban or rural, are equally served and protected by this administrative regulation of ground ambulance providers.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or part or division of that local government if it operates an ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect a local government in any additional manner. It merely moves the licensing and regulatory functions for emergency medical services from the Office of the Inspector General to the Department of Health Services.

**CABINET FOR HUMAN RESOURCES**
**Department for Health Services**
**Division of Health Systems Development**

**902 KAR 14:050. 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

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 defined in KRS 211.950 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 ambulance service providers.

Section 1. Definitions. (1) "Air ambulance service" is defined in 902 KAR 14:030.

(1) "FAA" means the Federal Aviation Administration.

(2) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

Section 2. Air Ambulance 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 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. Air Ambulance 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. Air Ambulance 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)(a)2 of this section.

Section 6. Air Ambulance 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 shall provide a full record to the receiving facility of any treatment administered at the pickup 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: December 15, 1994

FILED WITH LRC: December 15, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1995 at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 18, 1995 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W.K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: 502-564-7900.

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. A notice of intent was published in the Administrative Register on November 1, 1994. There were no requests for a public hearing. However, this administrative regulation 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. A notice of intent was published in the Administrative Register on November 1, 1994. There were no requests for a public hearing. However, this administrative regulation 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 administrative 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: A notice of intent was published in the Administrative Register on November 1, 1994. There were no requests for a public hearing. 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: This administrative 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 administrative 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 administrative 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.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or part or division of that local government if it operates an air ambulance service. At this time, no local governments operate an air ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any air ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect a local government in any additional manner. It merely moves the licensing and regulatory functions for emergency medical services from the Office of the Inspector General to the Department of Health Services.

## KENTUCKY HEALTH POLICY BOARD

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

RELATES TO: KRS 13A.220(3)(e), Chapters 142, 164, 205, 216, 216B, 304

STATUTORY AUTHORITY: KRS 13A.220(3)(e), 216.2905(2)(t), 216.2923(2)(c)

NECESSITY AND FUNCTION: KRS 216.2905(2)(t) requires the board to promulgate administrative regulations on minutes, meetings and transactions. These administrative regulations relate to the conduct of meetings of the Health Policy Board and its transaction of business.

Section 1. Definitions. (1) "Board" is defined in KRS 216.2903(1).

(2) "Chair" means the chaCrman of the Kentucky Health Policy Board.

Section 2. Meetings. (1) Regular meetings shall be held at a time and place as established by resolution of the board. Special meetings shall be set upon the call of the chair or three (3) members of the board. Meetings shall be open to the public in accordance with KRS 61.805 to 61.850.

(2) Notice of meetings shall be published in accordance with KRS 61.823.

(3) Three (3) members of the board shall constitute a quorum for the transaction of business. Meetings of the board shall be conducted according to "The New Roberts Rules of Order", (1989) unless otherwise determined by the board.

Section 3. Minutes. (1) Written minutes shall be taken at all meetings of the board. Minutes shall include the time, date and place of meeting, a list of each member present and absent, a description of all action taken and matters discussed and the results of votes taken on actions. The minutes shall be circulated to all board members and approved by the board at the next regular meeting. The chair shall certify that the minutes have been approved by the board. The certified minutes shall be kept on file at the board's offices.

(2) The chair shall designate staff to take and keep minutes.

Section 4. Agenda. (1) The board may convene to discuss and transact business as well as to receive information related to the board's functions and to health care in general.

(2) The agenda shall be available to the public at the board's office twenty-four (24) hours in advance of the meeting.

(3) Anyone requesting to place an item on the agenda shall submit a written request with supporting documentation to the board. The board may at its discretion, place the items on the agenda.

(4) The agenda may be amended at a regular meeting by a majority of the board present when it is deemed necessary and appropriate to do so.

Section 5. Chair. (1) The chair of the board shall preside at all meetings. In addition, the chair shall exercise such authority as designated by resolution of the board.

(2) In the chair's absence, the board shall delegate a member to preside over meetings. In addition, the board may from time to time delegate authority to other members of the board for the transaction of specific business.

JACK B. HALL, Chairman

APPROVED BY AGENCY: December 15, 1994

FILED WITH LRC: December 15, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 31, 1995, at 1 p.m. at the Health Services Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by January 26, 1995, five days prior to the hearing, of their intent to attend. 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack B. Hall, Chairman, Kentucky Health Policy Board, 3572 Iron Works Pike, Lexington, Kentucky 40511, (606) 281-1213.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack B. Hall

(1) Type and number of entities affected: This regulation only affects the Kentucky Health Policy Board. It regulates the conduct of meetings and the transaction of business of the board.

(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, this regulation only applies to the Kentucky Health Policy Board and is procedural in nature.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. None, see above.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: This regulation establishes the procedure for meetings, creating an agenda, notice of public meetings and the keeping of minutes.

(a) Direct and indirect costs or savings:

1. First year: $10,000 in postage and printing of public notice.

2. Continuing costs or savings: $10,000 per year for postage and printing.

3. Additional factors increasing or decreasing costs: Variation in postage rates would raise costs.

(b) Reporting and paperwork requirements: None, however, the regulation does establish the manner in which an agenda at a meeting is set.

(4) Assessment of anticipated effect on state and local revenues: None. This regulation will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget of the Commonwealth as established in House Bill 2.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The regulation establishes the meeting schedules for the Health Policy Board which has broad jurisdiction over health care matters in KRS Chapters 216, 216B, and 205.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative was available. KRS 216.2905(2)(t) mandates this regulation.

(8) Assessment of expected benefits: To provide the public adequate public notice of board meetings and business, and to provide for the accurate recording of minutes.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will allow the board to act on issues within its jurisdiction.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to enact a procedure regulation will delay the ability of the board to act to implement health care reform legislation.

(c) If detrimental effect would result, explain detrimental effect: Benefits will be to allow the Health Policy Board to function.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulation has been drafted in an effort to be consistent with the Kentucky Open Meetings Law:

(a) Necessity of proposed regulation if in conflict: See above.

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

(10) Any additional information or comments: The function of this regulation is to allow the Health Policy Board to meet and establish an agenda upon which to act. The regulation also provides for the manner in which matters may be placed upon the board's agenda for consideration. It also provides for public notice of meetings.

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation addresses board procedures for public meetings and tiering was inappropriate.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
## Minutes of the December 8, 1994 Meeting

The December meeting of the Administrative Regulation Review Subcommittee was held on Thursday, December 8, 1994, at 10 a.m. in Room 327 of the CapitoBuilding. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the November 10, 1994 meeting were approved.

**Present were:**

**Members:** Representative Tom Kerr, Chairman; Senators John David Preston, Nick Kafoglis; Representatives Woody Allen, Jim Bruce and Tommy Lee.

**LRC Staff:** O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines, Angie Watson.

**Guests:** Lori Flanery, Executive Branch Ethics Commission; George Russell, Board of Elections; Hanson Williams, Personnel Board; Mary Lassiter, Finance Cabinet; Bill Pettus, Physical Therapy Board; Lauren Schaaf, Donald K. Walker, Department of Fish and Wildlife Resources; Millie Ellis, Kenneth Hines, John E. Hornback, Natural Resources and Environmental Protection Cabinet; Jack B. Hall, Stephen W. Atwood, Petroleum Storage Tank Environmental Assurance Fund Commission; Sarah M. Jackson, Division of Charitable Gaming; Louis Smith, Brenda Priestley, Susan Alley, Jack Damron, Keith Hardison, Department of Corrections; Edward Sue Perkins, Department of Transportation; Kevin Noland, Clara DeMoss, Deborah Schumacher, Akeel Zaheer, Fran Salyers, Department of Education; Wesley Gearheart, David L. Johnson, Burl Scott, Department of Mines and Minerals; Judith G. Walden, Department of Housing, Buildings and Construction; Kay Kirkland, Ed Crews, Karen Doyle, Barbara Kibler, Vera Frazer, Ked Fitzpatrick, Cabinet for Human Resources; Steve Wilborn, Kentucky Petroleum Commission; John Brazel, Tony Sholar, Kentucky Chamber of Commerce; Caroline Johnson, Ed Garrett, Kentucky Speech-Language-Hearing Association; Bill Caylor, Kentucky Coal Association; Richard P. Johnson, Kentucky Enviromental Contractors and Consultants Association; Dave Blankenship, TECO Coal Corp.; Elizabeth Marshall, Kentucky School Boards Association; Roy Strange, Associated Industries of Kentucky; Paula Moore-Carson, GOPM; Tod Griffin, Kentucky Retail Federation; Ted Bradshaw, KOA; Bryan Armstrong, Kentucky Post; Charlie Vice, KEA; Keith Medley, Mark Muse, Gatliff Coal; Charles L. Barton, Interstate Coal Inc.; Rick Foley, KAUCF; Rob Moore, Kentucky-Tennessee Clay.

**The following administrative regulation, as amended, was found deficient by the Subcommittee:**

**Department of Mines and Minerals: Division of Mining**

805 KAR 5:060. Electrical mine safety standards. Bill K. Caylor, Kentucky Coal Association, stated that the Association objects to this administrative regulation for the following four reasons: (1) the administrative regulation: (a) adds to the existing workload of the department by creating new responsibilities; and (b) will require more budgetary dollars to implement; (2) the Department was not required by the Legislature to promulgate this administrative regulation, as in some cases it tracks the law and in other cases it exceeds the law; (3) it duplicates what is currently required by another federal agency, the Mine Safety and Health Administration; and (4) in light of only one electrical accident in the past four years, this administrative regulation is not justified from a safety standpoint, that is, it does not offer provisions which increase safety over the existing administrative regulation.

The Association offered the following specific comments: (1) if this administrative regulation is adopted, it should be separated in two parts: (a) one part would be for electrical standards for underground coal mines; and (b) the other for surface coal mines; (2) the requirements as set out in the regulation are confusing as presently written, since they apply equally to both surface and underground. It is difficult to determine whether the regulatory reference is for surface electrical installations or for underground electrical installations; (3) Section 1(7): (a) "Fail safe", should be amended as follows: "(7) "Fail safe" means designed and installed in a manner that will ensure proper operation of a device under normal [delete and abnormal] conditions."; and (b) No person can determine what conditions are under "abnormal" conditions; (4) Section 1(11) "Proper fitting", should be amended as follows, by deleting this subsection in its entirety or amending it. Because of the wide variation of environments between an underground "face area" and a surface shop building, the Association feels that this definition should also include language clarifying that the fitting be approved for the area where it is actually being used; (5) The Association objected to the language throughout this proposed regulation which states: "...approved by the department in accordance with this administrative regulation and with the applicable standards set out in the National Electrical Code or Parts 18, 75, or 77 of Title 30 of the Code of Federal Regulations ('CFR'), both of which are incorporated herein by reference."; The construction of this sentence is ambiguous. Does this sentence require approval by the Department and a choice of conformance with either the National Electrical Code or with Mine Safety and Health Administration (MSHA)? Or, does this sentence require the operator to choose between MSHA and the Department (with reference to the National Electrical Code)?; (6) Mine Safety and Health Administration (MSHA) currently regulates this area, such a "new" regulation will only create conflicts and ambiguities between the Department and MSHA, not to mention the added man-hours needed to review and issue such approvals; Will the Department require the many and various "approvals" to be through a written request by the operator? Whether it be written or oral, this will require much more time of employees of the Department; When an operator is regulated by both a state and federal agency over the same subject matter, it creates a very difficult situation for the operator. There are numerous conflicts or ambiguities between the two agencies, and invariably, the operator gets caught in the middle; (7) Section 1(17) "Suitable", should be amended as follows: (a) Delete "Suitable" means approved by the department. (b) The Association recommended deleting this subsection in its entirety as this definition is simply too vague and subjective; (8) Section 2(1), should be amended to read as follows: (a) "(1) All power circuits and electrical equipment shall be de energized before work is done on those circuits and equipment, except when necessary for troubleshooting or testing."; (b)Delete Energized troubleshooting or testing are subject to approval by the department as this language would require a call to the Department each time there were energized troubleshooting or testing; Troubleshooting, by its very nature is different each time it's done; There are also different physical conditions encountered during troubleshooting; Since there are no "normal conditions" for troubleshooting, this proposal would require the prior approval from the Department for all troubleshooting; This proposed language is simply not needed; (9) Section 2(8), is confusing as it states: "(8) Cables and wires shall enter compartments only through proper fittings and suitable strain protection shall be provided for all cables and wires."; (a) Does this mean telephone wires? The Department should clarify exactly what cables and wires it is referring to in this subsection; As written, it is too general and broad; (10) Section 2(10), as follows is confusing: (a) "(10) If equipment is moved under energized power lines and the clearance is less than ten (10) feet, the power lines shall be de energized or other precautions approved by the department shall be taken to ensure that equipment does not come in contact with energized power lines."; and (b) Are these uninsulated high voltage power lines

or simply single phase 220 volt insulated lines feeding an office trailer? Is the Department referring to power lines at surface or underground mines, or both? The Association also has concerns with the precautions recommended by the Department, that is, that inspectors be uniform in guarding requirements; (11) Section 2(16), The Association recommended deletion of this subsection, as the substance of this subsection is already covered under subsection (10), which restricts movement of equipment under high voltage lines; (a) As this subsection is presently written, simply moving equipment will result in a literal violation of this subsection; (b) for example, this subsection would preclude the driving of a piece of equipment with a 100-foot bloom under a 50-foot high power line unless the power line was de-energized; This is because the 100-foot boom could come within 10 feet of the power line--even though it obviously would not be engaged; (c) Does this subsection intend to apply only when the bloom or mast is being used, or when just the equipment is being used; and (d) the Association is sure that the Department didn't intend for this subsection to be interpreted this way, and it needs to rewrite this subsection; (12) Section 2(18), is confusing: (a) Is this subsection addressing an ohmic value of a ground field or is it a requirement for all parts of a system to physically connected by a wire or cable? The Association suggests amending this subsection to read as follows: "(18) Installations shall be made in a manner to ensure that there is [no] minimal difference of potential between earth, frames, casings, and enclosures of electrical equipment."; (13) Section 3(2)(a), the Association recommended deletion of this subsection; (a) Many times electrical circuits may have only one disconnect which simultaneously de-energizes several pieces of equipment. Companies should not have to get approval on the locations of disconnects; and (b) The Department may not be knowledgeable as to why disconnects are placed in certain locations (such as work station location, etc.); (14) Section 3(2)(g), is also confusing: What is meant by "unless otherwise specified?" What if you had a pump set but had to set the disconnecting device back in break where it wasn't in a direct line of sight? This is confusion as to when the department's specification is required; (15) Section 3(2)(h), the term "readily accessible" needs to be defined. This could be interpreted differently by different persons; (16) Section 4(3): (a) the Association recommended amending this subsection to read as follows: "(3) Each motor shall be provided with an individual controller unless the [department] manufacturer 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. If there is a change or update in the machinery this change or update shall be subject to approval by the department."; and (b) The manufacturer is the appropriate entity to make this determination. If there is a change or update in the machinery, then it would be appropriate for this to be approved by the department; (17) Section 5: (a) the Association recommended amending this subsection to read as follows: "(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."; (b) The Association: 1. stated that there is no "approved book." Reference to this should be deleted from this subsection; 2. also questioned the term "All" at the beginning of this subsection. Does this mean high, medium, or low voltage electrical equipment?; (18) Section 8(1)(c), requires a clarification of what is meant by "calibrated"; (19) Section 8(1)(e) calls for handling of energized trailing cables by persons wearing "approved gloves". There are **no** approved gloves other than gloves approved for high voltage; (20) Section 12(8)(e): (a) The Association recommended amending this subsection to read as follows: "(8) If required, grounding resistors shall: (e) Be tested [weekly] **monthly** for continuity and damage by a qualified electrical worker.; (b) Monthly is the current practice by MSHA. The Department should be required to justify why the current practice is insufficient. Federal regulations require only **monthly** testing. (See Section 75.800-3 and 75.800-4.); (21) Section 12(11)(a), the Association recommended amending this subsection to read as follows: "(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;". This is not needed. It is already a MSHA requirement; (22) Section 12 (11)(e): (a) the Association recommended amending this subsection to read as follows: "(11) The grounding electrode system shall: (e) Be tested at the time of installation and at intervals not to exceed [six (6)] **twelve (12)** months thereafter for resistance to earth and the test results recorded [in the electrical examination book approved by the department];"; and (b) It is now tested at "twelve" months as required by federal regulations. There is no current state requirements Ground fields are permanent by nature and there is no great variance due to movement. As they are by character out of the way of traffic, there is no chance for damage. Continuity would be tested monthly under subsection 8(e); (23) Section 13(2)(a): (a) The Association recommended amending this subsection to read as follows:

"(a) The under voltage device shall be fail safe **under normal operating conditions** and shall open the circuit breaker when the line voltage decreases to forty (40) percent of nominal or less;"; and (b) This change will clarify that nothing is fail safe and nobody can predict abnormal conditions; (24) Section 14(1): (a) The Association recommended amending this subsection to read as follows:"(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 (30) days."; (25) Section 15(1): (a) The Association recommended amending this subsection to read as follows: "(1) Prior to being moved, portable power centers and transformers shall be de energized 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 **unless in an emergency situation.**"; and (b) If the roof begins working or if you have a ruptured water line, then immediate action is needed to insure the safety of the miners or the equipment. The operator may not have the time to obtain prior permission from the Department; and (26) Section 18(2)(c), the Association recommended deleting language referring to the "approved book" as no such book exist.

Dave Blankenship, Safety Director, with a coal company, reiterated concerns relating to: (1) duplication of governmental regulation by both federal and state agencies; and (2) specific provisions of the administrative regulation which are ambiguous in nature and will present enforcement problems.

Department of Mines and Minerals representatives responded as follows: (1) that House Bill 526 while it addressed this subject matter, left some areas which needed further regulatory law; (2) safety is an issue, and there have been numerous electrical accidents over the past several years; (3) the Department: (a) has been developing the substance of this administrative regulation for over two years, and finds that it is very necessary to provide a regulatory framework which addresses safety for Kentucky's coal miners; (b) have employees with the technical expertise to implement the provisions of the regulation, therefore, the Department does not believe that additional funds will be necessary to implement the administrative regulation; (4) the Department is willing to work with industry to assist in implementation

of the new requirements of this regulation; and (5) methane monitors are already required on face equipment on all underground coal mines where coal is being cut, mined, or loaded; Therefore, this administrative regulation does not place a more onerous burden on operators.

Chairman Kerr expressed concerns that Section 18(1), which relates to methane monitors does not establish an identifiable standard and would therefore, violate KRS Chapter 13A.

In response to Senator Preston's inquiry, Mr. Caylor stressed that this administrative regulation both exceeds statutory authority and contains numerous standards which are ambiguous and vague in nature.

The Subcommittee approved a motion finding that this administrative regulation does not comply with KRS Chapter 13A.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Executive Branch Ethics Commission: Ethics Commission**

9 KAR 1:050 (& E). Approval of outside employment of a public servant. This administrative regulation was amended to correct a clerical error in Section 1(1).

**State Board of Elections: Forms and Procedures**

31 KAR 4:080. Preclearance counties. This administrative regulation was amended, in the RELATES TO and Sections 1 and 2, to comply with KRS 13A.222(4) drafting requirements.

**Personnel Board**

101 KAR 1:325. Probationary periods. This administrative regulation was amended in the STATUTORY AUTHORITY section to remove the reference to "KRS Chapter 13A".

**Petroleum Storage Tank Environmental Assurance Fund Commission**

415 KAR 1:060 & E. Financial responsibility account. Jack Hall and Steve Atwood appeared before the Subcommittee, representing the Petroleum Storage Tank Environmental Assurance Fund Commission. The Commission requested, and the Subcommittee approved, an amendment to Section 1(2)(f) relating to requirements for being issued a certificate of eligibility, to delete the citation of federal references and replace them with Kentucky administrative regulation cite references, specifically relating to having tanks in operation by a date specified and demonstrating financial responsibility as specified.

Representative Lee proposed an amendment which consisted of five parts: (1) Section 5(1)(a). Delete the present language and replace with the following: "(1) Report the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400. For the purpose of potential eligibility for participation in the financial responsibility account, in no event shall the report of the release be made to the cabinet more than seven (7) days after discovery;"

This amendment returns the language that was removed that requires that "in no event shall the report of the release be made to the Cabinet more than seven days after discovery." Representative Bruce moved to adopt the amendment. Jack Hall agreed and the amendment was adopted.

(2) Section 10(2)(b)(2). Delete the present language and replace with the following: "If a final determination is made by the Cabinet that the facility has failed to report a release as required by KRS 224.01-400, five (5) percent of their average adjusted gross income for the past five (5) years not to exceed $25,000;"

This concerns reporting a release. The present language requires only a referral; the amendment requires a final determination of a failure to report a release, to exact a monetary penalty. Representative Bruce moved to adopt the amendment. Jack Hall agreed and the amendment was adopted.

(3) Section 10(2)(b)(3). Delete the present language and replace with the following: "If a final determination is made by the Cabinet that the facility failed to comply with Cabinet direction for corrective action as required by 401 KAR 42:060, five (5) percent of their average adjusted gross income for the past five (5) years not to exceed $25,000."

This amendment requires a final determination rather than simply a referral for failure to comply, before exacting a monetary penalty. Representative Lee moved to adopt the amendment. Jack Hall agreed and the amendment was adopted.

(4) Section 10(3)(b)(2). Delete the present language and replace with the following: "If a final determination is made by the Cabinet that the facility has failed to report a release as required by KRS 224.01-400, ten (10) percent;"

Concerning failure to report a release, this amendment requires a final determination rather than simply a referral for failure to comply, before exacting a monetary penalty. Representative Lee moved to adopt the amendment. Jack Hall agreed and the amendment was adopted.

(5) Section 10(3)(b)3. Delete the present language and replace with the following: "If a final determination is made by the Cabinet that the facility failed to comply with Cabinet direction for corrective action as required by 401 KAR 42:060, ten (10) percent;"

This is the same type of amendment, concerning compliance, requiring a final determination rather than simply a referral for failure to comply, before exacting a monetary penalty. Representative Lee moved to adopt the amendment. Jack Hall agreed and the amendment was adopted.

Representative Lee moved for approval of the administrative regulation as amended. The motion passed. Representative Lee then thanked Jack Hall and his staff and Secretary Shepherd for the long hours they put in for the determination to change this administrative regulation.

**Department of Corrections: Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures. Jack Damron and Louis Smith, representing the Department, appeared before the Subcommittee. The agency requested a clarifying amendment to CPP 18.5, Custody and Security Guidelines, and proposed amendments to CPP 9.7 to correct various deficiencies pointed out in the initial staff review relating to various types of weapons and ammunition required or prohibited. Also, a definition of "electric disabler" was added.

501 KAR 6:030. Kentucky State Reformatory. An amendment was approved to KSR 15-01-02 relating to TV viewing requests and KSR 15-01-04 relating to the procedure to follow relating to requesting fire fighting assistance.

**Transportation Cabinet: Department of Highways: Right-of-way**

603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways. Sue Perkins, representing the Cabinet, appeared before the Subcommittee. The agency requested an amendment to this administrative regulation to add the TOD trailblazer sign system to the Tourist Oriented Directional Signs system. TOD trailblazer means a reduced sized TODS used in areas where the speed limit is posted with a limit of 45 mph or less to direct the traveling public to a tourist attraction. David Lovelace, representing the Tourism Cabinet, spoke in favor of the amendment. The motion was made to accept the amendment, which the Subcommittee then approved.

**Department of Housing, Buildings and Construction: Kentucky Building Code**

815 KAR 7:100. The Kentucky Building Code. Judith Walden, representing the Department, appeared before the Subcommittee. Section 1(1) was amended to delete the number "8" and insert in lieu

thereof "the number 13", to correctly specify those sections intended.

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

**Finance and Administration Cabinet: Underwriter and Bond Counsel Selection Process**

Subcommittee staff pointed out that: (1) there were issues raised by the initial staff review concerning this group of administrative regulations; (2) most of the comments relate to KRS 13A drafting requirements; (3) cabinet personnel agree with most of the suggested changes; (4) only ordinary administrative regulations can be amended by the cabinet; and (5) these administrative regulations are emergency only and therefore cannot be amended.

Senator Preston stated that: (1) the initial staff review indicates that some of these administrative regulations did not comply with statutory authority; (2) the administrative regulations have not been amended; and (3) therefore still fail to comply with statutory authority.

Representative Bruce pointed out that: (1) he had no objection to the administrative regulations at this time since they were emergency administrative regulations only; and (2) any problems with the administrative regulations could be corrected when the ordinary administraitve regulations come before the subcommittee.

In response to questions from Representative Kerr and Representative Bruce, Cabinet personnel responded that: (1) in the 1994 General Assembly, HB 299 was adopted; (2) these administrative regulations relate to HB 299 which provides for a competitive bidding process for bond counsel rates; (3) this administrative regulation applies to counsel for the underwriter; (4) state government plays no role in selecting the firm the underwriter uses; (5) the Office of Financial Management does set a rate for reimbursement of counsel for the underwriter; (6) underwriter's counsel will be paid 55% of the bond counsel rate.

In response to questions from Senator Preston, Cabinet personnel responded that: (1) preference is given for in state bond counsel firms; (2) there are situations where two in state law firms present equal bids for the bond counsel; (3) this administrative regulation seeks to resolve the conflict between the two in state firms; (4) there are also instances where out-of-state firms bid on bond counsel work; (5) the preference given for in state firms does not violate the commerce clause of the constitution because the preference is the same as would be given to the out-of-state firm if that firm was bidding in it's home state; (6) the administrative regulation provides that once a year every state's debt management office is contacted to determine what preference is given for in state law firms; (7) this preference is then used to determine the preference Kentucky firms are given when competing with that state's firms in Kentucky.

200 KAR 21:010E. Procedure for prequalification of underwriters and bond counsel.

200 KAR 21:020E. Evaluation factors for bond counsel, managing underwriter(s), and financial advisors.

200 KAR 21:030E. Preference for Kentucky bond counsel firms for state bond issues.

200 KAR 21:040E. Selection of national comanaging underwriters.

200 KAR 21:050E. Establishment of rates to reimburse underwriter's for counsel.

200 KAR 21:060E. Procedure for resolving ties between underwriters and bond counsel rankings during selection process.

**Board of Physical Therapy**

201 KAR 22:052. Refusal, revocation, suspending, or probation of license or certification; administrative warning to licensee or certificant.

**Tourism Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 2:260 (& E). Crow hunting season.

**Department for Environmental Protection: Air Quality - General Administrative Procedures**

401 KAR 50:038E. Air emissions fee.

**Petroleum Storage Tank Environmental Assurance Fund Commission**

415 KAR 1:050 & E. Definitions.

415 KAR 1:070 & E. Petroleum storage tank account.

415 KAR 1:080 & E. Claims procedures.

415 KAR 1:090 & E. Ranking system. Jack Hall and Steve Atwood appeared before the Subcommittee, representing the Petroleum Storage Tank Environmental Assurance Fund Commission. Chairman Kerr asked staff to comment on questions raised. It was pointed out that several changes had been made by the agency, but that there were three questions relating to a possible conflict about the administrative regulation, and HB 2 (the Budget Bill).

One question relates to the distinction in the administrative regulation about the different types of governmental entities that own petroleum storage tanks, H.B. 2 didn't address that.

The second question is that in H.B. 2 there is a "floor date" for inclusion of tanks (tanks purchased as of a specified beginning date). The administrative regulation only mentions "tanks purchased prior to a specified date.

The third question is that H.B.2 requires eligibility to be conditioned on the owner not having assets in excess of one million dollars $1,000,000. The administrative regulation doesn't require this or refer to it.

Mr. Hall first replied to the second and third questions. He said they tried to address H.B.2 in that the controls they put in concerning the tanks is more open to people getting in than what H.B.2 called for.

He said, concerning the $1,000,000 tangible assets, that they did not include that, but went back to their old language. He said the statute stated originally that they had to take into account the financial ability and the environmental impact and they felt like the only way they had a checks and balances was to deal with the average adjusted income. He stated that using this, they had the federal government at least checking on this. He said they weren't trying to avoid H.B 2 but, in reality didn't feel like that language was workable.

Steve Atwood, Counsel for the agency, addressing the first question, stated that the distinction between governmental entities was, he thought, based on the fact that local governments (cities and counties) don't have the financial resources to generate revenue that the executive branch has.

Chairman Kerr stated that there is some question as to statutory authority, and concerning the funds, he said that what he understood the agency was saying was that they didn't have the funds to go out and audit people to see if they have a million dollars ($1,000,000). Chairman Kerr asked if the agency inquires about this. Mr. Hall said that it was not a part of their regulations for people to furnish information about net worth or tangible assets. Chairman Kerr stated that it seemed to him that it would not be a burden for the agency to ask. Mr. Hall responded that with a potential of 28,000 of these, he didn't know. He said they had difficulty getting five years of tax returns from them.

Chairman Kerr said that since the statute requires it, it seems like it ought to be done. Mr. Hall stated he didn't think the statute required it, that it was a note on the budget.

It was pointed out that LRC v. Brown said that the budget was a bill and it must pass like a bill. Chairman Kerr said he thought the agency should look at it. Mr. Hall said they had looked at it, and how to have some way of knowing they were getting accurate information.

Chairman Kerr asked if they were asking if people had $1,000,000 in tangible assets. Mr. Hall said "No their matrix was set up on adjusted gross over a five year period."

Chairman Kerr stated that another committee may want to look at that in the future because "I think the legislature's intent was that that be a consideration, one of the criteria, and I don't think the

Commission can completely ignore that." He added that he knew they may not have the resources to audit everyone that applies. Mr. Hall said it wasn't just an auditing question, and added "all we're going to get is people to say they've got below that, without some ability to go out and check, and with the income tax we know what their net is." Mr. Hall said they would look at it again, adding that he thought what they have accomplishes the same thing, only they don't have an upper limit.

Mr. Hall added that those with under 50,000 get in quicker, 50-100,000 second, over 100,000 third. He said he thinks they accomplish the same mission except there is not an absolute cap on it.

Chairman Kerr reiterated that the Subcommittee may want to look at that in the future because it is his thinking that the legislature's intent was that there be a cap on it.

415 KAR 1:100 & E. Third party claims.

415 KAR 1:120 & E. Hearings.

**Justice Cabinet: Charitable Gaming**

500 KAR 11:010 (& E). Temporary licensure.

500 KAR 11:015E. Permanent licensure.

500 KAR 11:020 (& E). Conduct of hearings.

500 KAR 11:025E. Quarterly reports.

**Department of Corrections: Office of the Secretary**

501 KAR 6:120. Blackburn Correctional Complex.

**Department of Education: Office of Instruction**

704 KAR 3:455 & E. Instructional material and textbook adoption process. A detailed summary of the testimony concerning this administrative regulation can be found in the November 1994, Administrative Regulation Review Subcommittee Report to the Legislative Research Commission.

Kevin Noland, Kentucky Department of Education, Associate Commissioner, Office of Legal Services, testified that: (1) this administrative regulation deals with a number of topics such as: (a) the State Textbook Commission; (b) adoption lists; (c) distribution of state funds to districts for purchase of textbooks; (2) a similar administrative regulation was brought before the Subcommittee, approximately two years ago, and found to be deficient, as the Subcommittee determined that the restriction placed on local board of education was not in compliance with the statute. The objectionable provision has been deleted in the present administrative regulation.

At the request of the Subcommittee, Mr. Noland explained that Libby Marshall, Director of Governmental Relations, Kentucky School Boards Association has meet with the State Board to express her concerns. She described to the State Board the Association's concern as follows: "whether the local board's scope and review authority is limited to a determination as to whether the local school council's plan is affordable, or does it also include oversight of the selection of textbook materials; (1) two conflicting statutes appear to raise a question relating to the scope of local school board's review as follows: (a) KRS 156.439 provides an appeal mechanism to the Commissioner of Education, if a school board and school council cannot agree, and the local board has not approved the school council plan on selection and purchase of textbooks and instructional materials; and (b) the School based decision making statute, KRS 160.345(2)(g), provides that the school council shall select and determine textbooks and instructional materials; (2) absent a clear Legislative directive on the scope of review, the existing statutes have been in effect for four years, and the Department has not received one appeal to the Commissioner; (3) at the State Board's meeting in which this administrative regulation was approved, and the most recent meeting in which Ms. Marshall attended, the Department staff did not take a position on the issue, and has chosen not to at this time as this is a legal issue which is premature for the Department to decide when: (a) no appeals have previously been made to the Commissioner in the past four years; and (b) the 1996 General Assembly will likely take up this issue again.

In response to Representative Bruce's inquiry concerning objectionable local library textbooks, Mr. Noland explained that: (1) this administrative regulation deals only with school textbooks and instructional materials; and (2) it is usually best to first take such concerns to the local school council which will attempt to deal with these types of books at the particular school; If that is unsuccessful, then the concerns should be voiced to the local board of education.

Ms. Marshall stated that: (1) the Association; (a) appreciates the Subcommittee's action at its November meeting which permitted an opportunity for the Association to express their concerns before the State Board; (b) is at an impasse with the State Board, as the board believes that the local board of education has virtually no oversight on any issues related to curriculum, textbooks and instructional materials; (2) the local board of education holds accountability under the law for all the academic issues, such as school performance, while the school council has no accountability under law; and (3) the Association will encourage the General Assembly to address this issue in the 1996 General Session.

Representative Bruce and Chairman Kerr expressed concerns relating to the conflicting statutes and assured Ms. Marshall that the General Assembly would likely address the conflicting statutes in the 1996 Session.

In response to Chairman Kerr's question, Mr. Noland stated that any parent having concerns with textbooks which they find objectionable, must understand that the statute requires that any textbooks selected by a local district for use, are first approved by the State Textbook Commission from an approved adoption list.

Ms. Marshall summarized by stating: (1) because the administrative regulation makes no reference, nor incorporates the State Board's position relating to local board's oversight authority, the Association is: (a) assuming that it can direct local boards to review a textbook plan; and (b) operating under what it believes to be the black letter of the law; and (2) if a local board then faces a legal challenge for assuming such authority or oversight, it will then have to await the State Board's determination about what a local board's role is to be.

**Education Professional Standards Board**

704 KAR 20:084. Interdisciplinary early childhood education, birth to primary.

**Department for Housing, Buildings and Construction: Elevator Safety**

815 KAR 4:010. Annual inspection of passenger elevators.

**Plumbing**

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

815 KAR 20:050. Installation permits.

815 KAR 20:070. Plumbing fixtures.

**Cabinet for Human Resources: Department for Health Services: Controlled Substances**

902 KAR 55:040. Excluded over the counter products.

902 KAR 55:045. Exempt prescription products.

902 KAR 55:090. Exempt anabolic steroid products.

**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:**

**Auditor of Public Accounts: Audits**

45 KAR 1:080. Standards for Title VI reporting.

**Board of Medical Licensure**
201 KAR 9:005. Ethical conduct.

**Natural Resources and Environmental Protection cabinet: Department for Surface Mining and Reclamation and Enforcement: Surface Effects of Noncoal Mining**
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.
**General Provisions**
405 KAR 7:095. Assessment of civil penalties.
**Performance Standards for Surface Mining Activities**
405 KAR 16:200. Revegetation.
**Performance Standards for Underground Mining Activities**
405 KAR 18:200. Revegetation.

**Cabinet for Human Resources: Department for Health Services: Emergency Medical Services**
902 KAR 14:030E. License procedures and fee schedule for ambulance service providers.
902 KAR 14:040E. Ground ambulance service providers and patient emergency medical services.
902 KAR 14:050E. Air ambulance providers.
**Department for Social Services: Children's Residential Services**
905 KAR 7:240 & E. Kentucky Educational Collaborative for State Agency Children.
**Department for Medicaid Services**
907 KAR 1:009E. Physicians' services.
907 KAR 1:010E. Payments for physicians' services.

## OTHER BUSINESS

**Cabinet for Human Resources: Department for Medicaid Services**
907 KAR 1:023. Review and approval of oxygen and selected therapies in nursing facilities. Representatives of the Kentucky Speech-Language-Hearing Association, Lisa Feltner and Ed Garrett, Third Party Reimbursement Issues Committee, Carolyn Johnson, Director of Governmental Affair, Rebecca S. Goss, President, submitted the following oral and written comments: (1) at the August 10, 1994, Subcommittee meeting, the Association presented testimony to address deficiencies in gaining review and approval of oxygen and selected therapies in nursing facilities, specifically speech-language therapy and audiological services; (2) As requested by the Subcommittee, the Association is responding with specific documentation of deficiencies in the implementation of this regulation, as the problems with this regulation are directly affecting the quality and efficiency of care to those with communication disorders; (3) Certification for evaluations are done by Peer Review Nurses instead of a more efficient system of peer review. (a) Some evaluations were approved for only one day, when it may take 2-3 sessions to gain reliable data due to patients' medical status and alertness; (b) At one facility a PR requested that a tube feeding dysphasia evaluation be completed in one day in order to prevent his/her return to the facility for certification; (4) Therapists at facilities have not been informed of visits form PR so that they may be available for patient advocacy; (5) Certifications have not been completed with the five day period as stated in the guidelines. For instance: At Parkway Medical Center, Louisville, two denials were received June 4, 1994, following notification to Medicaid of orders received fourteen days previously in one case and seven days previously in the other case. (Patients A and B); (6) Some denials have been based on nursing notes and not the documentation of those providing the ancillary services. Denials have been made with a physician's referral and supportive documentation intact. (a) Also, at Parkway Medical Center, Louisville, Patient A's speech therapy was denied on the grounds that Medicaid guidelines for coverage were not met. However, support documentation contradicts this assertion. The patient suffered a medical status change and had a clearly documented decline in speech intelligibility; had a report from an outside nursing consultation indicating that medical complications may have been the result of his inability to communicate changes in his medical condition to the staff; was able to cognitively participate in therapy and by the time of the review (14 days after notification was sent to Medicaid) the patient had shown good improvement. All of this information was provided in a reconsideration appeal and the claim was still denied. A request for a face to face hearing was made and after more than three months, there still has been no response to the request; (b) Also, at Parkway, patient B's swallowing therapy was denied on the grounds that a) a CNA told the reviewer the patient was not a good therapy patient and, b) was at risk for aspiration in the reviewer's opinion. Obviously, a CNA should not be considered a reliable judge of rehab potential. Also, the patient had received a comprehensive swallowing evaluation, including a dye test to assess for tracheal aspiration which indicated that under controlled circumstances (as under the care of a speech-language pathologist) the patient did not aspirate. Denying therapy due to risk of aspiration seems a bit contradictory since the purpose of therapy is to prevent that from happening. A reconsideration was made and the reviewer, Ms. Robinson, stated that the reasons were as stated above as well as "to stagger treatment would be best." She could not say whose best interests would be served by this "staggering" process where only one type of therapy would occur at a time. A request for a face to face hearing has not been honored with a response yet, after three months; (7) In October, 1994, a denial was received at the Good Samaritan Center, Louisville, on Patient C. The reviewer denied swallowing therapy "because the patient is not aspirating." This would appear to be somewhat inconsistent with the previous case. In either case, swallowing therapy is often needed to prevent malnutrition in the presence of oral motor dysfunction, even in the absence of aspiration risk. This, and the previous case demonstrate how grossly unaware of rehabilitation those reviewers are; (8) Audiological and aural rehabilitation services have been denied thus excluding those with varying degrees of hearing loss from receiving much need assistance to restore or enhance hearing acuity; (9) Also, patients have been denied services based on age and diagnosis; (10) Patients with dementia, OBS diagnosis have been denied. One specific example was as follows: At Lyndon Lane Nursing Center, Louisville, the reviewers have developed a pattern of denying therapy with patients who exhibit cognitive impairments on the grounds that it is "a nursing level of care issue." However, the referrals come from nurses who were at a loss as how to handle these residents and their special needs. Speech-Language Pathology services were designed to train the staff to deal with the special communication needs of these residents. Obviously, the nurses feel ill-equipped to deal with these residents and needed the services of a speech-language pathologist to design a functional maintenance program; (11) All these examples illustrate the gross negligence

occurring with this current regulation. Patients in need of speech therapy services were clearly and unjustifiably denied payment; and (12) the Association respectfully request that these episodes be taken into account as the legislature decides what changes need to be made.

Vera Frazier, representing the Cabinet for Human Resources, Department for Medicaid Services, submitted a report entitled: "Report for the Administrative Regulation Review Subcommittee concerning PRO Review of Oxygen and Therapies in Nursing Facilities".

Ms. Frazier explained that: (1) the Department: (a) has implemented the requirements of 907 KAR 1:023; and (b) is surprised to hear some of the complaints voiced by Mr. Garrett, as none of these concerns have been brought to the attention of, or reported to, the Department for Medicaid Services; Medicaid has been under the impression that the present system is working well; (c) in the past has had some indications that the reviews were not always conducted within the required time frame (which is five (5) working days from the notification by the nursing facility of the physician orders), but were told that those situations had been resolved; (2) the review agency has hired four additional review staff, who will join the current forty-seven (47) on-site reviewers; (3) the Department knows of no plans to implement a thirty (30) day review cycle, instead the five (5) day review time continues to be the standard; (4) Medicaid does not presently have a system in place for editing claims submitted for nursing facility services for payment against the approvals by the review agency for these ancillary services; Such a system is being developed to address these concerns, which will retrospectively go back an examine such claims that nursing facilities have billed Medicaid for even though the review agency has denied the service for ancillary billing; Action will be taken against a nursing facility found to be billing in such cases; (5) two reports have been included which reflect the: (a) monthly review activity by the review agency for these services (which includes: 1. number of reviews; 2. number of denials; 3. percentage of denials; 4. number of request for reconsideration; and 5. number of reconsiderations upheld and those overturned; and (b) monthly payments for oxygen and therapy services in nursing facilities from a period of four months in 1993 and 1994; The savings to date is $1,073,963.94. This falls short of what the projected savings would be, but it is still too early to know what the long-term effect will be.

Dr. Barbara Freeman, representing the Health Review Corporation, which is the Medicaid PRO, testified: (1) that until today the PRO has been completely unaware of any problems with meeting the five (5) day review requirement; The PRO has not been notified that it in any way has been negligent. Mr. Foley, representative from the Health Care Facility Association, has indicated that he has had no complaints from the facilities; To her knowledge, she explained, that Medicaid has likewise not received any complaints regarding timeliness in the review of claims; (2) at the past Subcommittee meeting the PRO was requested to meet with representatives of the Association of Respiratory Therapists for the State of Kentucky to take a look at their additional parameters; Correspondence has been sent by the PRO to this association, however, the newly elected association president was not available to go over the therapy with PRO officials; (3) the PRO has not received, to date, any request from representatives of the Kentucky Speech-Language-Hearing Association to go over the administrative regulation and its requirement, however, the PRO would be available to do so; and (4) the request for reconsideration of the PRO's denial determinations continue not to bear out significant concern by any of the therapy groups; The PRO has performed a total of 24,941 reviews since May 1st, 1994; To date the PRO has only had request for reconsideration of such determinations on 313 cases. This alone points to the success of the review process.

Chairman Kerr: (1) encouraged the PRO to meet with interested persons concerning improvements to the review process and continue the dialog; (2) asked association representatives to report to Subcommittee staff of any remaining concerns which have not been addressed by the PRO or Medicaid.

**The Subcommittee adjourned at 12:30 p.m. until January 9, 1995 at 10 a.m. in Room 131 of the State Capitol.**

## 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 November 17, 1994**

The following administrative regulations were available for consideration by the Interim Joint Committee on State Government during its meeting of November 17, 1994, having been referred to the Committee on November 11, 1994, pursuant to KRS 13A.290(6); 9 KAR 1:050E; 40 KAR 2:220 & E.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: 40 KAR 2:220 & E. The amendments are as follows: (1) Amend the last line of Section 2(4)(a) to change "license" to "permit"; (2) Amend the last line of Section 2(4)(b) to change "license" to "permit".

### INTERIM JOINT COMMITTEE ON EDUCATION
**Meeting of December 1, 1994**

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of December 1, 1994, having been referred to the Committee on November 11, 1994, pursuant to KRS 13A.290(6): 702 KAR 3:270 and 703 KAR 4:060.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None.

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum: None.

The following administrative regulations were deferred pursuant to KRS 13A.300: None.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 1, 1994, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

### INTERIM JOINT COMMITTEE ON TRANSPORTATION
**Meeting of December 6, 1994**

The following administrative regulations were considered by the Interim Joint committee on Transportation, Tuesday, December 6, 1994, having been referred to the Committee by the Legislative Research Commission, pursuant to KRS 13A.290(6):

502 KAR 10:035E - Commercial driver's license skills testing which the committee moved to take no action.

601 KAR 1:025 - Transporting hazardous materials by air or highway was passed by the Committee with a favorable recommendation.

### INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
**Meeting of December 14, 1994**

The following administrative regulations were available for consideration by the Interim Joint Committee on State Government during its meeting of December 14, 1994, having been referred to the Committee on December 9, 1994, pursuant to KRS 13A.290(6):

9 KAR 1:050, 101 KAR 1:325, 200 KAR 21:010E, 200 KAR 21:020E, 200 KAR 21:030E, 200 KAR 21:040E, 200 KAR 21:050E, 200 KAR 21:060E.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None.

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 14, 1994 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

# CUMULATIVE SUPPLEMENT

**Locator Index - Effective Dates** ..... G2

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** ..... G12

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** ..... G24

The Subject Index is a general index of regulations published in VOLUME 21 of the Administrative Register, and is mainly broken down by agency.

## LOCATOR INDEX - EFFECTIVE DATES

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# VOLUME 20

**EMERGENCY REGULATIONS:** (Note: Emergency regulations expire 170 days from publication or upon replacement or repeal, whichever occurs first)

| | | |
|---|---|---|
| 12 KAR 1:115E | 3166 | 5-13-94 |
| Replaced | 3322 | 8-24-94 |
| 12 KAR 1:120E | 3166 | 5-13-94 |
| Replaced | 3323 | 8-24-94 |
| 12 KAR 1:125E | 3166 | 5-13-94 |
| Replaced | 3324 | 8-24-94 |
| 12 KAR 1:130E | 3167 | 5-13-94 |
| Replaced | 3324 | 8-24-94 |
| 12 KAR 1:135E | 3167 | 5-13-94 |
| Replaced | 3325 | 8-24-94 |
| 12 KAR 1:140E | 3168 | 5-13-94 |
| Replaced | 3326 | 8-24-94 |
| 12 KAR 1:145E | 3169 | 5-13-94 |
| Replaced | 3327 | 8-24-94 |
| 12 KAR 1:150E | 3169 | 5-13-94 |
| Replaced | 3328 | 8-24-94 |
| 12 KAR 1:155E | 3170 | 5-13-94 |
| Replaced | 3329 | 8-24-94 |
| 12 KAR 1:160E | 3170 | 5-13-94 |
| Replaced | 3330 | 8-24-94 |
| 12 KAR 1:165E | 3171 | 5-13-94 |
| Replaced | 3331 | 8-24-94 |
| 12 KAR 1:170E | 3171 | 5-13-94 |
| Replaced | 3332 | 8-24-94 |
| 12 KAR 1:175E | 3173 | 5-13-94 |
| Replaced | 3334 | 8-24-94 |
| 12 KAR 6:010E | 3174 | 5-13-94 |
| Replaced | 3335 | 8-24-94 |
| 12 KAR 6:015E | 3174 | 5-13-94 |
| Replaced | 3336 | 8-24-94 |
| 12 KAR 6:020E | 3175 | 5-13-94 |
| Replaced | 3337 | 8-24-94 |
| 12 KAR 6:025E | 3175 | 5-13-94 |
| Replaced | 3338 | 8-24-94 |
| 401 KAR 42:060E | 2530 | 2-15-94 |
| 401 KAR 42:070E | 2530 | 2-15-94 |
| 401 KAR 42:080E | 2531 | 2-15-94 |
| 907 KAR 1:023E | 3185 | 4-29-94 |
| Replaced | 3395 | 8-17-94 |

**ORDINARY REGULATIONS:**

| | | |
|---|---|---|
| 12 KAR 1:111 | 3322 | 8-24-94 |
| 12 KAR 1:115 | 3322 | 8-24-94 |
| 12 KAR 1:120 | 3323 | 8-24-94 |
| 12 KAR 1:125 | 3324 | 8-24-94 |
| 12 KAR 1:130 | 3324 | 8-24-94 |
| 12 KAR 1:135 | 3325 | 8-24-94 |
| 12 KAR 1:140 | 3326 | 8-24-94 |
| 12 KAR 1:145 | 3327 | 8-24-94 |
| 12 KAR 1:150 | 3328 | 8-24-94 |
| 12 KAR 1:155 | 3329 | 8-24-94 |
| 12 KAR 1:160 | 3330 | 8-24-94 |
| 12 KAR 1:165 | 3331 | 8-24-94 |
| 12 KAR 1:170 | 3332 | 8-24-94 |
| 12 KAR 1:175 | 3334 | 8-24-94 |
| 12 KAR 6:010 | 3335 | 8-24-94 |
| 12 KAR 6:015 | 3336 | 8-24-94 |
| 12 KAR 6:020 | 3337 | 8-24-94 |
| 12 KAR 6:025 | 3338 | 8-24-94 |
| 30 KAR 3:010 | 3339 | (See Volume 21) |
| 30 KAR 3:020 | 3340 | (See Volume 21) |
| 103 KAR 18:120 | | |
| Amended | 2879 | (See Volume 21) |
| 201 KAR 1:081 | 3343 | (See Volume 21) |
| 301 KAR 1:085 | | |
| Amended | 3223 | (See Volume 21) |
| 401 KAR 5:001 | 3348 | (See Volume 21) |
| 401 KAR 5:037 | 3128 | (See Volume 21) |
| 401 KAR 5:050 | | |
| Amended | 3228 | (See Volume 21) |
| 401 KAR 5:055 | | |
| Amended | 3231 | (See Volume 21) |
| 401 KAR 5:057 | 3358 | (See Volume 21) |
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| Amended | 3246 | (See Volume 21) |
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| Amended | 3272 | (See Volume 21) |
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| 401 KAR 5:075 | | |
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| 405 KAR 7:080 | | |
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| 603 KAR 4:035 | | |
| Amended | 3104 | (See Volume 21) |
| 702 KAR 3:270 | 3378 | (See Volume 21) |
| 704 KAR 3:401 | 3382 | (See Volume 21) |
| 704 KAR 3:406 | 3384 | (See Volume 21) |
| 705 KAR 4:231 | 3391 | (See Volume 21) |
| 803 KAR 1:085 | | |
| Amended | 3110 | (See Volume 21) |
| 815 KAR 45:025 | 3155 | (See Volume 21) |
| 900 KAR 1:070 | 2941 | |
| Amended | 3203 | (See Volume 21) |
| 904 KAR 3:041 | 3392 | (See Volume 21) |
| 907 KAR 1:013 | | |
| Amended | 2740 | (See Volume 21) |

## LOCATOR INDEX - EFFECTIVE DATES

## VOLUME 21

**EMERGENCY REGULATIONS:** (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

| Regulation Number | 21 Ky.R Page No. | Effective Date |
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| 9 KAR 1:050E | 879 | 8-15-94 |
| 31 KAR 4:090E | 1448 | 10-17-94 |
| 32 KAR 1:100E | 242 | 7-14-94 |
| Replaced | 687 | 10-10-94 |
| 40 KAR 2:061E | 242 | 7-14-94 |
| Replaced | 1283 | 10-12-94 |
| 40 KAR 2:070E | 243 | 7-14-94 |
| Replaced | 1283 | 10-12-94 |
| 40 KAR 2:080E | 243 | 7-14-94 |
| Replaced | 1284 | 10-12-94 |
| 40 KAR 2:090E | 245 | 7-14-94 |
| Replaced | 1285 | 10-12-94 |
| 40 KAR 2:100E | 246 | 7-14-94 |
| Replaced | 1286 | 10-12-94 |
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| 40 KAR 2:220E | 252 | 7-14-94 |
| Replaced | 1720 | 11-17-94 |
| 40 KAR 2:230E | 253 | 7-14-94 |
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| Replaced | 465 | 9-14-94 |
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| Replaced | 470 | 9-14-94 |
| 101 KAR 4:010E | 1696 | 12-13-94 |
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| Replaced | 710 | 9-14-94 |
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| 200 KAR 21:050E | 1256 | 9-29-94 |
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| 301 KAR 2:044E | 995 | 8-15-94 |
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| 301 KAR 2:222E | 1451 | 11-11-94 |
| 301 KAR 2:223E | 1454 | 11-15-94 |
| 301 KAR 2:224E | 1456 | 11-11-94 |
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