ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on February 1, 1995, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 1831-1833 of this Administrative Register.

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - February 1, 1995, 10 a.m.
Room149, Capitol Annex

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

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Department for Environmental Protection

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401 KAR 57:045. National emission standard for inorganic arsenic emissions for glass manufacturing plant. (Not Amended After Hearing)

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401 KAR 57:055. National emission standard for inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities. (Not Amended After Hearing)

401 KAR 57:130. National emission standard for benzene emissions from coke by-product recovery plants. (Not Amended After Hearing)

401 KAR 57:270. National emission standard for benzene emissions from benzene storage vessels. (Not Amended After Hearing)

401 KAR 57:300. National emission standard for benzene emissions from benzene transfer operations. (Not Amended After Hearing)

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Department for Social Services

Children's Residential Services

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Department for Medicaid Services

Medicaid Services

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Department for Mental Health And Mental Retardation Services

Mental Health

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Kentucky Health Policy Board

Administration

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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

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

DEPARTMENT OF STATE
Registry of Election Finance

Date: December 15, 1994
Department of State
Registry of Election Finance

(1) Adoption of public finance manual and forms - **32 KAR 1:130.**

(2) The Kentucky Registry of Election Finance 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 February 28, 1995, at 9:30 a.m., at 140 Walnut Street, 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 February 28, 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: 140 Walnut Street, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Registry of Election Finance 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 adoption of the Public Finance Handbook and forms is KRS 121A.020(7) and 121.120(4).

(b) The administrative regulation that the Registry of Election Finance intends to promulgate will not amend an existing regulation. It will replace 32 KAR 1:110E which adopted form KREF 94-016/G (Public Finance Handbook) and the forms contained therein.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 121A.020(7) requires the Registry of Election Finance to "adopt official forms and perform other duties necessary to implement the provisions of this chapter" because slates of candidates for Governor and Lieutenant Governor have begun to file for the 1995 gubernatorial campaign, it is necessary to promulgate this administrative regulation to adopt the Public Finance Handbook (KREF 94-016/G) and other forms contained therein for use by slates of candidates for Governor and Lieutenant Governor.

(d) The benefits expected from this administrative regulation are: This administrative regulation will provide a guide and forms needed by slates of candidates for Governor and Lieutenant Governor under the new Public Financing Campaign Act.

(e) The administrative regulation will be implemented as follows: The handbook and forms will be distributed to all slates of candidates for Governor and Lieutenant Governor and other interested parties.

Date: December 15, 1994
Department of State
Registry of Election Finance

(1) Disposition of cash contributions received by slates of candidates for Governor and Lieutenant Governor - **32 KAR 1:140.**

(2) The Kentucky Registry of Election Finance 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 February 28, 1995, at 9:30 a.m., at 140 Walnut Street, 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 February 28, 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: 140 Walnut Street, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Registry of Election Finance 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 disposition of cash contributions received by a slate of candidates for Governor and Lieutenant Governor is KRS 121A.020(7).

(b) The administrative regulation that the Registry of Election Finance intends to promulgate will not amend an existing regulation. It will replace 32 KAR 1:140E.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 121A.050(3) strictly forbids cash contributions to slates of candidates for Governor and Lieutenant Governor. However, situations may arise in which a person who is unaware of this prohibition makes a cash contribution, either anonymously or overtly. It is therefore necessary to promulgate this administrative regulation to advise slates as to the manner in which they should proceed if cash is received.

(d) The benefits expected from this administrative regulation are: This administrative regulation will provide slates of candidates for Governor and Lieutenant Governor a means of disposing of unsolicited cash contributions.

(e) The administrative regulation will be implemented as follows: The registry will name a staff member who will be responsible for forwarding all cash received from slates to the State Treasurer for deposit in the Election Campaign Fund.

KENTUCKY REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research

Date: January 13, 1995
Kentucky Revenue Cabinet
Office of General Counsel
Division of Tax Policy and Research

(1) The subject of the proposed administrative regulation: **103 KAR 16:190**, The unitary (combined) method of reporting for corporation income tax purposes.

(2) The Kentucky Revenue Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m. on February 27, 1995, at the Capitol Annex, Room 131, 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 public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to February 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing or submit written comments should mail their correspondence to the following address: Jennifer C. Hays, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy and Research, 200 Fair Oaks Lane, Frankfort, Kentucky 40620.

(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 Revenue Cabinet 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 unitary (combined) reporting method is KRS 131.130(1), 141.050(4), and 141.120 as interpreted by the Kentucky Supreme Court in the cases styled: Dept. of Revenue v. Early & Daniel Co., Inc., Ky. 628 S.W.2d 630 (1982), Armco, Inc. v. Revenue Cabinet KY., 748 S.W.2d 372 (1988), and GTE and Subsidiaries v. Revenue Cabinet, Commonwealth of Kentucky, 94-SC-168-DG (Dec. 22, 1994).

(b) The administrative regulation that the Kentucky Revenue Cabinet intends to promulgate will not amend an existing administrative regulation. It will provide the following guidance when using the unitary (combined) reporting method:

1. A definition of which corporations will be required to file a Kentucky corporation income tax return using the unitary (combined) reporting method;
2. An explanation of how the unitary group shall report Kentucky taxable net income when required to use the unitary (combined) reporting method; and
3. A statement regarding the taxable years for which the unitary group will be required to file its Kentucky corporation income tax return using the unitary (combined) reporting method.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed administrative regulation is necessary for clarification of the methods available under KRS 141.120 for apportioning and allocating income to Kentucky in light of the Kentucky Supreme Court's interpretations of that statute. It will also serve to facilitate the filings of corporate income tax returns.

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

1. Improved taxpayer education;
2. Fewer mistakes by the taxpayer on returns filed using the unitary (combined) reporting method; and
3. Fewer adjustments by the Kentucky Revenue Cabinet to the corporation income tax returns filed using the unitary (combined) reporting method.

(e) The administrative regulation will be implemented as follows: Corporations will be instructed concerning the tests used to determine the composition of a unitary group, how to report taxable income for the unitary group after established, and for which taxable years the unitary (combined) reporting method will be required for the unitary group.

KENTUCKY REAL ESTATE COMMISSION

Date: January 12, 1995
Kentucky Real Estate Commission

(1) The Kentucky Real Estate Commission intends to promulgate an administrative regulation, **201 KAR 11:400**, Agency disclosure requirements, whose specific subject matter is:

(a) Disclosure and identification of agency relationships in typical real estate brokerage transactions by person licensed by this commission to consumers;

(b) Disclosure and identification of all persons for whom the person, licensed by this commission, is acting to consumers;

(c) Disclosure of the relationships which exist in actual transactions between buyers, sellers, lessons and lessees, and persons licensed by this commission, by the persons so licensed to consumers.

(2)(a) The Kentucky Real Estate Commission will hold a public hearing, if a public hearing is requested at least twenty (20) days prior to the date of the public hearing (as stated below), in writing, by at least five (5) persons, or by an administrative body, or by an association having at least five (5) members, provided that a minimum of five (5) persons agree to be present at the public hearing, at which the Kentucky Real Estate Commission will accept oral and written comments from any interested person;

(b) Written requests for a public hearing and written comments shall be sent to Ms. Bernadette Gradney, Kentucky Real Estate Commission, 10200 Linn Station Rd., Suite 201, Louisville, Kentucky 40223.

(c) The public hearing shall be on February 27, 1995, at 10 a.m. at the hearing room, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223;

(d) As concerns the proposed administrative regulation:

1. The statutory authority is KRS 324.160(1)(e), (j), 324.281(5) and 324.282;

2. The administrative regulation will require disclosure by persons licensed by this commission of the several agency relations which typically exist between the parties to a real estate transaction and the persons licensed by this commission, identify the persons for whom the licensed individual is working, and disclose the actual relationships which exist in each real estate transaction in which a person licensed by this commission is involved;

3. The administrative regulation will help eliminate confusion by consumers and persons licensed by this commission over whom the licensees represent and what duties are owed to the consumers;

4. The benefits expected from the administrative regulation are the reduction in the confusion set forth in 3 above;

5. The administrative regulation will require mandatory disclosure by persons licensed by this commission, on forms either prepared by or approved by this commission, which contain the disclosures required by the administrative regulation.

KENTUCKY REAL ESTATE APPRAISERS BOARD

Date: December 29, 1994
Kentucky Real Estate Appraisers Board

(1) **201 KAR 30:030**; Types of appraisers required in federally related transactions; certification and licensure.

(2) The Kentucky Real Estate Appraisers 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 February 28, 1995, at 10 a.m., 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511.

(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 February 28, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, 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 James P. Daniels at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to standards of practice is KRS 324A.035.

(b) The administrative regulation that the Kentucky Real Estate Appraisers Board intends to promulgate will amend 201 KAR 30:030. It will adopt the most current edition of the "Uniform Standards of Professional Appraisal Practice."

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to establish the: (1) types of appraisers required in federally related transactions; (2) scope of practice; and (3) general requirements for certification or licensure.

(d) The benefit expected from this administrative regulation is that the standards of practice for licensed and certified appraisers will be in accord with the most recent edition of the "Uniform Standards of Professional Appraisal Practice."

Date: December 29, 1994
Kentucky Real Estate Appraisers Board

(1) **201 KAR 30:040**; Standards of practice administrative regulation.

(2) The Kentucky Real Estate Appraisers 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 February 28, 1995, at 10 a.m., 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511.

(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 February 28, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, 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 request form from James P. Daniels at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to standards of practice is KRS 324A.035.

(b) The administrative regulation that the Kentucky Real Estate Appraisers Board intends to promulgate will amend 201 KAR 30:040. It will adopt the most current edition of the "Uniform Standards of Professional Appraisal Practice."

(c) The Necessity and Function of the proposed administrative regulation is as follows: Sets forth the standards of practice regulating the conduct of licensed and certified appraisers.

(d) The benefit expected from this administrative regulation is that the standards of practice for licensed and certified appraisers will be in accord with the most recent edition of the "Uniform Standards of Professional Appraisal Practice."

Date: December 29, 1994
Kentucky Real Estate Appraisers Board

(1) **201 KAR 30:130**; Standards for education approval - fees.

(2) The Kentucky Real Estate Appraisers 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 February 28, 1995, at 10 a.m., 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511.

(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 February 28, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, 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 James P. Daniels at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation is KRS 324A.035.

(b) The administrative regulation that the Kentucky Real Estate Appraisers Board intends to promulgate will amend 201 KAR 30:130. It will provide the board's current address.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 3351), to set standards, and to protect the public.

(d) The benefit expected from this administrative regulation is that applicants, licensees, and the public will be informed as to the correct address for the board.

TOURISM CABINET
Department of Fish and Wildlife Resources

Date: January 15, 1995
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:172**, Deer Hunting Seasons and Requirements; **301 KAR 2:174**, Deer hunting zones; **301 KAR 2:178**, Deer hunting on wildlife management areas.

(2) The Department of Fish and Wildlife Resources intends to promulgate 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 February

28, 1995 at 9 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 February 28, 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, KY 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 regulations.

(a) The statutory authority for the promulgation of administrative regulations governing deer hunting is KRS 150.170, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395.

(b) The administrative regulations that the department intends to promulgate will not amend an existing administrative regulation. They will repeal an existing regulation, 301 KAR 2:171, and replace it with three separate regulations to better meet the formatting requirements of KRS Chapter 13A. Substantive changes from 301 KAR 2:171 under consideration are:

1. Establishing a one-day youth hunt in zones one (1) through four (4) on the last Saturday in October.

2. Opening portions of the Cypress/AMAX-Robinson Forest Wildlife Management Area to gun deer hunting by a lottery drawing.

3. Adjusting county deer hunting zone assignments based upon the results of deer population surveys and 1994 harvest figures.

(c) The necessity and function of the proposed administrative regulations are to allow a regulated harvest of the Commonwealth's deer herd.

(d) The benefits expected from these administrative regulations are sport and recreation for Kentucky's deer hunters and management of the Commonwealth's deer population.

(e) The administrative regulations will be implemented as follows: Their provisions will be publicized through brochures and media outlets; they will be enforced by the department's Division of Law Enforcement.

DEPARTMENT OF AGRICULTURE

Date: January 5, 1995
Department of Agriculture

(1) The regulation to be amended is **302 KAR 20:075**, Identification of "farm fresh" cattle.

(2) The Department of Agriculture 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 February 27, 1995, at 10 a.m. at the Capital Plaza Tower, 7th Floor, 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 February 27, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Capital Plaza Tower, 7th floor, 500 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 Department of Agriculture 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 302 KAR 20:075 is KRS 257.030.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will not amend 302 KAR 20:075 and is a new administrative regulation. This regulation provides sellers of cattle mechanism for identifying cattle as "farm fresh" if the cattle is under eighteen (18) months of age and has not been delivered or sold at any stockyard within the previous twenty-seven (27) days.

(c) The necessity and function of the proposed administrative regulation is as follows: To provide sellers of cattle a mechanism for identifying cattle as "farm fresh".

(d) The benefits expected from administrative regulation are: This regulation furthers Kentucky health and disease control initiatives for cattle.

Date: January 13, 1995
Department of Agriculture

(1) **302 KAR 31:015**, Certification.

(2) The Department of Agriculture 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 February

28, 1995, at 10 a.m. at Capital Plaza Tower, 7th floor, 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 February 28, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Capital Plaza Tower, 7th floor, 500 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 Department of Agriculture 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 certification is KRS 217B.050.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To amend 302 KAR 31:015, Certification, to ensure compliance with the principles of the ADA.

(d) The benefits expected from administrative regulation are: This regulation will conform to the principles of ADA.

Date: January 12, 1995
Department of Agriculture

(1) **302 KAR 79:010**: Testing and inspection program.

(2) The Department of Agriculture 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 February 28, 1995, at 10 a.m. at Capital Plaza Tower, 7th floor, 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 February 28, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Capital Plaza Tower, 7th floor, 500 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 Department of Agriculture 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 inspection and testing of motor fuels is KRS Chapter 363.

(b) The administrative regulation that the Department of Agriculture intends to promulgate will amend an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To amend 302 KAR 79:010 to conform to KRS Chapter 13A as suggested by Administrative Regulation Review Subcommittee.

(d) The benefits expected from administrative regulation are: This regulation will conform to KRS Chapter 13A.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection

January 13, 1995
Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection

(1) The subject matter of the administrative regulations are: **401 KAR 100:030**, Site characterization, which will provide guidance and set minimum standards for performing a site characterization; **401 KAR 100:040**, Risk assessment, which will prescribe the process and requirements for performing a risk assessment; and **401 KAR 100:050**, Risk management options, which will establish procedures and criteria for submitting and evaluating remedial options and risk management plans.

(2) The Natural Resources and Environmental Protection Cabinet intends to promulgate three (3) administrative regulations governing the subject matter listed above. For copies of draft documents related to these administrative regulations, contact Division of Waste Management, Program Planning and Administration Branch, Attention Aaron Keatley, 14 Reilly Road, Frankfort, Kentucky 40601, and phone number (502) 564-2225 ext. 304.

(3) A public hearing to receive oral and written comments on the administrative regulations has been scheduled for March 2, 1995 at 10 a.m. EST in the State Board Room located on the first floor of the Capital Plaza Tower, Frankfort, Kentucky.

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

(b) If five (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 twenty (20) days prior to March 2, 1995, the public hearing will be canceled.

(5) Persons wishing to submit written comments on this Notice of Intent or request a public hearing should mail their written request or comments to the following address: Division of Waste Management, Program Planning and Administration Branch, Attention James Hale, 14 Reilly Road, Frankfort, Kentucky 40601, and phone number (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 regulations.

(a) The statutory authority for the promulgation of administrative regulations governing site characterization, risk assessment, and risk management options is KRS 224.10-100, 224.01-400, 224.01-405, and 224.60-137.

(b) The administrative regulations that the Natural Resources and Environmental Protection Cabinet intends to promulgate will not amend an existing administrative regulation. They will establish the requirements governing site characterization, risk assessment, and risk management options.

(c) The necessity and function of the proposed administrative regulations is as follows: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.01-400 requires that any person possessing or controlling a hazardous substance or a pollutant or contaminant that is released into the environment, or any person responsible for such a release, characterize the extent of the release as necessary to determine the effect of the release on the environment. This statute also requires that the person take actions necessary to correct the effect of the release on the environment.

KRS 224.01-405 requires the cabinet to establish standards and procedures for the performance of corrective action in the event of a release of petroleum or petroleum products from a source other than a petroleum storage tank. This statute also allows use of the options established in KRS 224.01-400(18).

KRS 224.60-137 requires the cabinet to promulgate administrative regulations that establish standards for corrective action for a release into the environment from a petroleum storage tank. The standards are to be based upon a study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission. The study has indicated risk assessment to be a viable option for the corrective action of releases originating from petroleum storage tanks.

KRS 224.01-400(18) establishes four (4) options that can be used in determining an appropriate plan for correcting the effect of the release on the environment. The options are as follows: 1) demonstrating that no action is necessary to protect human health, safety, and the environment; 2) managing the release in a manner that controls and minimizes the harmful effects of the release and protects human health, safety, and the environment; 3) restoring the environment through the removal of the hazardous substance or pollutant or contaminant; or 4) any combination of options 1-3. For options one (1), two (2), and (4), where restoration of the environment through removal is not performed, the responsible person shall demonstrate that the proposed remedy is protective of human health and the environment.

KRS 224.01-400(21) establishes the variables to be evaluated for this demonstration, known as risk assessment. These variables include the following: the characteristics of the hazardous substance or the pollutant or contaminant, the hydrogeologic characteristics of the area, the surface water and groundwater in the area, the potential effects of residual contamination, the chronic and acute health effects and environmental consequences to terrestrial and aquatic life, an exposure assessment, and all other available information.

Pursuant to KRS 224.10-100, 224.01-400, 224.01-405, and 224.60-137, the three (3) administrative regulations addressed in this Notice of Intent will establish standards to effectively administer site characterization, risk assessment, and risk management options pursuant to KRS 224.01-400. A central goal of the cabinet is that these standards will clearly and concisely set forth scientifically valid requirements applicable to these processes.

(d) The benefit expected from these administrative regulations is: Clarification and standardization of the cabinet's requirements for the performance and submittal of information pertaining to site characterization, risk assessment, and risk management options.

(e) These administrative regulations will be implemented as follows: The cabinet has organized an advisory group comprised of persons from a cross section of technical, industrial, administrative, and public-interest fields. This advisory group, along with an independent technical contractor, is being used to advise the cabinet in developing the three (3) administrative regulations. The cabinet is using the advisory group and the technical contractor to support the promulgation process established under KRS Chapter 13A. These administrative regulations will establish the criteria for performing, submitting, and evaluating site characterizations, risk assessments, and risk management options.

JUSTICE CABINET
Department of Corrections

Date: January 12, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:040**, Kentucky State Penitentiary: Inmate telephone access; general guidelines and functions of the classification committee; classification document; preparole progress report; extended furloughs.

(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 February 28, 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 February 28, 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 6:040, as follows:

1. Inmate telephone access (16-03-02) shall be amended to comply with actual practice.
2. General guidelines and functions of the classification committee (18-01-01) shall be amended to comply with actual practice.
3. Classification document (18-06-01) shall be amended to comply with actual practice.
4. Preparole progress report (18-10-01) shall be amended to comply with actual practice.
5. Extended furloughs (25-08-01) shall be amended to comply with Corrections policy and procedure.

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

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

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

Date: January 12, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:050**, Luther Luckett Correctional Complex: Special management inmates, dining room guidelines, food service meals, food service: menu, nutrition and special diets, medical screening of food handlers, food service inspections, food services: purchasing and farm products, sanitation, living condition standards and clothing issues, distribution, procurement and control, health records, inmate visiting, entry and identification of visitors for inmate visitation, inmate canteen committee, inmate canteen, inmate control of personal funds.

(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 February 28, 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 February 28, 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 6:050, as follows:

1. Special management inmates policy (12-01-01) shall be amended to delete wording that is duplication of institutional post orders and to set guidelines restricting inmates from the special management unit from receiving pre-ordered food from outside fast food restaurants.
2. Dining room guidelines policy (13-01-01) shall be amended to establish new guidelines for rules of the dining room.
3. Food service meals policy (13-04-01) shall be amended to establish meals and menus.
4. Food service: menu, nutrition and special diets policy (13-04-02) shall be amended to establish guidelines for reviewing special diets and special diets for inmates whose religious beliefs required adherence to a specific diet.

5. Medical screening of food handlers policy (13-05-02) shall be amended to establish guidelines for re-examining inmates working in food services. This policy is also being amended to establish monitoring of cleanliness requirements.

6. Food service: inspections and sanitation policy (13-06-01) shall be amended to establish responsibility for inspections.

7. Food services: purchasing and farm products policy (13-07-01) shall be amended to delete wording concerning Roederer Correctional Complex.

8. Sanitation, living condition standards and clothing issues policy (14-01-01) shall be amended to establish responsibility for sanitation inspections.

9. Distribution, procurement and control policy (15-03-03) shall be amended to establish a monitoring system for an inmate's compliance with taking prescribed medication.

10. Health records policy (15-07-01) shall be amended to establish scheduled meetings between the institutional physician and the warden.

11. Inmate visiting policy (18-02-01) shall be amended to establish guidelines for inmate visitation.

12. Entry and identification of visitors for inmate visitation policy (18-03-01) shall be amended to establish guidelines for visitors under the age of 18. This policy is also being amended to establish guidelines for restroom use and table assignments.

13. Inmate canteen committee policy (20-04-01) shall be amended to delete unnecessary wording and to change the amount of required meetings of the inmate canteen committee.

14. Inmate canteen policy (20-04-02) shall be amended to establish a schedule for inventory.

15. Inmate control of personal funds (20-05-01) shall be amended to establish guidelines for inquiries concerning an inmate's account.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Luther Luckett 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: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:010**, Definitions. This regulation sets forth definitions related to youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish procedures for administrative hearings related to youth alternative centers as defined in KRS 610.267.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:020**, Administration; management. This regulation sets forth procedures to be followed for the administration and management of youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish procedures for the administration and management of youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:030**, Fiscal management. This regulation sets forth fiscal management procedures to be followed in youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish fiscal management procedures for youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:040**, Personnel. This regulation sets forth personnel procedures to be followed in youth

alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish personnel procedures for youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:050**, Physical plant. This regulation sets forth standards and procedures to be followed in the design and construction of youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish physical plant standards and procedures to be followed in the design and construction of youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995

Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:060**, Security; control. This regulation sets forth security procedures to be followed in youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish security procedures to be followed in youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:070**, Safety; emergency procedures. This regulation sets forth safety and emergency procedures to be followed in youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish safety and emergency procedures to be followed in youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: staff will inspect youth alternative centers to determine compliance

with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:080**, Sanitation; hygiene. This regulation sets forth procedures to provide proper sanitation and hygiene in youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish procedures to provide proper sanitation and hygiene in youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:090**, Medical services. This regulation sets forth procedures to provide proper medical services in youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish procedures to provide proper medical services in youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:100**, Food services. This regulation sets forth procedures for the delivery of proper food services in youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish procedures for the delivery of proper food services in youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:110**, Classification. This regulation sets forth procedures for the classification of residents in youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will

establish procedures for the classification of residents in youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:120**, Admission; release. This regulation sets forth procedures for the admission and release of residents in youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish procedures for admission and release of residents in youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:130**, Resident programs; services. This regulation sets forth procedures for resident programs and services in youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish procedures for resident programs and services in youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:140**, Resident rights. This regulation sets forth procedures to ensure resident rights in youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish procedures to ensure resident rights in youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

Date: January 3, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 12:150**, Hearings, procedures, disposition. This regulation sets forth procedures for administrative hearings related to youth alternative centers.

(2) The Justice Cabinet, Department of Corrections intends to promulgate the administrative regulation cited above pursuant to KRS 610.267.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 610.267.

(b) The administrative regulation that the Department of Corrections intends to promulgate will create a new regulation that will establish procedures for administrative hearings related to youth alternative centers.

(c) The necessity and function of the proposed administrative regulation is: To establish minimum standards for youth alternative centers.

(d) The benefits expected from administrative regulation are: To comply with current case law, health requirements, and acceptable procedures in operating youth alternative centers.

(e) The administrative regulation will be implemented as follows: Staff will inspect youth alternative centers to determine compliance with the regulation.

TRANSPORTATION CABINET

Date: January 13, 1995

Transportation Cabinet

(1) **601 KAR 2:020**, National Drivers' Privacy Protection Act; **601 KAR 12:020**, Expired or suspended license requirements for renewal; **601 KAR 12:040**, Driving history record fee; **601 KAR 11:020**, Commercial driving history record; and **601 KAR 12:100**, Problem Driver Pointer System.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation establishing the procedures and policies for Kentucky to participate in the Problem Driver Pointer System and establishing the fees to be charged for accessing the "Problem Driver Pointer System" on behalf of the public. The hearing will also discuss the requirements of the "Drivers' Privacy Protection Act" passed as part of the National Crime Bill in late 1994 and its relation to the privacy requirements of the National Driver Pointer System.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 1995 at 2 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to February 28, 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 administrative regulation relating to:

1. The Problem Driver Pointer System are 23 CFR Part 1327 and 49 CFR Part 383;
2. The National Drivers Privacy Act are the National Crime Act, KRS 61.874 and KRS 281A.100.

(b) The administrative regulations that the Transportation Cabinet intends to promulgate are:

1. A new administrative regulation relating to the National Drivers' Privacy Protection Act and how the information in the Department of Vehicle Regulation's computer systems relating to both licensed drivers and motor vehicle owners can be sold or dispersed.

2. The Transportation Cabinet is evaluating the method of charging a fee, and the amount of the fee, for accessing the Problem Driver Pointer System. It is unknown at this time whether a new administrative regulation will be promulgated (601 KAR 12:100) or if existing administrative regulations relating to Driving History Records (601 KAR 11:020 and 601 KAR 12:040) will need to be amended. If the latter, a combined driving history report might be considered.

3. Establishing in a new administrative regulation the procedures and policies necessary for Kentucky to participate in the Problem Driver Pointer System.

(c) The necessity and function of the proposed administrative regulation relating to National Drivers' Privacy Protection Act is as follows: "The 1994 National Crime Prevention Act included a section called the "Drivers' Privacy Protection Act" which mandated what could and could not be included in information sold or otherwise distributed about motor vehicle operators or motor vehicle owners. In addition, the Problem Driver Pointer System federal mandate includes many provisions relating to the privacy of individuals and what information can be sold/distributed to employers, the public, or courts. This administrative regulation is the means used by the Department of Vehicle Regulation to establish under what circumstances/conditions the private information will be distributed/sold.

The necessity and function of the proposed new administrative regulation/amended administrative regulation relating to Problem Driver Pointer System is as follows: 23 CFR Part 1327 replaces the National Driver Register (NDR) with a new Problem Driver Pointer System. It establishes how states are to participates in the new National Driver Register as well as conditions and procedures for other authorized users of the National Driver Register. As part of being a participating state, the Department of Vehicle Regulation is required to transmit to the National Driver Register a report regarding any individual who is denied a motor vehicle operators license for cause, whose motor vehicle operators license is cancelled, revoked, or suspended for cause, or who is convicted under the laws of Kentucky the most serious of motor vehicle offenses. Although the Problem Driver Pointer System was established as a voluntary system, it is now mandatory for all licensing jurisdictions

to participate. To comply with the Commercial Motor Vehicle Safety Act of 1986, all states must check the National Driver Register before issuing a commercial driver's license. (The National Driver Register is being replaced with the Problem Driver Pointer System on May 1, 1995.) Any state not certified as a participating state by April 30, 1995, will not be allowed to use the Problem Driver Pointer System in any manner. If a state cannot participate in the Problem Driver Pointer System it will be out of compliance with the federally mandated Commercial Motor Vehicle Safety Act.

(d) The benefits expected are: Increased highway safety; compliance with federal mandates; and additional protection of an individual's privacy.

Date: January 15, 1995
Transportation Cabinet

(1) **603 KAR 5:072**, relating to mandatory annual bus inspection and **601 KAR 1:005**, Safety regulations.

(2) The Kentucky Transportation Cabinet has in existence an administrative regulation requiring that all buses be inspected annually by the Transportation Cabinet (603 KAR 5:072). Proof of passing this annual inspection is required prior to registration (issuance of updated license plates) each year. Since the federal motor carrier safety regulations were amended effective January 1, 1995 to include private motor carrier of passengers (non-business) and the Transportation Cabinet has an annual inspection program in place in conjunction with the Commercial Vehicle Safety Alliance (CVSA) and all other vehicles when inspected receive a CVSA decal for placement in the window, (601 KAR 1:005) the Transportation Cabinet is considering either amending its current bus inspection policy or repealing it in its entirety and allowing the requirements of 601 KAR 1:005 only to govern. The primary difference between the new requirements of 601 KAR 1:005 and 603 KAR 5:072 are that the former applies only to buses of 15 passenger or greater, the later applies to 9 passenger or greater.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 1995 at 9 a.m. local prevailing time, at 501 High Street, Room 1003, Frankfort, Kentucky 40622.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to February 28, 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 annual bus inspections is KRS 189.231 and 281.600 and 49 CFR Part 396.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will either amend 603 KAR 5:072 Mandatory Bus Inspections or repeal the administrative regulation. 601 KAR 1:005 will be amended.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.231 authorizes the Secretary of Transportation to restrict or regulate traffic on state maintained highways in such manner as is reasonably necessary to promote the safety and convenience of the travelling public. KRS 281.600 authorizes the Department of Vehicle Regulation to promulgate administrative regulations regarding safety requirements for a method of operation of motor vehicles. 49 CFR Part 396 requires periodic inspection of every commercial motor vehicle. While there is not an actual conflict between 49 CFR Part 396 and 603 KAR 5:072 there is a duplication of effort for 15 passenger and larger buses when considered in conjunction with 601 KAR 1:005 (which is governed in part by 49 CFR Part 396). These administrative regulations need to be promulgated to eliminate the duplication and simplify the inspection program for bus owners.

(d) The benefits expected are: More uniform inspection of commercial buses, a decrease in the work load of the county clerks, and a decrease in the amount of paperwork required for the owner of commercial buses.

STATE BOARD FOR ELEMENTARY AND SECONDARY EDUCATION

Date: January 3, 1995
State Board for Elementary and Secondary Education

(1) Regulation Number and Title: **704 KAR 3:035**, Annual professional development plan.

(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 February 28, 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 February 28, 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 school district staff professional development is KRS 156.070, 156.095, 158.070, and 156.0951.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend is 704 KAR 3:035. It provides for professional development planning for improvement of instruction in the public schools.

(c) The Necessity and Function of the proposed amendment is to provide guidelines to be followed by schools and school districts for professional development activities for the professional staff.

(d) The benefits expected from amendment to the administrative regulation include making the regulation consistent with the July 1, 1995, sunset provision of KRS 156.0951, and better enabling the local school district to plan, implement and monitor its own professional development activities.

(e) The administrative regulation will be implemented as follows: By local school districts planning, implementing, and monitoring their own professional development activities.

KENTUCKY COMMISSION ON THE DEAF AND HARD OF HEARING

Date: January 12, 1995

Kentucky Commission on the Deaf and Hard of Hearing

(1) The subject matter of the proposed administrative regulations is to establish the parameters Telecommunications Device for the Deaf (TDD) Distribution Program to be delineated as follows:

(a) **735 KAR 1:010**, Eligibility requirements, application and certification procedures.

(b) **735 KAR 1:020**, Processing system including vendor participation, security, maintenance and repair.

(2) The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) intends to promulgate administrative regulations 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 February 25, 1995, at the Grow Hall Cafeteria at the Kentucky School for the Deaf, from 9 a.m. - 12 noon. The Kentucky School for the Deaf is at South Second Street in Danville, Kentucky.

(4)(a) The public hearing will be held if 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 a minimum of the five (5) persons, or the administrative body or association, agree, in writing to be present at the public hearing.

(b) If five (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 twenty (20) days prior to February 25, 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 Commission on the Deaf and Hard of Hearing, ATTN: Dr. Bobbie Beth Scoggins, 134 Brighton Park Boulevard, 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 administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Commission on the Deaf and Hard of Hearing at the above address.

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of administrative regulations in relation to the TDD Distribution Program is KRS 163.525(5).

(b) The administrative regulations the KCDHH intends to promulgate will not amend existing regulations. They will establish the parameters of the TDD Distribution Program, which include (a) the eligibility requirements, application and certification procedures; and (b) the processing system including vendor participation, and security, maintenance and repair.

(c) The necessity and function of the proposed administrative regulations are as follows: These administrative regulations is necessary to implement the provision of KRS 163.525(5), which mandates that the KCDHH establish a program to distribute specialized telecommunications equipment to any deaf, hard of hearing, or speech impaired individual, at no additional cost beyond a single party residence line. The function of these administrative regulations are to establish the criteria for awarding assistance, the procedures for application and certification, a processing system for recipients to receive the specialized telecommunications equipment and to develop procedures for vendor participation, and the security, maintenance and repair of that equipment.

(d) The benefits expected from the administrative regulations are: Deaf, hard of hearing, and speech individuals will have equal access to the telecommunications system in Kentucky. Use of the Kentucky Relay Service in conjunction with the specialized telecommunications equipment will enable communications access, for the first time in many cases, among hearing, deaf, hard of hearing, and speech impaired citizens of Kentucky. The telecommunications industry will benefit from an increased customer base, increased toll revenue, and enhanced public relations image.

(e) The administrative regulations will be implemented as follows: The administrative regulations will establish the eligibility requirements for applicants, including Kentucky residency and being at least of five (5) years of age, and require that applicants obtain professional certification of the extent and permanence of their hearing loss or speech impairment. Once deemed eligible, the recipient will then

receive a voucher to be used to obtain the specialized telecommunications equipment. All ownership rights and responsibilities, except for maintenance and repair, will belong solely to the recipient. The KCDHH will reimburse the vendors who submit itemized invoices along with their copy of the recipient's voucher.

KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

Date: January 12, 1995
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is workers' compensation individual self-insurers, **803 KAR 25:021.**

(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 February 28, 1995, at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms A, B, and C, at 405 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to February 28, 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 individual self-insurers is KRS 342.260, 342.340, and 342.345.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will repeal and replace 803 KAR 25:020 on "self-insurers."

(c) The necessity and function of the proposed administrative regulation is as follows: The existing regulation concerning workers' compensation individual self-insurers has not been amended since 1975, and is out of date. The new regulation will revise and update the requirements for these self-insurers.

(d) The benefits expected from administrative regulation are: In conjunction with a separate administrative regulation that will incorporate the forms used for both individual and group self-insurers, the proposed regulation will revise and update the regulatory provisions and forms concerning individual self-insurers.

(e) The administrative regulation will be implemented as follows: The purpose of the public hearing is to solicit comments and suggestions about what the proposed regulation should contain. The commissioner will then consider these comments and suggestions in determining the content of the regulation. It is anticipated that the regulation that is eventually filed will include specific, current requirements concerning the security to be furnished by the employer. Applications to be a self-insurer will be required to be submitted on magnetic computer disc as well as on paper.

Date: January 12, 1995
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is workers' compensation group self-insurers, **803 KAR 25:026.**

(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 February 28, 1995, at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms A, B, and C, at 405 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to February 28, 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 group self-insurers is KRS 342.260, 342.340, 342.345 and 342.350.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will repeal and replace 803 KAR 25:025 on "joint self-insurers."

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation concerning group self-insurance has not been amended since 1988. The new regulation will revise and update the requirements for workers' compensation self-insurance groups.

(d) The benefits expected from administrative regulation are: In conjunction with a separate regulation concerning self-insurance forms, the proposed regulation will revise and update the requirements and forms for workers' compensation self-insurance groups.

(e) The administrative regulation will be implemented as follows: The purpose of the public hearing is to solicit comments and suggestions about what the proposed regulation should contain. The commissioner will then consider these comments and suggestions in determining the content of the regulation. It is anticipated that the minimum requirements concerning the total estimated annual normal premium and net worth for group members will be increased. The revisions will include a requirement that applications for certification of a self-insurance group be submitted on magnetic computer disc as well as on paper.

Date: January 12, 1995
Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation is workers' compensation self-insurance forms, **803 KAR 25:027**.

(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 February 28, 1995, at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms A, B, and C, at 405 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to February 28, 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 self-insurance forms is KRS 342.260, 342.340, 342.345, 342.350, and 342.430.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing administrative regulation. This is a new regulation that will incorporate by reference the forms to be used by individual self-insurers and self-insurance groups in workers' compensation, including the application, renewal, and bond forms.

(c) The necessity and function of the proposed administrative regulation is as follows: The regulations concerning individual self-insurers and self-insurance groups are being replaced by new administrative regulations, and as part of this comprehensive update and revision it is anticipated that the forms will be incorporated in a separate regulation because some of the forms are used by both individual and self-insurers.

(d) The benefits expected from administrative regulation are: Simplification of the separate regulations on individual self-insurers and self-insurance groups as a result of having the forms used placed in a separate regulation, and a simpler process for the amendment of self-insurance forms by the Department of Workers' Claims in the future.

(e) The administrative regulation will be implemented as follows: The purpose of the public hearing is to solicit comments and suggestions about what the forms used by the Department of Workers' Claims in self-insurance should contain. It is anticipated that a draft of the proposed forms prepared by the agency will be available to the public not later than the date of the proposed notice of intent hearing.

PUBLIC SERVICE COMMISSION

Date: January 13, 1995
Kentucky Public Service Commission

(1) Regulation Number and Title: **807 KAR 5:058** - Integrated resource planning by electric utilities.

(2) The Kentucky Public Service 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 February

23, 1995, at 10 a.m., Hearing Room 1, 730 Schenkel Lane, 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 February 23, 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. Don Mills, Executive Director, Kentucky Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

(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 Public Service Commission 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 integrated resource planning by electric utilities is KRS Chapter 13A and KRS 278.040(3).

(b) The administrative regulation that the Kentucky Public Service Commission intends to promulgate will amend 807 KAR 5:058, Integrated resource planning by electric utilities. Section 1(2) will be amended to lengthen the overall filing period of integrated resource plans. Section 2(1) will be amended to lengthen the time between the filings of individual integrated resource plans by electric utilities. Section 8(5) will be amended to require a description of actions to be undertaken during the integrated resource planning period to meet the requirements of the Clean Air Act Amendments of 1990. Section 10 will be amended to eliminate the commission staff's report from the statewide perspective.

(c) The necessity and function of the proposed administrative regulation is as follows: At present, the six utilities required to prepare integrated resource plans do so on a biennial basis and file such plans during a three month period of each designated filing year. Given the complex nature of the integrated resource plans, the commission has, in the past, employed outside consultants to assist in its review of the six plans. When 807 KAR 5:058 was originally promulgated, it was envisioned by the commission and the affected utilities that the use of outside consultants would be temporary and that the commission and its staff would eventually conduct these reviews on their own. Because of limited staff resources and the complex nature of the integrated resource plans, it has become apparent that such in-house reviews will be possible only if the overall filing period and the length of time between individual utility filings are increased. For these reasons, the commission believes the proposed amendments to Sections 1(2) and 2(1) are needed.

The Clean Air Act Amendments of 1990 require electric utilities to take certain actions to comply with new federal clean air standards. As these actions are likely to affect a utility's long-range resource planning process and decisions, the commission believes it is important to monitor these actions as part of the integrated resource planning process. Section 8(5) would be amended for that purpose.

The commission staff's report from the statewide perspective is a compilation and aggregation of information from the utilities' integrated resource plan filings and is provided to the utilities and other parties in integrated resource plan proceedings. The information presented in this report is meaningful only if all six integrated resource plans cover nearly the same period of time and are filed in close proximity to one another. If the filing schedule in Section 2(1) is amended as proposed, the information contained in utility integrated resource plans will be for significantly different time periods. For this reason, a compilation and aggregation of information would no longer be meaningful and useful to the Commission and other parties. The commission, therefore, believes the report from the statewide perspective should be eliminated.

(d) The benefits expected from the proposed administrative regulation are: By lengthening the filing schedule of the integrated resource plans the commission and its staff will be able to conduct thorough reviews of the plans without the regular assistance of outside consultants. This could result in significant savings by the utilities' ratepayers. The total costs for consultants for the review of the utilities' 1991 integrated resource plans were approximately $350,000. The total costs for consultants for the review of the utilities' 1993 integrated resource plans are expected to be $290,000. These costs would be virtually eliminated if the commission and its staff began reviewing integrated resource plans without the regular assistance of outside consultants.

By reviewing the actions to be undertaken by the utilities to meet the requirements of the Clean Air Act Amendments of 1990, the commission will be able to monitor, on a regular basis, how these actions affect the long-range resource planning efforts and decisions of Kentucky's largest electric utilities. This increased awareness by the commission will ultimately benefit the utilities and their ratepayers.

By lengthening the overall filing period of integrated resource plans and the time between individual utility filings, the report from the statewide perspective will no longer serve a useful purpose for the commission and the other parties in integrated resource plan proceedings. The elimination of this report will in no way lessen the importance of the integrated resource planning process in Kentucky.

(e) The administrative regulation will be implemented as follows: An integrated resource plan filing schedule will be established that increases the overall filing period and lengthens the time between the individual utility filings. This will provide the commission and its staff sufficient time to conduct thorough reviews of the integrated resource plans without the regular assistance of outside consultants.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Maternal and Child Health

Date: January 15, 1995
Cabinet for Human Resources
Department for Health Services
Division of Maternal and Child Health

(1) Kentucky Birth Surveillance Registry, administrative number: **902 KAR 19:010.**

(2) The Cabinet for Human Resources, 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 February 28, 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 public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to February 28, 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 by writing the Administrative Regulation Coordinator, Department for Health Services, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621, or 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 Kentucky Birth Surveillance Registry is KRS 211.660.

(b) The administrative regulation that the Cabinet for Human Resources, Department for Health Services, Division of Maternal and Child Health, intends to promulgate will require general acute care hospitals and freestanding birthing centers licensed under the provision of KRS Chapter 216B to report to the Registry all inpatients up to the age of five (5) years with conditions described in the regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: The purpose of the Kentucky Birth Surveillance Registry, established by KRS 211.651 to 211.670, is to provide information on the incidence, prevalence, and trends of congenital anomalies, stillbirths, and disabling conditions; provide information as to their possible causes; and to develop prevention strategies to reduce their incidence. The Health Policy Board is responsible for collecting data from hospitals, but they are unable under House Bill 250 to retrieve patient identifying information. This will be vital to the Registry in tracking correct diagnoses, verifying quality care and notifying parents of available medical care and other services available for the child and family. The Department for Medicaid has information on Medicaid only patients, with up to five ICD-9 condition codes. A special advisory committee, established under KRS 211.665, determined that in order to fully meet the purposes of the law, it would be necessary to retrieve data on all patients in Kentucky with conditions defined under ICD-9 codes. While birth certificate information will be a basis for the Registry, numerous studies have shown underreporting of medical conditions on birth certificates. This regulation will be vital in assuring that all hospitals licensed under KRS Chapter 216B submit specific information on patients with the conditions defined by the advisory committee, to be listed in the regulation.

(d) The benefits expected from the administrative regulation are: The retrieval of information that will lead to a better knowledge of the incidence of congenital anomalies, stillbirths, and disabling conditions in the Commonwealth of Kentucky. It is determined that this information will lead to identification of possible causes, thus resulting in the development and implementation of preventive measures to decrease their incidence and prevalence in the future. It will also be a vital link in the provision of services to patients and their families affected by them. This will not only lessen the severe mental anguish on the part of parents and children, but will also be a major contributing factor to reducing high medical costs in Kentucky.

Department for Social Insurance
Division of Management and Development

Date: December 20, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 3:025**, Technical requirements: Food Stamp Program.

(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 February 28, 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 February 28, 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, Division of Management and Development, 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 3:025, Technical requirements. It will establish the technical requirements for participating in the Food Stamp Program. The specified regulation is amended to (1) change the title of the Food and Nutrition Service to the Food and Consumer Service, (2) delete the citizenship or alien status declaration form, which will now be included in the penalty and perjury statement on the actual application form, (3) delete the mandatory monthly reporting requirement, and (4) delete the material incorporated by reference which is now obsolete.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

(d) The benefits expected from administrative regulation are: The amendments to the administrative regulation will significantly reduce the administrative burden on both staff and recipients. Deleting the monthly reporting requirement will decrease the administrative complexity of the program and save on paper, postage, staff time, and systems time. In addition, by combining the citizenship and alien declaration with the penalty warning statement, the department will realize a savings in staff time and paper. In addition to the elimination of the administrative burden, independent studies have revealed that monthly reporting did not significantly affect case error rates or dollar error rates in any major way. Moreover, when researchers examined agency and client related errors, they found, monthly reporting had no significant impact on the probability of an agency or client error.

Date: December 20, 1994
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 3:035**, Certification process: Food Stamp Program.

(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 February 28, 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 February 28, 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, Division of Management and Development, 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 3:035, Certification process. It will establish the technical requirements for participating in the Food Stamp Program. The specified regulation is amended to (1) decrease the administrative burden on both recipients and agency staff and to promote a more effective and efficient Food Stamp Program, optional monthly reporting requirements are being deleted from technical eligibility criteria. This change includes limitations on certification periods for monthly reporters; and (2) Other technical drafting changes are being made to conform with KRS Chapter 13A.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the certification requirements used by the cabinet in the administration of the Food Stamp Program.

(d) The benefits expected from administrative regulation are: The amendments to the administrative regulation will significantly reduce

the administrative burden on both staff and recipients. Deleting the monthly reporting requirement will decrease the administrative complexity of the program and save on paper, postage, staff time, and systems time. In addition to the elimination of the administrative burden, independent studies have revealed that monthly reporting did not significantly affect case error rates or dollar error rates in any major way. Moreover, when researchers examined agency and client related errors, they found, monthly reporting had no significant impact on the probability of an agency or client error.

Department for Social Services
Division of Family Services

Date: January 14, 1995
Cabinet for Human Resources
Department for Social Services
Division of Family Services

(1) **905 KAR 1:300**, Standards for child caring facilities.

(2) The Department for Social Services 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 February 28, 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 February 28, 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.

(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 Services, Cabinet for Human Resources, 6th Floor West, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the standards of care and service for child caring facilities is KRS 199.640.

(b) The administrative regulation that the Department for Social Services intends to promulgate amends 905 KAR 1:300, Standards for child caring facilities. The amendment to this administrative regulation shall cross-reference the statutory exemption referenced in KRS 199.640(3) relating to the use of reasonable corporal discipline by church-related privately operated child-caring agencies and facilities in Section 6(8)(d). The department intends to revise and clarify the independent living services section and review the existing staffing requirements. Other revisions may be promulgated in order to clarify the existing regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 199.640 authorizes the Cabinet for Human Resources to adopt administrative regulations establishing standards of care and service for child-caring facilities relating to the sanitary and hygienic conditions, the accommodations available for each child, the diet provided, the safety of the child from fire and other accidents and hazards and other factors necessary to promote the welfare of the child in the child-caring facility.

(d) The benefits expected from administrative regulation are: The amendment to this administrative regulation shall cross-reference the statutory exemption referenced in KRS 199.640(3) relating to the use of reasonable corporal discipline by church-related privately operated child-caring agencies and facilities in Section 6(8)(d). This revision will clarify that the statutory exemption will be considered when the facility applies for licensure or relicensure. Another expected benefit is the clarification of language defining independent living services and staffing requirements for use by state surveyors and the public. Other revisions may be promulgated in order to clarify terminology in order to improve the existing regulation.

Date: January 14, 1995
Cabinet for Human Resources
Department for Social Services
Division of Family Services

(1) **905 KAR 2:090**, Child care facility licensure.

(2) The Department for Social Services 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 February 28, 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 February 28, 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.

(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 Services, Cabinet for Human Resources, 6th Floor West, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the licensure and establishment of standards of care and service for day care centers is KRS 199.896.

(b) The administrative regulation that the Department for Social Services intends to promulgate amends 905 KAR 2:090, child care facility licensure. The amendment to this regulation will clarify the applicability of the five year waiting period before reapplication for a license to operate a child care facility by inserting in Section 2(1) prior to the words "shall not apply" for reasons set forth in Section 6(1)(b) or (c) of this administrative regulation. Additionally we are recommending that an eighteen (18) month waiting period be created for licensees or applicants who have had their day care license denied, suspended or revoked for reasons other than abuse, neglect or exploitation of children or adults. Other revisions may be promulgated in order to clarify the existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations relating to the licensure and establishment of standards of care and service for day care centers. The function of this administrative regulation is to establish licensure requirements for child day care centers including provisions for the application process, renewal process, basis for denial, suspension or revocation and the right of appeal.

(d) The benefits expected from administrative regulation are: The amendment to this regulation will clarify that the five year waiting period will only be imposed if the licensee, an adult living in the facility or person under the supervision of the licensee had been convicted of a crime related to abuse, neglect or exploitation of a child or an adult or if the licensee or an adult living in the facility has abused, neglected or exploited a child or an adult or is listed on the Nurse's Aid Abuse Registry by the Inspector General's Office. Another benefit will be the creation of a waiting period of eighteen months for licensees or applicants who have had their day care license denied, suspended or revoked. This provision will ensure that the applicants for licensure are complying with the provisions of the child day care licensure regulations. Other revisions may be promulgated in order to clarify the existing regulation for both the licensing agency and the public.

Department for Medicaid Services

Date: January 15, 1995
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:013**, Payments for hospital inpatient services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 hospital inpatient services are KRS 194.050, 205.520, 205.640, 42 CFR 440.10, 440.140, 447.250 through 447.280, and 42 USC 1396a, b, d, r-4.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:013, Payments for hospital inpatient services. This amendment effective December 31, 1994 allows state owned psychiatric hospitals to be paid disproportionate share hospital payments equal to 100 percent, and state university teaching hospitals to be paid disproportionate share hospital payments equal to 200 percent, of the uncompensated care they furnish. In-state disproportionate share hospitals with 100 beds or less will be paid an additional disproportionate share hospital payment of $200,000 for the period December 31, 1994 through June 30, 1995.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth the method of determining amounts payable by the Medicaid Program for hospital inpatient services.

(d) The benefits expected from administrative regulation are: Amending 907 KAR 1:013 will allow state owned psychiatric hospitals to be paid disproportionate share hospital payments equal to 100 percent, and state university teaching hospitals to be paid disproportionate share hospital payments equal to 200 percent, of the uncompensated care they furnish; prevent the loss of federal matching funds which would otherwise be available for state owned psychiatric hospitals and state university teaching hospitals qualifying as disproportionate share hospitals; and pay the small in-state disproportionate share hospitals with 100 beds or less an additional disproportionate share hospital payment of $200,000 for the period of December 31, 1994 through June 30, 1995 to cover the cost of treating patients unable to pay.

Date: January 15, 1995
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:016,** Psychiatric hospital services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 28, 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 February 28, 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 psychiatric hospital services are KRS 194.050, 205.520, 42 CFR 441 Subparts C and D, 42 CFR 456 Subparts G, H, I, and 42 USC 1396a-d.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:016, Psychiatric hospital services, to provide that effective for services provided on or after December 28, 1994 the Medicaid patient status criteria will cover chronically mentally ill adults age 65 and above who are committed to the psychiatric hospital when services in the hospital are necessary to maintain the recipient at or restore him to the greatest possible degree of health and independent functioning.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to services in psychiatric hospitals for which payment shall be made by the Medicaid Program.

(d) The benefits expected from administrative regulation are: Amending 907 KAR 1:016 to liberalize the patient status to include chronically mentally ill adults age 65 and above will permit these recipients to meet Medicaid status; in addition to providing direct care to these individuals under the Medicaid program at a savings of state funds, these individuals will be counted toward the one (1) percent minimum required for hospitals to be considered disproportionate share hospitals.

Date: January 15, 1994
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:680**, Vaccines for Children Program.

(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 February 28, 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 February 28, 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 Section 1928 of the Social Security Act and KRS 205.520.

(b) Section 1928 of the Social Security Act requires states to establish a Vaccines for Children Program effective October 1, 1994. This new administrative regulation that the Department for Medicaid Services intends to promulgate will establish the Medicaid Program's reimbursement fee for the administration of the vaccine by the Medicaid provider when the vaccines are administered to a qualified Medicaid recipient through the Vaccines for Children Program. The proposed administration fee of $3.30 was derived from Medicare's $3.28 administration fee for vaccines rounded to the nearest ten (10) cents.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation sets forth the Medicaid provider requirements, and the reimbursement fee, for the vaccine administration through the Vaccines for Children Program.

(d) The benefits expected from administrative regulation are: The administrative regulation allows the state to comply with a federal mandate to administer a Vaccines for Children Program and also reimburses the providers for the administration of the pediatric vaccines.

KENTUCKY HEALTH POLICY BOARD

Date: December 21, 1994
Kentucky Health Policy Board

(1) **909 KAR 1:200**, Twenty-four (24) hour pilot insurance program. The subject matter of the proposed administrative regulation is to combine general health insurance with the health coverage component of Workers' Compensation Insurance.

(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 Tuesday, February 28, 1995 at 1 p.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 February 28, 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, 3572 Iron Works Pike, 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 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 twenty-four (24) hour pilot insurance program is specified in KRS 216.2960.

(b) The administrative regulation that the board intends to promulgate 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 216.2960 mandates the Kentucky Health Policy Board to promulgate administrative regulations requiring the implementation of the twenty-four (24) hour pilot insurance program to combine general health and the health component of Workers' Compensation.

(d) The benefit expected from this administrative regulation is to enable the board to carry out its statutory mandate to implement the program.

(e) The proposed administrative regulation will be implemented by allowing employers and companies to make application to the program.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
32 KAR 1:110E

KRS 121A.020(7) requires the Registry of Election Finance to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 121A. The Public Financing Campaign Act of 1992 established a program of partial public financing for gubernatorial campaigns under which a slate which agrees to accept public funds transfers and abide by specified contribution and expenditure limits may receive matching funds based on qualifying contributions. Minimum and maximum thresholds are established by statute, but the statutes do not clearly specify whether a participating slate may raise more than the maximum threshold qualifying amount. It is therefore necessary to promulgate this emergency administrative regulation to clarify the total amount of contributions a participating slate may receive, and the amount of funds that may be raised by a participating slate which is unopposed or whose opposition fails to raise the minimum threshold qualifying amount. An ordinary administrative regulation shall not be filed with the Regulations Compiler to replace this emergency administrative regulation.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 1:110E. Clarification of total contributions.

RELATES TO: KRS 121A.030(1), 121A.060(3)
STATUTORY AUTHORITY: KRS 121A.020(7)
EFFECTIVE: December 20, 1994
NECESSITY AND FUNCTION: The Public Financing Campaign Act of 1992 established a program of partial public financing for gubernatorial campaigns under which a slate which agrees to accept public funds transfers and abide by specified contribution and expenditure limits may receive matching funds based on qualifying contributions. Minimum and maximum thresholds are established by statute, but the statutes do not clearly specify whether a participating slate may raise more than the maximum threshold qualifying amount. It is therefore necessary to promulgate this emergency administrative regulation to clarify the total amount of contributions a participating slate may receive, and the amount of funds that may be raised by a participating slate which is unopposed or whose opposition fails to raise the minimum threshold qualifying amount. An ordinary administrative regulation shall not be filed with the Regulations Compiler to replace this emergency regulation.

Section 1. No qualifying slate of candidates seeking nomination or election to the offices of Governor and Lieutenant Governor shall raise more than the maximum threshold qualifying amount established in KRS 121A.060(3). A slate which discovers that it has received qualifying contributions in excess of the maximum threshold qualifying amount shall dispose of any excess contributions in the following manner:

(1) Excess contributions may be returned to the contributor by returning the excess contributions to the contributors; or

(2) The slate may deposit all checks into the campaign account and execute a single check to the state treasurer in the amount of total excess contributions for deposit in the Election Campaign Fund. The check shall be forwarded to the Registry.

Section 2. If the expenditure limits established in KRS 121A.030(1) are lifted because a slate which rejects public financing and expenditure limits has exceeded the limits, a participating slate shall receive further matching funds based upon qualifying contributions received subsequent to the time the slate was released.

Section 3. (1) A slate of candidates which has signed a statement of intent to accept public funds transfers and expenditure limits for the primary, but is unopposed or is opposed by a slate that fails to reach the minimum threshold qualifying amount may raise contributions and make expenditures up to $1.8 million dollars. However, funds raised for the primary shall not be used for prepayment of expenses related to the regular election. Any funds remaining in the slate account after all primary obligations have been satisfied shall be transferred to the Registry for deposit in the Election Campaign Fund.

(2) The excess contributions returned to the contributors or transferred to the state treasurer pursuant to Section 1 of this administrative regulation shall not be considered qualifying contributions and shall not be matched by public transfers.

JOSEPH H. TERRY, Chair
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: December 20, 1994 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This administrative regulation will affect all slates of candidates for Governor and Lieutenant Governor.

(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. All reporting requirements are governed by statute or other administrative regulations.

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 paperwork: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effects on state and local revenues: This administrative regulation will produce no effects on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund appropriations in the agency budget.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising

from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Other alternatives considered were rejected because this method appeared to provide the fairest means of enforcing the provisions of KRS Chapter 121A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented
and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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 is not applied because all slates of candidates for Governor and Lieutenant Governor are subject to the same provisions.

STATEMENT OF EMERGENCY
32 KAR 1:120E

KRS 121A.080(9) prohibits the Registry of Election Finance from making transfers of public funds to qualifying slates of candidates seeking nomination to the offices of Governor and Lieutenant Governor prior to January 1, 1995. KRS 121A.080(7) provides that a slate of candidates seeking a transfer of public funds shall submit a transfer entitlement voucher to the Registry "at the times and in the form and manner the Registry may require." KRS 121A.080(9) requires the Registry to adjust the matching ratio if it appears that available funds will be insufficient to cover anticipated transfers. Because the number of participating slates will not be ascertainable until the deadline for filing revocations of statements of intent, it is necessary to promulgate this emergency regulation to establish the schedule for public fund transfers. An ordinary administrative regulation shall not be filed with the Regulations Compiler to replace this emergency administrative regulation.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 1:120E. Schedule for public fund transfers.

RELATES TO: KRS 121A.080(3), (9)

STATUTORY AUTHORITY: KRS 121A.020(7), 121A.060(d), 121A.080(7)

EFFECTIVE: December 20, 1994

NECESSITY AND FUNCTION: KRS 121A.080(9) prohibits the Registry of Election Finance from making transfers of public funds to qualifying slates of candidates seeking nomination to the offices of Governor and Lieutenant Governor prior to January 1, 1995. KRS 121A.080(7) provides that a slate of candidates seeking a transfer of public funds shall submit a transfer entitlement voucher to the Registry "at the times and in the form and manner the Registry may require." KRS 121A.080(9) requires the Registry to adjust the matching ratio if it appears that available funds will be insufficient to cover anticipated transfers. Because the number of participating slates will not be ascertainable until the deadline for filing revocations of statements of intent, it is necessary to promulgate this emergency administrative regulation to establish the schedule for public fund transfers. An ordinary administrative regulation shall not be filed with the Regulations Compiler to replace this emergency regulation.

Section 1. (1) No transfer of matching funds shall be made to a qualifying slate of candidates for Governor and Lieutenant Governor prior to the deadline for filing joint notification and declaration forms with the Secretary of State.

(2) Multiple transfer entitlement vouchers may be submitted as provided in KRS 121A.080(1) but not more frequently than the dates upon which regular campaign finance reports are due.

(3) A slate of candidates for Governor and Lieutenant Governor shall submit their transfer entitlement voucher at the time the request for eligibility certification is submitted so that the amount of qualifying contributions may accurately be determined.

JOSEPH H. TERRY, Chair
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: December 20, 1994 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This administrative regulation will affect all slates of candidates for Governor and Lieutenant Governor.

(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 paperwork: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effects on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds for the public finance program were included in the 1994-96 Biennial Budget.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered, because the statutes mandate that slates submit transfer entitlement vouchers in the form and at the times prescribed by the Registry.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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 is not applied because all slates of candidates for Governor and Lieutenant Governor are treated similarly.

STATEMENT OF EMERGENCY
32 KAR 1:130E

KRS 121A.020(7) requires the Registry of Election Finance to "adopt official forms and perform other duties necessary to implement the provisions of..." KRS Chapter 121A, known as the "Public Financing Campaign Act." Because slates of candidates for Governor and Lieutenant Governor have begun to file for the 1995 gubernatorial campaign, it is necessary to file this emergency administrative regulation to adopt the Public Finance Handbook and forms contained therein. An ordinary administrative regulation shall be filed with the Regulations Compiler to replace this emergency administrative regulation.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 1:130E. Adoption of public finance manual and forms.

RELATES TO: KRS 121A.005 to 121A.990, 121.120(4)
STATUTORY AUTHORITY: KRS 121A.020(7), 121.120(4)
EFFECTIVE: December 20, 1994
NECESSITY AND FUNCTION: KRS 121A.020(7) requires the Registry of Election Finance to "adopt official forms and perform other duties necessary to implement the provisions of this chapter." Because slates of candidates for Governor and Lieutenant Governor have begun to file for the 1995 gubernatorial campaign, it is necessary to promulgate this emergency administrative regulation to adopt the Public Finance Handbook (KREF 94-016/G) and other forms contained therein for use by slates of candidates for Governor and Lieutenant Governor. An ordinary administrative regulation shall be filed with the Regulations Compiler to replace this emergency regulation.

Section 1. As authorized by KRS 121A.020(7), the Registry of Election Finance hereby prescribes KREF 94-016/G (Public Finance Handbook) and the forms contained therein as the manual and forms to be utilized by slates of candidates for Governor and Lieutenant Governor.

Section 2. Material Incorporated by Reference. Form KREF 94-016/G (Public Finance Handbook) and forms KREF 94-001/G (Gubernatorial Slate Appointment of Campaign Treasurer); KREF 94-010/G (Gubernatorial Slate Committee Registration); KREF 94-011/G (Waiver From Filing Slate Campaign Finance Statements); KREF 94-002/G (Statement of Intent to Accept Transfers from Election Campaign Fund); KREF 94-003/G (Statement of Intent to Reject Election Campaign Fund Transfers); KREF 94-030/G (Request for Certification); KREF 94-031/G (Certification of Eligibility to Receive Election Campaign Fund Transfers); KREF 94-033/G (Authorization to Draw on Campaign Fund); KREF 94-032/G (Transfer Entitlement Voucher - Sample); KREF 94-032/G/A (Transfer Entitlement Voucher Appendix - Sample); and KREF 94-034/G (Notice of Gubernatorial Slate Replacement) contained therein, are hereby incorporated by reference. These materials are on file with the Administrative Regulations Compiler or may be obtained from the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., local time.

JOSEPH H. TERRY, Chair
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: December 20, 1994 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This administrative regulation will affect all slates of candidates for Governor and Lieutenant Governor.

(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: The only costs associated with this administrative regulation are those from preparation and printing of the handbook and forms.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing paperwork: None

(b) Reporting and paperwork requirements: The reporting and paperwork requirements associated with this administrative regulation are the usual staff time involved in receiving and processing forms.

(4) Assessment of anticipated effects on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund appropriations in the agency budget.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the statutes mandate that the agency provide manuals and forms for these candidates.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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 is not applied because all slates of candidates for Governor and Lieutenant Governor are treated similarly.

STATEMENT OF EMERGENCY
32 KAR 1:140E

KRS 121A.050(3) strictly forbids cash contributions to slates of candidates for Governor and Lieutenant Governor. However, situations may arise in which a person who is unaware of this prohibition makes a cash contribution, either anonymously or overtly. It is therefore necessary to promulgate this emergency administrative regulation to advise slates as to the manner in which they should proceed if cash is received. An ordinary administrative regulation shall be filed with the Regulations Compiler to replace this emergency administrative regulation.

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

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 1:140E. Cash contributions.

RELATES TO: KRS 121A.050(3)
STATUTORY AUTHORITY: KRS 121A.020(7)
EFFECTIVE: December 21, 1994
NECESSITY AND FUNCTION: KRS 121A.050(3) strictly forbids cash contributions to slates of candidates for Governor and Lieutenant Governor. However, situations may arise in which a person who is unaware of this prohibition makes a cash contribution, either anonymously or overtly. It is therefore necessary to promulgate this emergency administrative regulation to advise slates as to the manner in which they should proceed if cash is received. An ordinary administrative regulation shall be filed with the Regulations Compiler to replace this emergency regulation.

Section 1. A slate of candidates which discovers that cash has been received by the campaign shall dispose of the cash in the following manner:

(1) If the identity of the donor can be determined, the cash shall be immediately returned to the donor; or

(2) If the identity of the donor cannot be determined, the campaign shall immediately forward the cash to the Registry of Election Finance for deposit into the Election Campaign Fund. The cash shall be accompanied by a sworn statement signed by the treasurer certifying that:

(a) The cash was not solicited by a member of the slate nor an agent of the campaign; and

(b) That all cash received at that time has been forwarded to the Registry as provided in this administrative regulation.

JOSEPH H. TERRY, Chair
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: December 21, 1994 at noon

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This administrative regulation will affect all slates of candidates for Governor and Lieutenant Governor.

(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 paperwork: None

(b) Reporting and paperwork requirements: The only paperwork involved will be that of transferring cash to the Election Campaign Fund.

(4) Assessment of anticipated effects on state and local revenues: If cash is received by a slate, it will be deposited into the Election Campaign Fund, thereby slightly increasing state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency budget.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this method was the only way to deal with this problem and provide a way for slates to comply with the prohibition against cash contributions.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: KRS 121A.050(3) prohibits cash contributions and KRS 121.150(3) includes slates in the provisions for anonymous contributions.

(a) Necessity of proposed regulation if in conflict: Because of the specific language prohibiting cash, the Registry has taken the position that it is virtually impossible for a slate to receive an anonymous contribution.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not applied because the prohibition against cash contributions applies to all slates of candidates for Governor and Lieutenant Governor.

STATEMENT OF EMERGENCY
601 KAR 9:200E

House Bill 225 passed by the 1994 General Assembly required the Transportation Cabinet to promulgate an administrative regulation to implement the provisions of the "Branded Title Bill" within ninety days of the effective date of the Act. The Transportation Cabinet was not ready to promulgate the implementing administrative regulation at that time. However, because it is obvious from the language of the statute that the Kentucky Legislature expected the Transportation

Cabinet to react as quickly as possible, now that the computer has been reprogrammed to brand titles, to fully implement the program, the administrative regulation needs to be filed on an emergency basis. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on December 29, 1994.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 9:200E. Registration and titling of rebuilt motor vehicles.

RELATES TO: KRS Chapter 186A
STATUTORY AUTHORITY: KRS 186.115, 186A.500 through 186A.550
EFFECTIVE: December 29, 1994
NECESSITY AND FUNCTION: KRS 186A.530 requires the Transportation Cabinet to issue a certificate of title with a brand printed on the face of the title if the vehicle has been rebuilt or has a branded certificate of title from another jurisdiction. This administrative regulation sets forth the procedures the Transportation Cabinet shall follow in issuing the certificate of title and printing a brand on the face of the motor vehicle title. The administrative regulation further sets forth procedures to be followed when the owner of a motor vehicle which has been assembled from parts of wrecked or salvage motor vehicles presents the rebuilt motor vehicle for registration and titling.

Section 1. Vehicles from Other Jurisdictions. When the owner of a motor vehicle with a title from another jurisdiction applies for a Kentucky motor vehicle title, the county clerk receiving the application shall enter the following information relating to brands into the Automated Vehicle Information System:

(1) If the brand on a foreign motor vehicle title relates to prior damage to and repair of a motor vehicle the Kentucky title, when issued, shall bear the notation "rebuilt vehicle".

(2) If a vehicle title bears both a brand as described in subsection (1) of this section and a "water damaged" brand as set forth in KRS 186A.530(4), the Kentucky title shall bear the notation "rebuilt vehicle".

(3) If a vehicle certificate of title bears a brand relating to the previous use of the motor vehicle but not to damage to the motor vehicle, the Kentucky certificate of title shall not be branded.

Section 2. Branding of Title Issued for a Rebuilt Motor Vehicle. (1) If a salvage certificate of title has been issued pursuant to KRS 186A.520 because of both physical damage and water damage to the motor vehicle, a title issued pursuant to KRS 186A.530(2) shall bear the notation "rebuilt vehicle".

(2) If a vehicle with a salvage certificate of title issued pursuant to KRS 186A.520 is transferred within Kentucky or when a vehicle with similar title from another jurisdiction is transferred into Kentucky, the new certificate of title shall be another salvage certificate of title until the owner of the motor vehicle has successfully gone through the process set forth in Section 3 of this administrative regulation.

Section 3. Application for Title of Rebuilt Motor Vehicle. After a motor vehicle which has been assembled from parts of wrecked or salvaged vehicles and if the motor vehicle complies with all equipment and safety requirements of KRS Chapter 189, the owner may apply for registration or title of the motor vehicle. All applications for registration or title of a motor vehicle which has been assembled from parts from wrecked or salvaged motor vehicles shall be accompanied by the following:

(1) The form required by KRS 186A.060, Vehicle Transaction Record. This form shall contain an inspection certificate issued by a certified inspector in accordance with KRS 186A.115;

(2) A completed Form TC 96-215, Affidavit of Motor Vehicle Assembled from Wrecked or Salvaged Motor Vehicles, revised February, 1986. This form is incorporated by reference as a part of this administrative regulation;

(3) An address where the motor vehicle may be examined;

(4)(a) A properly assigned certificate of title; or

(b) If the vehicle owner does not have a certificate of title because the motor vehicle has not been through the titling process since the enactment of KRS Chapter 186A in 1983, a notarized affidavit fully explaining ownership of the vehicle which includes the following:

1. Length of time the vehicle was owned by the current owner, but it shall be a minimum of five (5) years;

2. Where and from whom the vehicle was purchased;

3. When and where the vehicle was last registered or licensed; and

4. Statement of no liens against the vehicle.

(5) A descriptive, notarized labor statement of repairs made and parts replaced;

(6) An original receipt for each part purchased. Multiple parts may be listed on each receipt. The receipt shall include:

(a) Seller's name;
(b) Seller's address;
(c) Seller's telephone number;
(d) Date of part purchase;
(e) Price of part purchased; and
(f)1.Serial number of each part;

2. Vehicle identification number of vehicle from which the part was taken; or

3. A written comprehensive explanation of the reason why the part does not have a serial number.

(7) If the motor vehicle is a motorcycle, a pencil tracing of both the motor identification number and frame identification number of the rebuilt motorcycle and the motorcycle from which parts were obtained.

(8)(a) The license plate from the motor vehicle even if the plate has expired; or

(b) A statement of why there is no longer a license plate for the rebuilt motor vehicle.

(9) A separate federal odometer disclosure statement if unavailable on either the Application for Title/Registration or the back of the certificate of title. The separate form may be TC 96-5, Odometer Disclosure Statement, revised March, 1989 or its equivalent. Form TC 96-5 is hereby incorporated by reference.

Section 4. Insurance Companies. (1) When an insured motor vehicle is paid for by an insurance company and the insurance company becomes the lawful owner of a stolen motor vehicle, the insurance company may make application in the name of the company for a regular title.

(2) If the motor vehicle is subsequently recovered and damage to the motor vehicle meets the requirements of a salvage vehicle as set forth in KRS 186A.335, the insurance company shall make an application for a salvage certificate of title.

(3) If an insurance company has a theft-recovered motor vehicle for which the company applied and was issued a salvage certificate of title, but the motor vehicle does not meet the requirements of a salvage vehicle as set forth in KRS 186A.335, the insurance company may make application for a regular certificate of title. The application for certificate of title shall be made on form required by KRS 186A.060 and shall include the following:

(a) The assigned certificate of title; and

(b) Verification on the company letterhead that the motor vehicle is a theft recovery and a description of the damage to the motor

vehicle.

Section 5. Recorded Lien Against Title. An application for a certificate of title to be issued pursuant to KRS 186A.530(2) shall be rejected by the Transportation Cabinet if there is a lien against the vehicle recorded in the Automated Vehicle Information System.

Section 6. Additional Information which may be Required. (1) The Transportation Cabinet may require an inspection of a rebuilt motor vehicle by the Kentucky State Police if:

(a) All documentation required by Section 3 of this administrative regulation is not available; or

(b) A check of the National Crime Information Center computer identifies the motor vehicle as one with a nonconforming vehicle identification number.

(2) If the repair documentation submitted in accordance with the requirements of Section 3 of this administrative regulation appears to be significantly less than seventy-five (75) percent of the value of the motor vehicle, the Transportation Cabinet may require:

(a) A statement from the insurance company of the damage done to the motor vehicle; or

(b) A salvage pool receipt which describes the damage to the motor vehicle.

Section 7. Material Incorporated by Reference. The material incorporated by reference may be viewed, copied or obtained free of charge from any county clerk or the Transportation Cabinet's, Division of Motor Vehicle Licensing. The Division is located on the 2nd and 3rd floors of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-5301. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

Section 8. Repeal of Administrative Regulation. Administrative regulation 601 KAR 9:047, Rebuilt or reconstructed vehicle registration is hereby repealed.

NORRIS BECKLEY, Commissioner
JERRY ANGLIN, Deputy Secretary
DON C. KELLY, P. E., Secretary
APPROVED BY AGENCY: December 12, 1994
FILED WITH LRC: December 29, 1994 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: The owners of the 30,000 motor vehicles which will be branded as a result of the passage of HB 225 and the promulgation of this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation will be implemented uniformly statewide. There should be no change in the cost of living or employment in the state as a result of the promulgation of the administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The cost of used cars which have branded titles will likely be lower. That is an increase in the cost of doing business for the recyclers but a decrease for the persons who purchase the vehicles. However, the branding of the motor vehicle titles is mandated by KRS Chapter 186A. This administrative regulation is just the mechanism for implementation of the branding program.

(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 first year following implementation will see a problem in that not all of the motor vehicles which have been severely damaged and then rebuilt will have a branded title since brands are only being imposed from December 1, 1994 forward. Therefore, a seller will be able to price a previously damaged motor vehicle without a brand higher than one damaged to the same extent which does have a brand. Regardless of the implementation date of a new program such as this, the inequity will exist for a short period of time. Further the administrative regulation sets forth the application process for obtaining a title for a motor vehicle which has been rebuilt.

2. Second and subsequent years: The application process for obtaining a title for a motor vehicle which has been rebuilt is the same for all persons.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The Transportation Cabinet must pay for the cost of reprogramming the Automated Vehicle Information System (AVIS).

1. First year: This cost will all be incurred in fiscal year 1994-95.
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: Road fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: The economic impact will be on the recycler industry in Kentucky. Since motor vehicle titles have not previously been branded in Kentucky, the recyclers based here and eligible to title a rebuilt motor vehicle in Kentucky, have done a booming business. They believe the price of these motor vehicles after they are rebuilt will be reduced by the passage of HB 225. However, this is out-weighed by the protection offered to the public.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There was a major discussion of whether the bill was to be imposed retroactively or prospectively. One alternative was to place a brand on any motor vehicle which the Transportation Cabinet was told had been rebuilt. The other alternative was to only brand those motor vehicle titles received after the December 1, 1994 implementation date. The cabinet's general counsel said that unless HB 225 had specifically allowed the retroactive application, only prospective application could be allowed.

(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 duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. All motor vehicles which meet the definition of a "rebuilt vehicle" are to be branded.

STATEMENT OF EMERGENCY
907 KAR 1:013E

This emergency administrative regulation is being amended so that state-owned psychiatric hospitals will be paid disproportionate share hospital payments equal to 100 percent, and state university teaching hospitals will be paid disproportionate share hospital payments equal to 200 percent, of the uncompensated care they furnish. In-state disproportionate share hospitals with 100 beds or less shall be paid an additional disproportionate share hospital payment of $200,000 for the period of December 31, 1994 through June 30, 1995. This action must be taken on an emergency basis to prevent the loss of federal matching funds which would otherwise be available for state owned psychiatric hospitals and state university teaching hospitals qualifying as disproportionate share hospitals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

BRERETON JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.575, 1992 Ky. Acts ch. 462, Part I.G.52.b.2

STATUTORY AUTHORITY: KRS 194.050, 205.460, 1992 Ky. Acts ch. 462, Part I.G.52.b.2., 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4

EFFECTIVE: December 29, 1994

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of medical assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of medical assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. (1) The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised December 31, 1994 [~~November 29, 1993~~], which is incorporated by reference in this administrative regulation.

(2) For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential).

(3) The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. eastern time in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. General Description of the Payment System. The following provisions shall be applicable for purposes of setting inpatient hospital payment rates:

(1) Use of prospective rates. Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days.

(a) The prospective rate shall be all inclusive in that both routine and ancillary cost shall be reimbursed through the rate.

(b) For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used.

(c) For universal rate years beginning on or after January 1, 1985, the prospective rate shall not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary.

(d) Total prospective payments shall not exceed the total customary charges in the prospective year.

(e) Overpayments shall be recouped:

1. By payment from the provider of the amount of the overpayment; or

2. By the withholding of the overpayment amount from future payments due the provider.

(2) Use of a uniform rate year. A uniform rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for psychiatric hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the psychiatric hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, shall be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used shall be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be grouped with other acute care hospitals according to bed size (referred to as "peer grouping").

(a) The peer groupings for the payment system shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up.

(b) Designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless the facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in a manner which recognizes the presence of the major pediatric teaching component existing outside the state university hospitals.

(c) A facility in the 201-400 peer group shall not have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up.

(d) Psychiatric hospitals shall not be peer grouped but shall have

a separate array of psychiatric hospitals only.

(e) Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature shall not be peer grouped or arrayed.

(6) Use of a minimum occupancy factor. A minimum occupancy factor shall be applied to capital costs attributable to the Medicaid Program. A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor shall apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to psychiatric hospitals.

(8) Use of upper limits with regard to services provided on or after November 29, 1993.

(a) The following upper limits and payment principles shall apply to all hospitals with other limitations for disproportionate share hospitals shown in paragraph (b) of this subsection.

1.a.(i) For acute care hospitals, except hospitals with 100 beds or less, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year.

(ii) For acute care hospitals with 100 beds or less, the upper limit on all costs (except Medicaid capital cost) shall be established at 110 percent of the weighted median per diem for hospitals in the peer groups, using the most recent Medicaid cost report available as of December 1 of each year.

b. For psychiatric hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A psychiatric hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index.

c. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy.

d. Disproportionate share hospitals shall also receive, in addition to regular program payments, disproportionate share hospital payments as described in the Reimbursement Manual at Section 102C.

e. Provider taxes shall be considered allowable cost. For the rate period beginning November 29, 1993, the allowable cost of the tax shall be added to the hospital rate with no offsets and without regard for usual upper limits. For subsequent rate periods the cost (excluding, effective March 1, 1994, any per diem rate adjustments for the prior rate period relating to provider taxes) shall be shown in the appropriate cost report with adjustment as necessary to reflect an annual amount.

f. Allowable cost growth from the prior rate base year to the new rate base year shall be limited to not more than one and one-half (1 1/2) times the Data Resources, Inc. inflation amount for the same time period; limits shall be applied by component (capital and operating cost only); cost growth beyond the allowable amounts shall be considered unallowable cost for rate setting purposes.

2. For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursery [~~nursing~~] days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)[2] of this section). These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual. 2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)[2] of this section). These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual.

3. Psychiatric hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)[2] of this section). These hospitals shall also be entitled to disproportionate share hospital payments in accordance with KRS 205.640 and Section 102C of the Reimbursement Manual.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) and (d) and those hospitals which may not meet the criteria but meet the criteria specified in 42 USC 1396r-4(d) and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and psychiatric hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. [~~Effective with regard to services provided on or after July 1, 1990,~~] Hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of [~~one-half (1/2) of~~] one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the

facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. For the period ending June 30, 1994, the following policy shall be in effect:

a. Each disproportionate share hospital shall be paid a minimum disproportionate share payment amount for the type of hospital plus any earned adjustment to which the hospital is entitled. The hospital types, minimum payment amounts, and earned adjustments shall be as follows and shall only remain in effect for the period ending June 30, 1994:

(i) Type I hospitals shall be those acute care and psychiatric in-state hospitals serving a federally designated medically undeserved area, a federally designated health manpower shortage area, or a primary care physician shortage area designated under the rural Kentucky medical scholarship fund, when the hospital has fifty (50) beds or less. Minimum amount: ninety-five (95) dollars per Medicaid day.

(ii) Type II. These hospitals shall be described in the same manner as Type I, except these hospitals have fifty-one (51) beds to 100 beds. Minimum amount: seventy (70) dollars per Medicaid day.

(iii) Type III. These hospitals shall be described in the same manner as Type I except these hospitals have 101 beds to 200 beds and include rehabilitation hospitals. Minimum amount: fifty-five (55) dollars per Medicaid day.

(iv) Type IV. These hospitals shall be described in the same manner as Type I except these hospitals have 201 or over beds and include rehabilitation hospitals. Minimum amount: forty-five (45) dollars per Medicaid day.

(v) Type V. All acute care and psychiatric in-state hospitals with 100 beds and under except those described as Type I or II. Minimum amount: forty-five (45) dollars per Medicaid day.

(vi) Type VI. All acute care, rehabilitation and psychiatric in-state hospitals with 101 beds to 200 beds except those that are Type III. Minimum amount: thirty-five (35) dollars per Medicaid day.

(vii) Type VII. These hospitals shall be described in the same manner as Type I, except the type shall be limited to rehabilitation hospitals. Minimum amount: ninety-five (95) dollars per Medicaid day.

(viii) Type VIII. These hospitals shall be described in the same manner as Type II, except the type shall be limited to rehabilitation hospitals. Minimum amount: seventy (70) dollars per Medicaid day.

(ix) Type IX. All rehabilitation hospitals, with 100 beds and under except those described as Type VII or VIII. Minimum amount: forty-five (45) dollars per Medicaid day.

(x) Type X. All other in-state hospitals. Minimum amount: ten (10) dollars per Medicaid day.

(xi) Type XI. All out-of-state hospitals. Minimum amount: one (1) dollar per Medicaid day.

b.(i) Each Type I through Type X hospital shall have the opportunity for an earned payment adjustment based on the provision of indigent care (i.e., care provided to Medicaid recipients beyond the Medicaid covered days or to individuals or families with income under the poverty level).

(ii) For the period of July 1, 1993 through June 30, 1994, the earned adjustment shall equal ten (10) dollars for each indigent day of care provided plus an amount equal to the cost of the indigent care (at Medicaid rates) provided by the hospital for which there has been no direct or indirect payment (i.e., where the cost of the care has not been paid or cost-shifted to other payors) with an adjustment to account for outpatient services so the total indigent care per diem rate shall be up to but not in excess of 140 percent of the Medicaid per diem rate.

(iii) A hospital shall be presumed to have received payment for indigent care to the extent that other patient revenues exceed other patient costs, and to the extent that direct or other indirect payments are made to the hospital for the indigent care.

(iv) A one (1) time disproportionate share payment shall be paid as appropriate for the period of June 15, 1994 through June 30, 1994 to those hospitals qualifying under the following formula:

i. The amount of disproportionate share indigent care payments earned by the hospital using the formula in effect during the period of July 1, 1993 through June 30, 1994 shall be compared to an amount which is derived by computing the amount of earnings that would have been realized during the period of July 1, 1993 through June 30, 1994 using the revised formula taking effect on July 1, 1994 (shown in subparagraph 2 of this paragraph); the one (1) time payment amount shall be the amount (if any) by which the amount derived by using the formula effective July 1, 1994 exceeds the actual amount earned under the formula which was in effect; and

ii. If the one (1) time payments would cause the total of all disproportionate share payments to exceed $81,000,000 for the period of July 1, 1993 through June 30, 1994, all one (1) time payments shall be reduced proportionately so the total amounts of disproportionate share payments for the period of July 1, 1993 through June 30, 1994 shall equal but not exceed $81,000,000.

(v) Any acute care disproportionate share hospital with 100 beds or less whose July 1, 1993, or January 1, 1994, per diem payment rate is less than the April 1, 1993 rate paid as of June 30, 1993, and also less than full allowable per diem costs for the services provided by the hospital as of July 1, 1993, or January 1, 1994, respectively, shall receive an adjustment to the hospital's disproportionate share minimum payment for the period March 1, 1994 through June 30, 1994. The payment adjustment for an acute care hospital shall be determined by multiplying the number of the hospital's Medicaid days as follows:

i. For services provided for the July 1, 1993 through December 31, 1993 period by the difference between the hospital's July 1, 1993 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost; and

ii. For services provided for the January 1, 1994 through June 30, 1994 period by the difference between the hospital's January 1, 1994 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost.

(vi) Any acute care or psychiatric disproportionate share hospital of 100 beds or less shall receive an additional disproportionate share hospital payment of $200,000 for the period March 1, 1994 through June 30, 1994. This payment shall be made in two (2) equal installments of $100,000 each with the first payment amount to be paid on or before March 31, 1994 and the second payment amount to be paid on or before June 30, 1994.

c. Each Type XI hospital shall qualify for an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

2. The disproportionate share hospital payments for the period beginning July 1, 1994 through December 30, 1994 ~~[and thereafter]~~ shall be made as follows:

a. Type I hospitals shall be those in-state disproportionate share hospitals participating in the Medicaid Program.

b. Type II hospitals shall be those out-of-state disproportionate share hospitals participating in the Medicaid Program.

c. The disproportionate share hospital payments for Type I hospitals shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate (except that total disproportionate share payments for indigent care services provided during the 1995 fiscal year shall not exceed $81,000,000; if payments will cause the limits to be exceeded, all hospitals' earned amounts shall be adjusted proportionately). The inpatient equivalent care days for each hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified

period of time.

d. Each Type II (out-of-state) disproportionate share hospital shall qualify for a payment of one (1) dollar per Medicaid day plus an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

3. The disproportionate share hospital payments for the period beginning December 31, 1994 shall be made as follows:

a. Type I hospitals shall be those in-state disproportionate share hospitals with 100 beds or less participating in the Medicaid Program.

b. Type II hospitals shall be those in-state disproportionate share hospitals with 101 beds or more, except for Types III and IV, participating in the Medicaid Program.

c. Type III hospitals shall be those in-state disproportionate share hospitals participating in the Medicaid Program that have been designated as state university teaching hospitals.

d. Type IV hospitals shall be those in-state disproportionate share hospitals participating in the Medicaid Program that are state-owned psychiatric hospitals.

e. Type V hospitals shall be those out-of-state disproportionate share hospitals participating in the Medicaid Program.

f. The disproportionate share hospital payments for Type I and Type II hospitals shall include a volume adjustment. The adjustment shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate (except that total disproportionate share volume adjustment payments to Type I and Type II hospitals for indigent care services provided during the 1995 fiscal year shall not exceed $81,000,000; if payments will cause the limits to be exceeded, all hospitals' earned amounts shall be adjusted proportionately). The inpatient equivalent care days for each hospital shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

g. The disproportionate share hospital payments for Type III hospitals shall be equal to 200 percent (reduced effective July 1, 1995 to 100 percent), and for Type IV hospitals, 100 percent, of the cost of services to Medicaid patients, less the amount paid by Medicaid as usual Medicaid per diem payments, plus the cost of services to uninsured patients, less any cash payments made by the uninsured patients.

h. The disproportionate share hospital payments for Type V hospitals shall be one (1) dollar per Medicaid day plus an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

4. Any Type I in-state disproportionate share hospital shall receive a base disproportionate share hospital payment of $200,000 for the period of December 31, 1994 through June 30, 1995. This payment shall not be subject to the $81,000,000 payment limit specified in subparagraph 3f of this paragraph.

5. [~~3.~~] Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 to children under the age of six (6) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children.

(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.

(11) Hospitals whose general characteristics are not those of an acute care or psychiatric hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 4. Payments to Participating Out-of-state Hospitals. (1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission, participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) and children under age six (6), without regard to length of stay or number of admissions of the infants and children.

(3) Effective with regard to services provided on or after February 1, 1991, professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 5. Implementation Date. Except as otherwise specified the changes shown in this administrative regulation shall be effective with regard to services provided on or after December 31, 1994. [~~November 29, 1993.~~]

MASTEN CHILDERS II, Commissioner and Secretary
APPROVED BY AGENCY: December 28, 1994
FILED WITH LRC: December 29, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency contact person: Masten Childers II

(1) Type and number of entities affected:

(2) Direct and indirect costs or savings on the: All disproportionate share hospitals which are state-owned psychiatric hospitals; state university teaching hospitals and in-state disproportionate share hospitals with 100 beds or less participating in 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 identified.

(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 identified.

(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:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $194,800,000 (cost).

2. Continuing costs or savings: $115 million (cost).

3. Additional factors increasing or decreasing costs: There is a one-time cost of $11,800,000.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None identified.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None identified.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(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 was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY
907 KAR 1:016E

This emergency administrative regulation is being amended to provide that effective with regard to services provided on or after December 28, 1994 the Medicaid patient status criteria will cover chronically mentally ill adults age 65 and above who are admitted to the psychiatric hospital under a KRS Chapter 202A commitment when services must be provided in the hospital to maintain the recipient at or restore him to the greatest possible degree of health and independent functioning. This action must be taken on an emergency basis to prevent the loss of federal matching funds which would otherwise be available for state-operated psychiatric hospitals qualifying as disproportionate share hospitals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:016E. Psychiatric hospital services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441 Subparts C, D, 456 Subparts G, H, I, 42 USC 1396 a-d

EFFECTIVE: December 29, 1994

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of medical assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to services in psychiatric hospitals for which payment shall be made by the Medicaid program in behalf of both the categorically needy and the medically needy.

Section 1. Provision of Service. Inpatient services provided in an appropriately licensed psychiatric hospital participating in the Medicaid program shall be limited to recipients of medical assistance age sixty-five (65) or over or under age twenty-one (21) meeting patient status criteria. Services shall be provided in accordance with the federal Medicaid requirements and with Medicaid policies shown in the Psychiatric Inpatient Facility Utilization and Placement Review Manual, revised December 28, 1994 [~~March 1, 1993~~] which is hereby incorporated by reference and referred to hereafter as "the manual". The manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 2. Durational Limitation. Durational limitation on payment in respect to the aged recipient and children under age twenty-one (21) shall be subject to the utilization review mechanism established by the cabinet and shown in the manual. Notwithstanding a continuing need for psychiatric care, payment for services shall not be continued past the 22nd birthday for patients admitted prior to the 21st birthday.

Section 3. Condition of Eligibility for Participation. An appropriately accredited psychiatric hospital desiring to participate in the Medicaid program shall be required as a condition of eligibility to participate in the Medicare program when the hospital serves patients eligible for payments under the Medicare program.

Section 4. Determining Patient Status. Professional staff of the cabinet or an agency operating under its lawful authority pursuant to the terms of its agreement with the cabinet shall review and evaluate the health status and care needs of the recipient in need of psychiatric hospital care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet the needs, and ambulatory care services available in the community to meet those needs.

(1) The patient shall not qualify for Medicaid patient status unless:

(a) The person is qualified for admission, and continued stay as appropriate;

(b) Their needs mandate psychiatric hospital care on a daily basis; and

(c) As a practical matter, the necessary care can only be provided on an inpatient basis.

(2) The placement and continued stay criteria shown in Parts II, III and IV of the manual shall be used to:

(a) Determine patient status;

(b) Ensure that proper treatment of the individual's psychiatric conditions requires services on an inpatient basis under the direction of a physician;

(c) Ensure that psychiatric hospital services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed, or, for chronically mentally ill adults age sixty-five (65) and above as described in KRS 210.005, who are admitted to the hospital under a KRS Chapter 202A commitment, maintain the recipient at, or restore him to, the greatest possible degree of health and independent functioning; for individuals age sixty-five (65) or over residing in a psychiatric hospital on December 28, 1994, the requirement for admission under a commitment pursuant to KRS Chapter 202A shall not be applicable if the individual continues to reside in the same hospital; and

(d) Ensure that ambulatory care or alternative services available in the community are not sufficient to meet the treatment needs of the recipient.

Section 5. Reevaluation of Need for Services. All mental hospital stays shall be certified for a specific length of time, as deemed medically appropriate by the utilization review organization considering the health status and care needs of the applicant or recipient. Patient status shall be reevaluated at least once every thirty (30) days. Upon the expiration of the certified length of stay, the Medicaid Program shall not be responsible for the cost of care unless the recipient or his authorized representative requests and the utilization review organization certifies additional days.

Section 6. Reconsideration and Appeals. When an adverse determination is appealed by the applicant or recipient, the decision shall be reviewed by the cabinet (or its representative) using time frames specified in the manual to determine whether the decision should be reversed.

Section 7. Implementation Date. The amendments to this regulation shall be effective with regard to services provided on or after December 28, 1994. [~~March 1, 1993.~~]

MASTEN CHILDERS II, Commissioner and Secretary
APPROVED BY AGENCY: December 28, 1994
FILED WITH LRC: December 29, 1994 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency contact person: Masten Childers II

(1) Type and number of entities affected: State-owned psychiatric hospitals.

(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: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Any cost shall be reflected in the payment regulation 907 KAR 1:013, Payments for hospital inpatient services.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Statewide implementation.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(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 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
909 KAR 1:200E

This emergency regulation is required by House Bill 250 and House Bill 928 passed by the regular session of the 1994 General Assembly. In an amendment to KRS Chapters 342 and 216, House Bill 250 required the Kentucky Health Policy Board to promulgate administrative regulations to implement the twenty-four (24) hour pilot program by January 1, 1995. An ordinary administrative regulation alone is not sufficient as House Bill 250 requires that the administrative regulations be promulgated by January 1, 1995. Without the emergency regulation, the statutory requirements cannot be met. This emergency regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
JACK B. HALL, Chairman

KENTUCKY HEALTH POLICY BOARD

909 KAR 1:200E. Twenty-four (24) hour pilot insurance program.

RELATES TO: KRS Chapter 216
STATUTORY AUTHORITY: KRS 216.2960
EFFECTIVE: December 29, 1994
NECESSITY AND FUNCTION: KRS Chapters 216 and 342 require the promulgation of administrative regulations relating to the twenty-four (24) hour pilot insurance program to cover general health care for purposes of general health insurance and workers' compensation. This administrative regulation applies to all employers, insurers, and health care providers that apply to combine group health insurance with workers' compensations under a twenty-four (24) hour pilot program.

Section 1. Definitions. (1) "Twenty-four (24) hour pilot insurance program" means a combination of group health coverage plus the medical portion of worker's coverage, as required by KRS 342.020.

(2) "Commissioner" means the Commissioner of Workers' Claims, or the commissioner's designee.

(3) "Compensable injury or disease" means a condition or disease for which the employer is liable for medical benefits under KRS 342.020.

(4) "Coordinated plan" means a pilot plan in which medical services for compensable conditions are covered by a workers' compensation plan and medical services for noncompensable conditions are covered by a group health plan and the rendition of medical services is coordinated by a single plan administrator.

(5) "Group health plan" means an insurance policy and/or contractual agreement under which medical services for nonwork related conditions are extended to the employees of an employer or employers' association.

(6) "Health care service contractor" means a health maintenance organization (HMO), a managed health care organization (HCO), preferred provider organization (PPO), independent practice association (IPA), and other medical provider networks.

(7) "Integrated plan" means a pilot plan in which medical services for both compensable and noncompensable conditions are managed and/or covered by a single health care service contractor or insurance company.

(8) "Kentucky Health Policy Board" means a quorum of the board or a member of the board designated to represent the board.

(9) "Pilot plan" means an approved plan providing twenty-four (24) hour coverage.

(10) "Pilot insurance program administrator" means the entity which provides the day-to-day administration of the pilot insurance program.

(11) "Pilot insurance program" means an approved program of providing twenty-four (24) hour coverage.

(12) "Single insurance policy" means a twenty-four (24) hour pilot insurance program which provides insurance for compensable and noncompensable conditions.

Section 2. Prohibitions. No person or entity shall:

(1) Market an insurance product, policy or plan of rendition of health care services as providing twenty-four (24) hour coverage for compensable and noncompensable conditions absent first qualifying as a twenty-four (24) hour pilot program under this administrative regulation.

(2) There shall be no transfer of liabilities or expenses between or among particular lines of insurance whose medical or health components have been combined into twenty-four (24) hour coverage for health care.

Section 3. Pilot Insurance Programs in General. (1) A pilot insurance program shall deliver twenty-four (24) hour coverage through a coordinated plan, integrated plan, or a single policy plan. Each program shall be designed and operated to eliminate, or minimize, differences in the delivery and administration of medical services for compensable and noncompensable conditions.

(2) A pilot insurance program may provide twenty-four (24) hour coverage to employees of one (1) or more employers. The program may cover all or a portion of the subject workforce of a participating employer. If only a portion of the workforce is covered by a pilot insurance program, medical coverage for the remainder shall be governed by KRS 342.020 and any group health care plan which may otherwise be in effect.

Section 4. Application Process. (1) The administrator of a pilot plan shall apply for authorization to operate the program by submitting an application in quadruplicate to the Kentucky Health Policy Board on a prescribed form. The administrator shall provide the following information:

(a) The name, address, and telephone numbers of the pilot insurance program administrator and a description of its role in funding, insuring, and operating the pilot insurance program;

(b) The name, address, and telephone numbers of each sponsor of the pilot insurance program and a description of their roles in funding, insuring, and operating the pilot insurance program. Sponsors shall include the employer or employers' association, workers' compensation insurance carrier, health care service contractor for pilot insurance program and general health care insurance, if any.

(c) A full description of how the pilot insurance program will operate, including participating and nonparticipating employees, participating and nonparticipating worksites, plan benefits, coverage limitations, premiums, provider networks, managed care provisions and administrative procedures of the program;

(d) A listing of participating providers by service category;

(e) A draft of all materials describing the pilot insurance program that are intended for distribution to employees and their families;

(f) A description of how the pilot insurance program is expected to benefit each of the following: employees, employers, medical providers and insurers;

(g) A description of the financial and organizational resources supporting the pilot insurance program;

(h) A description of the methodology and identification of the personnel that the program administrator will utilize to produce an analysis comparing the pilot insurance program results with predicted results under traditional workers' compensation insurance, with and without managed care in the following areas:

1. Number of employees treated by the program.

2. Number of work-related injuries or diseases by ICD-9 code treated under the plan and during the year preceding the adoption of the plan.

3. Breakdown by ICD-9 codes of injuries and diseases treated.

4. Total medical costs for a noncompensable condition during the plan and in the year preceding adoption of the plan.

5. Average medical cost per injured employee by type of injury.

6. Average medical cost per diseased employee by type of disease.

7. Breakdown of medical cost elements as to type of physician utilized, hospital costs, drug costs, and other costs during the year preceding adoption of the plan and for one (1) year afterwards.

8. Number of days by type of injury and disease for which an employee has been released from work during the year preceding adoption of the plan and for one (1) year afterwards.

9. In lieu of the above, a methodology to compare each employer's preplan expenditure for both compensable and noncompensable medical to those expenditures made after adoption of the plan.

(i) If the health services contractor has not been approved to operate a managed care plan pursuant to 803 KAR 25:110, a variance shall be requested and the program administrator shall provide a description of the means by which the following will be achieved for compensable conditions:

1. Reasonable provider choice;
2. Quality care;
3. Availability of emergency care;
4. Strong case management; and
5. Utilization review.

(j) The program administrator shall list the terms and conditions of network coverage and a listing of all participating providers by service category and shall be fully disclose the same in the pilot insurance program application and to all program members.

Section 5. Authorization of Pilot Plans. (1) The commissioner and the Kentucky Health Policy Board with consultation of the Commissioner of Insurance shall authorize pilot insurance programs. Applications will be evaluated in order of their receipt. Within thirty (30) days of receiving a complete application, the Kentucky Health Policy Board shall provide a written notice of findings upon review to the program administrators. That notice shall:

(a) Specify approval or rejection of the application and the grounds for that decision; or

(b) Specify additional information needed to clarify the application and a deadline for submitting that information. If additional information is not provided by the deadline, the application shall be rejected. Within thirty (30) days of receiving timely additional information, the commissioner and the Kentucky Health Policy Board shall provide a written notice of findings, as described in paragraph (a) of this subsection.

(2) In evaluating and authorizing pilot insurance programs, the following criteria shall be considered:

(a) The extent to which the pilot insurance program achieves a diversity of participants, plan designs and geographic regions;

(b) The potential of the program to mutually benefit workers, employers, medical providers and insurers;

(c) The adequacy of the financial and organizational resources of the program administrator and sponsors;

(d) The ability of the program administrator to meet the evaluation requirements described in KRS 342.352 and 216.2960; and

(e) The availability of agency resources to monitor the pilot insurance program.

Section 6. Revocation of Pilot Plan Authority. (1) The Kentucky Health Policy Board and commissioner may revoke the authority of a pilot insurance program at any time if, one (1) or more of the following, or similar, conditions exist:

(a) The pilot insurance program or any program administrator does not comply with the provisions of this administrative regulation or other applicable provisions of statute;

(b) A participating insurer, self-insured employer, or group self-insured becomes subject to suspension or revocation of its certificate of authority;

(c) The pilot insurance program is deficient in its management or claims adjustment practices, or the health services contractor fails to observe standards of provider choice, quality care, utilization review or grievance resolution.

(d) A breach of the pilot insurance program agreement occurs or there has been a misrepresentation of a material fact in the pilot insurance program application on any subsequent report required of the pilot insurance program administrator or health services contractor.

(e) The successful operation of the pilot insurance program is jeopardized by a weakness in the financial or operational status of the program administrator, program sponsor, or health care services contractor.

(2) The Kentucky Health Policy Board and commissioner shall provide written notice of an intent to revoke to the administrator setting forth the basis of the revocation and granting the program administrator fifteen (15) days from the date of the notice to make a written response.

(3) After reviewing the response, the Kentucky Health Policy Board and commissioner shall issue an order directing the administrator to remedy specific defects; may revoke the certificate of authority or in the discretion of the commissioner and Kentucky Health Policy Board, set a time and place for hearing.

Section 7. Dispute Resolution. (1) Each twenty-four (24) hour pilot insurance program shall contain an expeditious, informal grievance procedure to resolve disputes by employees and providers relative to the rendition of medical services. A detailed description of the employee grievance procedure shall be included in informational materials provided to employees and a detailed description of the provider grievance procedure shall be included in all provider contracts or appended materials.

(2) The grievance procedure shall meet the following requirements:

(a) A grievance is made when a written complaint or written request is delivered by the employee or provider to the twenty-four (24) hour pilot insurance program administrator, or, health care services contractor setting forth the nature of the complaint and remedial action requested.

(b) The employee or provider shall file a grievance within thirty (30) days of the occurrence of the event giving rise to the dispute.

(c) The twenty-four (24) hour pilot program administrator, or, health care service contractor shall render a written decision upon grievance within thirty (30) days of the filing of the grievance.

(d) Twenty-four (24) hour pilot programs may provide for alternate means of dispute resolution including arbitration, and mediation. In that event, final resolution of a grievance shall not be subject to the time constraints set forth in paragraph (c) of this subsection. In all such cases, resolution mechanisms shall be expeditious and where treatment matters are at issue reflect the need for prompt resolution.

(3) The twenty-four (24) hour pilot program shall maintain a record for a minimum of two (2) years of each formal grievance to include the following:

(a) A description of the grievance, the employee's or provider's name and address, names and addresses of the health care providers relevant to the grievance, and the health care contractor's name and address; and

(b) A description of the administrator's findings, conclusions, and disposition of the grievance.

(c) Number of grievances filed and summary of action taken.

(4) Any employee or provider dissatisfied with the administrator's or health care service contractor's resolution of a grievance relating to a purportedly compensable condition, may apply for review by a workers' claims administrative law judge by filing a request for

resolution within thirty (30) days of the date of the administrator's final decision. Upon review by a workers' claims administrative law judge, the movant shall be required to prove that the administrator's final decision is unreasonable or otherwise fails to conform with KRS Chapters 342 or 216.

Section 8. Provider Networks. A pilot insurance program may deliver medical services through a limited network of participating health care providers as follows:

(1) Noncompensable injuries. Coverage may be restricted in accordance with the provisions of the group health care portion of the program; and

(2) Compensable injuries. Coverage may be restricted in accordance with the provisions of a managed care plan previously approved by the commissioner pursuant to 803 KAR 25:110 or pursuant to a variance approved in the application for a twenty-four (24) hour pilot program.

Section 9. Pilot Plan Coverage. (1) Medical services.

(a) Coverage of compensable injuries must comply with all provisions of KRS Chapter 342. It is the responsibility of the program administrator to ensure that all required medical services are provided for every compensable injury;

(b) Coverage of noncompensable injuries must comply with the terms of the group health plan portion of the pilot plan; and

(c) Nothing in these rules shall be construed to establish concurrent or double coverage of the same injury or illness under paragraphs (a) and (b) of this subsection.

(2) Coordination of medical coverage.

(a) Coverage of medical services that are included in the group health portion of a pilot plan, but are excluded from coverage under KRS Chapter 342, shall not be denied to pilot plan members solely because the plan member claims a compensable injury.

(3) Copayments and deductibles.

(a) Coverage of compensable injuries shall not require any copayment or deductible to be paid by subject workers. Coverage of noncompensable injuries may require copayments or deductibles to be paid by plan members;

(b) If any copayment or deductible is paid by a subject worker for medical services that are later determined to be compensable, the amounts paid shall be refunded within thirty (30) days of the determination.

(4) Effective date of coverage. Coverage under a pilot insurance program shall begin on the effective date specified in the pilot insurance program agreement. Workers' compensation coverage shall not be interrupted because of the initiation of a pilot insurance program. Coverage under a pilot insurance program shall not be delayed for any injured worker on account of an existing compensable injury. Ongoing medical services for an existing compensable condition shall comply with the provisions of KRS Chapter 342.

(5) Payment of premiums.

(a) Premiums for the group health plan portion of a pilot plan may be shared by the employer and the covered members in accordance with the terms of that portion of the plan. Premiums for the workers' compensation portion must be fully paid by the employer, as required under KRS Chapter 342.

(b) In integrated and single policy plans, a delineation of the premiums attributable to the two (2) portions of coverage must be maintained by the program administrator.

Section 10. Claims Administration. Nothing in the operation of a pilot insurance program shall hinder workers from submitting claims or encourage workers to seek group health plan coverage for compensable injuries in lieu of workers' compensation coverage.

Section 11. Examination of Records. The Kentucky Health Policy Board and commissioner, may make or cause to be made examinations of the books and records of the administrator of a pilot plan to ensure compliance with these rules and the pilot plan agreement.

Section 12. Statistical Reporting. (1) The workers' compensation portion of a pilot plan. The administrator and sponsors of a pilot plan shall provide the reporting required under KRS Chapter 342 for the workers' compensation portion of a pilot plan.

(2) The group health portion of a pilot plan. The administrators of a pilot plan shall report the experience of the group health portion of the plan in accordance with the administrative regulations of the Health Policy Board.

JACK B. HALL, Chairman
APPROVED BY AGENCY: December 21, 1994
FILED WITH LRC: December 29, 1994 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack B. Hall

(1) Type and number of entities affected: This regulation affects any employer or insurer that chooses to participating in the twenty-four (24) hour pilot program providing health care coverage to employees by combining general health with the health component of workers' compensation.

(2) Direct and indirect costs or savings to those affected:

(a) The twenty-four (24) hour pilot program will allow cost savings in the administration and the delivery of quality medical care by combining the two health components.

(b) Cost to the employer and employee will decrease with lower administration cost.

(3) Effects on the promulgating administrative body: It will be necessary for the board to monitor the twenty-four (24) hour pilot program.

(1) First year: Cost of staff of the board to implement the program.

(2) Continued cost or savings: Same, as the program must be monitored.

(3) Additional factors increasing or decreasing cost: None known.

(b) Reporting and paperwork requirements: Processing of applications for twenty-four (24) hour pilot programs and generating a report of its progress.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenues to be used for implementation and enforcement of administrative regulation: The budget of the Commonwealth as established in House Bill 250 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: Unknown

(b) Kentucky: The regulation makes coverage available statewide.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Health care reform KRS 216.2960 directs the board to promulgate this regulation.

(8) Assessment of expected benefits: More efficient and better quality care delivered to employees who participate in the program. Cost savings for employers by getting workers back to work in a timely manner and lower premium costs.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None known.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplicative: KRS 342.352.

(a) Necessity of proposed regulation if in conflict. Not applicable. House Bill 250 requires promulgation of this regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The board worked with the commissioner of workers' claims to develop mutually acceptable regulations.

(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

DEPARTMENT OF TREASURY
(As Amended)

20 KAR 1:080. Linked deposit.

RELATES TO: KRS 41.600 - 41.625
STATUTORY AUTHORITY: KRS 41.605, 41.625
NECESSITY AND FUNCTION: This administrative regulation sets out the procedures for the operation of the Linked Deposit Investment Program. It establishes policy, the reduced loan process, review and monitoring procedures, and criteria for approval. **The Department of Treasury finds the following: there are small businesses and agribusinesses throughout the state experiencing economic stagnation or decline; higher interest rates can cause small businesses and agribusinesses in the state to suffer in profitability and competition; and interest rates can be factors in causing unemployment, particularly for women and minorities. The Linked Deposit Investment Program shall provide available state investment funds for low cost loans through approved state financial institutions to accomplish the following: contribute to the economic revitalization of this state; provide for employment growth and stabilization in economically depressed areas; and promote alternate or additional agriculture production.**

Section 1. In deciding which eligible small businesses or agribusinesses shall receive reduced rate loans, the Treasury shall consider the following in that linked deposits funds are invested to:

(1) Assure that initiatives by women and minorities are supported equitably;

(2) Benefit the unemployed;

(3) Promote new, expanded and alternate crop production;

(4) Promote the further development of agribusiness and value added opportunities.

Section 2. In deciding whether to approve a linked deposit investment loan package the department shall:

(1) Confirm the eligibility of the applicant;

(2) The number and kind of jobs to be created or retained;

(3) The amount of the loan;

(4) The amount of money available for loans;

(5) Whether the availability of linked deposit financing is essential for the economic feasibility of the acquisition to be made;

(6) The feasibility of the proposed business or agriculture project;

(7) The financial feasibility of the loan to be made; and

(8) All other relevant factors.

Section 3. (1) The eligible lending institution shall forward to the Treasury a loan package. The loan package shall include:

(a) The loan application to be completed by the small business or agribusiness applicant; and

(b) An investment application to be completed by the eligible lending institution.

(2) The "Loan Application" (1995) form and the "Investment Application" form are incorporated herein by reference. These forms may be inspected, copied, or obtained from the State Treasury, 183 Capitol Annex, Frankfort, Kentucky 40601, (800) 465-4722, hours 8 a.m. to 4:30 p.m. Monday through Friday.

Section 4. (1) An applicant's loan package shall be reviewed by the Linked Deposits Loan Committee, a committee composed of three (3) Treasury employees appointed by the State Treasurer.

(2) The Linked Deposits Loan Committee shall forward their evaluation and recommendation to the Treasurer, or to her designee, for approval.

(3) Upon approval of the loan package, the:

(a) Eligible lending institution shall receive written notification;

(b) Applicant may be notified by either the lending institution or the State Treasurer's office.

(4) The State Treasurer's office may complete the application review and notification process within one (1) week, unless additional information is needed.

~~[Section 1. The Department of Treasury finds the following: there are small businesses and agribusinesses throughout the state experiencing economic stagnation or decline; higher interest rates can cause small businesses and agribusinesses in the state to suffer in profitability and competition; and interest rates can be factors in causing unemployment, particularly, for women and minorities.~~

~~Section 2. The Linked Deposit Investment Program shall provide available state investment funds for low cost loans through approved state financial institutions to accomplish the following: contribute to the economic revitalization of this state; provide for employment growth and stabilization in economically depressed areas; and promote alternate or additional agriculture production.~~

~~(1) In deciding which eligible small businesses or agribusinesses shall receive reduced rate loans, the Treasury shall consider the following in that linked deposits funds are invested:~~

~~(a) To assure that initiatives by women and minorities are supported equitably;~~

~~(b) To benefit the unemployed;~~

~~(c) To promote new, expanded and alternate crop production;~~

~~(d) To promote the further development of agribusiness and value added opportunities.~~

~~(2) In deciding whether to approve a linked deposit investment loan package the department shall:~~

~~(a) Confirm the eligibility of the applicant;~~

~~(b) The number and kind of jobs to be created or retained;~~

~~(c) The amount of the loan;~~

~~(d) The amount of money available for loans;~~

~~(e) Whether the availability of linked deposit financing is essential for the economic feasibility of the acquisition to be made;~~

~~(f) The feasibility of the proposed business or agriculture project;~~

~~(g) The financial feasibility of the loan to be made; and~~

~~(h) All other relevant factors.~~

~~Section 3. The eligible lending institution shall forward to the Treasury a loan package. The loan package shall include a letter of intent with the following information:~~

~~(1) Intent to make the loan;~~

~~(2) The loan amount;~~

~~(3) The loan term;~~

~~(4) The proposed repurchase agreement terms;~~

~~(5) The interest rate for the state;~~

~~(6) The interest rate for the application; and~~

~~(7) The interest rate normally offered by the eligible lending institution for repurchase agreements of similar nature, structure, amount and term.~~

~~Section 4. A loan package shall be reviewed by three (3) Treasury employees. Their recommendation shall be forwarded to the Treasurer, or his designee, for approval. Upon approval, the Treasury shall notify the Investment Commission staff to process the repurchase agreement.]~~

Section 5. The department shall monitor the business or agribusiness development of loan applications to verify compliance.

FRANCES JONES MILLS, Treasurer
APPROVED BY AGENCY: November 14, 1994
FILED WITH LRC: November 15, 1994, at 9 a.m.

OFFICE OF ATTORNEY GENERAL
Department of Law
(As Amended)

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

RELATES TO: KRS 61.846, 61.880
STATUTORY AUTHORITY: KRS 15.180
NECESSITY AND FUNCTION: KRS 61.880 requires the Attorney General to issue legally binding decisions in disputes arising under the Open Records Law. KRS 61.846 requires the Attorney General to issue legally binding decisions in disputes arising under the Open Meetings Law. This administrative regulation is necessary in order to set forth the procedures to be used by the parties involved in such adjudications.

Section 1. Form. **The Attorney General shall not consider a complaint that fails to conform to KRS 61.846(2), requiring the submission of a written complaint to the public agency and the public agency's written response, if the agency provide a response, and KRS 61.880(2), requiring the submission of a written request to the public agency and the public agency's written denial, if the agency provided a denial.** **[**~~An appeal under the Open Records Law must include a copy of the written request for the records and a copy of the agency's written response, if the agency provided a response. An appeal under the Open Meetings Law must include a copy of the written complaint to the public agency and a copy of the agency's written response, if the agency provided a response. The Attorney General cannot consider an appeal that fails to conform to this requirement.~~**]**

Section 2. Notice. Upon receiving **a complaint** **[**~~an appeal~~**]**, the Attorney General's Office **shall** **[**~~will~~**]** send **notice to the public agency that a complaint has been filed and a copy of the complaint** **[**~~a copy of the appeal to the public agency against whom the appeal is taken~~**]**. The agency may provide **the Attorney General with** a written response to the issues raised in the **complaint** **[**~~appeal~~**]**. The agency shall send a copy of this response to the **complaining** party taking the appeal. If the agency fails to provide such copy, the Attorney General **shall** **[**~~will~~**]** provide one upon request. The Attorney General **shall** **[**~~will~~**]** consider any response received before the decision is prepared; however, the Attorney General **shall not** **[**~~cannot~~**]** agree to withhold action on the **complaint** **[**~~appeal~~**]** beyond the time limit imposed by KRS **61.846(2) and** 61.880(2).

Section 3. Additional Documentation. KRS **61.846(2) and** 61.880(2) authorizes the Attorney General to request additional documentation from the agency against which **a complaint is made** **[**~~an open records appeal is filed~~**]**. If documents thus obtained are copies of documents claimed by the agency to be exempt from the Open Records Law, the Attorney General **shall** **[**~~will~~**]** not disclose them and **shall** **[**~~will~~**]** destroy the copies at the time the decision is rendered.

Section 4. Reconsideration. The Attorney General **shall** **[**~~will~~**]** not reconsider a decision rendered under the Open Records Law or the Open Meetings Law. Parties dissatisfied with a decision may appeal the decision to circuit court as provided in KRS 61.880(5) and 61.848.

Section 5. Appeals. **Each public agency against which an appeal to circuit court is filed** **[**~~A party taking an appeal to circuit court~~**]** shall notify the Attorney General of the appeal. The Attorney General shall not be made a party **to an open meetings or open records** **[**~~to the~~**]** appeal.

Section 6. Moot **Complaints** **[**~~Appeals~~**]**. If the requested documents are made available to the **complaining** **[**~~requesting~~**]** party after **a complaint is made** **[**~~an appeal is taken~~**]**, the Attorney General **shall** **[**~~will~~**]** decline to issue a decision in the matter.

CHRIS GORMAN, Attorney General
APPROVED BY AGENCY: August 18, 1994
FILED WITH LRC: November 2, 1994 at 2 p.m.

KENTUCKY REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research
(As Amended)

103 KAR 15:080. Depreciation; calculation and recognition of "transition amount."

RELATES TO: KRS 141.0101
STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)
NECESSITY AND FUNCTION: This administrative regulation explains the requirements for and computation of the "transition amount" adjustment, how it relates to previous depreciation deductions, and how to report the "transition amount" on tax returns.

[~~Section 1. General. (1) For taxable years beginning after December 31, 1993, the federal and Kentucky depreciation deductions, the Internal Revenue Code (IRC) Section 179 "election to expense" deduction, the basis of assets and the gain or loss from the disposition of assets shall be the same as determined under Chapter 1 of the IRC. KRS 141.0101(11) through (15) require that the adjusted Kentucky basis on the first day of the first taxable year beginning after December 31, 1993 be equal to the adjusted federal basis by calculating and reporting a transition amount.~~

~~(2) For taxable years beginning after June 30, 1984 but before January 1, 1994, taxpayers may have deducted different depreciation amounts for federal income tax purposes than for Kentucky income tax purposes. The difference in depreciation deductions results in different adjusted bases for Kentucky and federal income tax purposes.~~**]**

Section **1.** **[**~~2.~~**]** Determining and Reporting the Transition Amount. (1) **[**~~A transition amount shall be determined as of the first day of the first taxable year beginning after December 31, 1993, by calculating the net difference between the adjusted Kentucky basis and the adjusted federal basis of all depreciable assets owned by the taxpayer on that date. The transition amount shall be reported on the Kentucky income tax return as follows:~~

~~(a) If the transition amount exceeds $100,000, it shall be recognized annually at the rate of twenty five (25) percent of the transition amount for the first taxable year beginning after December 31, 1993 and the three (3) succeeding taxable years.~~

~~(b) If the transition amount does not exceed $100,000, the taxpayer may elect to report as described in paragraph (a) of this subsection or report the entire amount in the first taxable year beginning after December 31, 1993.~~

~~(2)(a) If the adjusted Kentucky basis exceeds the adjusted federal basis, the transition amount shall be deducted from gross income.~~

~~(b) If the adjusted Kentucky basis is less than the adjusted federal basis, the transition amount shall be added to gross income.~~

~~(3)~~] The transition amount shall be calculated and reported on Form 762TS, Kentucky Depreciation Transition Schedule [~~, which is hereby incorporated by reference~~]. This form shall be used for the income tax return filed for the first taxable year beginning after December 31, 1993 and will be available after December 31, 1994. [~~Copies may be obtained from the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620.~~]

(2) [~~(4)~~] The tax treatment of the transition amount shall be determined by the activity from which it was derived. The transition amount related to activities subject to passive activity and at-risk rules **shall** [~~must~~] be included when computing income for the purpose of determining passive loss and at-risk limitations.

(3) [~~(5)~~] For corporations, the transition amount shall not include amounts of Accelerated Cost Recovery System (ACRS) depreciation not allowed as a deduction in determining Kentucky net income for tax years beginning before July 1, 1984.

(4) [~~(6)~~] Election.

(a) The election under subsection (1)(b) of this section shall be made with the filing of the income tax return for the first taxable year beginning after December 31, 1993.

(b) The election shall be made by checking the appropriate box on Form 762TS.

(c) A taxpayer's election to report the transition amount over four (4) years **shall be** [~~is~~] irrevocable.

Section 2. [~~3.~~] Accelerated Recognition of Transition Amount Not Allowed. If the four (4) year period provided in Section 2(1)(a) of this administrative regulation applies, the annual recognition of twenty-five (25) percent of the transition amount shall not be accelerated by:

(1) The disposition of any asset prior to expiration of the four (4) year period;

(2) The death or move from Kentucky of an individual taxpayer prior to expiration of the four (4) year period; or

(3) The withdrawal or dissolution of a corporation prior to expiration of the four (4) year period.

Section 3. [~~4.~~] Examples. (1) The aggregate adjusted federal basis of transition property is $40,000. The aggregate adjusted Kentucky basis of transition property is $50,000. The transition amount is $10,000. This entire amount may be deducted from Kentucky gross income in the first taxable year beginning after December 31, 1993 or reported over four (4) years by electing the provisions contained in Section 2 of this administrative regulation and deducting $2,500 for that taxable year and each of the three (3) succeeding taxable years.

(2) The aggregate adjusted federal basis of transition property is $40,000. The aggregate adjusted Kentucky basis of transition property is $35,000. The transition amount is $5,000. This entire amount may be reported as an increase in Kentucky gross income in the first taxable year beginning after December 31, 1993 or reported over four (4) years by electing under Section 2 of this administrative regulation to include $1,250 in gross income for that taxable year and each of the three (3) succeeding taxable years.

(3) The aggregate adjusted federal basis of transition property is $250,000. The aggregate adjusted Kentucky basis of transition property is $400,000. The transition amount is $150,000. This amount shall be deducted from Kentucky gross income at the rate of $37,500 for the first taxable year beginning after December 31, 1993 and each of the three (3) succeeding taxable years.

(4) The aggregate adjusted federal basis of transition property is $400,000. The aggregate adjusted Kentucky basis of transition property is $550,000. The transition amount is $150,000. The taxpayer sells all transition property in 1995. The transition amount shall be deducted from Kentucky gross income at the rate of $37,500 for the first taxable year beginning after December 31, 1993 and each of the three (3) succeeding taxable years without regard to the disposition of the assets.

Section 4. Incorporation by Reference. (1) "Kentucky Depreciation Transition Schedule (9-94)", Form 762TS, is incorporated by reference.

(2) This form may be inspected, copied, or obtained at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

KIM BURSE, Secretary
APPROVED BY AGENCY: November 11, 1994
FILED WITH LRC: November 14, 1994 at 2 p.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:190. Qualified domestic relations orders.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)**(f)** [~~(e)~~]

NECESSITY AND FUNCTION: KRS 61.690(3) requires the retirement systems to honor qualified domestic relations orders which comply with the policy of the Board of Trustees established by this administrative regulation.

Section 1. Definitions. (1) "Alternate payee" means an individual who is named in a qualified domestic relations order to receive a portion of the member's retirement benefits.

(2) "Qualified domestic relations order" (QDRO) means a court order issued incident to an annulment, separation or divorce which establishes an alternate payee's rights to a portion of the member's benefit.

Section 2. A QDRO shall be accompanied by a statement from counsel that the QDRO is current and not superseded by a subsequent QDRO and shall contain the following:

(1) Certification by the clerk of the circuit court in which the QDRO was entered;

(2) The name, Social Security number and last known mailing address of the member and the alternate payee;

(3) The date of marriage and the date of decree of dissolution of marriage;

(4) The correct name of the system or systems to which it applies;

(5) If the member is retired, the percentage of the member's retirement allowance to be paid to the alternate payee or the specific amount to be paid to the alternate payee; and

(6) If the member is not retired, the percentage to be paid to the alternate payee upon the member's retirement, death or withdrawal from the system and whether the percentage pertains to the benefits attributable to the period of marriage, the member's entire period of employment or other specified period.

Section 3. If the retirement system determines that a QDRO does not meet the requirements of Section 2 of this regulation, the retirement system shall do the following:

(1) Notify the participant, alternate payee and their legal counsel, if known, that the QDRO is not in compliance and will not be followed and the necessary changes to be made to the QDRO to bring it into compliance.

(2)(a) If the member is retired, the general manager shall direct the percentage or amount of benefits to be paid to the alternate payee, if determinable from the QDRO, to be withheld from the member's retirement allowance and placed in abeyance until the QDRO is amended.

(b) If the QDRO is not amended to comply with this regulation within eighteen (18) months from the date the QDRO was first received, the percentage or amount of the member's retirement allowance held in abeyance shall be restored to the member's account and paid to the member.

(c) A QDRO or amended QDRO received after the close of the eighteen (18) month period and determined to be in compliance shall only be applied prospectively.

Section 4. A QDRO shall not be effective until received by the retirement system and shall apply only to those monthly retirement allowances that have not been processed by the retirement system by the date of receipt.

Section 5. If the QDRO is received prior to the member's retirement, then upon the member's retirement pursuant to KRS 61.590, the system shall notify the member and the alternate payee of the benefits payable under the QDRO which shall be calculated as follows:

(1) The benefit payment shall be divided between the member and the alternate payee as follows: The alternate payee shall receive the amount computed by multiplying the basic option amount due the member by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the member's total service credit. The member shall be paid all amounts in excess of the amounts paid to the alternate payee.

(2) If a lump sum payment equal to balance of the member's account is to be made, the percentage determined by this calculation shall be multiplied by the balance of the member's account and the result paid to the alternate payee. The member shall be paid all amounts in excess of the amounts paid the alternate payee.

(3) If a monthly benefit is paid, the options made available to the alternate payee shall be derived from the member's basic option.

(4) Service added for disability under KRS 61.605 or KRS **16.582** **[~~16.581(2)~~]** shall not be included in **[~~the member's total service for~~]** determining the amount payable to the alternate payee. **Service credit** purchased **[~~service credit for employment or service~~]** during the period of marriage shall be included in the calculation under this subsection.

(5) The payment options offered to the alternate payee shall be based on the alternate payee's life expectancy. The alternate payee shall be offered the payment options described in KRS 61.635 which do not provide lifetime benefits to a beneficiary and, if the member's is eligible, the ten (10) year certain option as proved by KRS 16.576(5).

(6) If the alternate payee predeceases the member after the member's retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee shall be paid to the alternate payee's estate.

(7) The alternate payee shall receive a pro rata share of any increases given recipients under KRS 61.691.

Section 6. (1) If the member dies prior to retirement and prior to the death of the alternate payee, the member's account shall be divided in accordance with the QDRO between the alternate payee and the beneficiary.

(2) If the death benefit is a refund of the member's contribution account, the alternate payee shall only be offered a lump sum payment representing a portion of the member's account calculated in accordance with Section 5 of this administrative regulation.

(3) If the death benefit is calculated under KRS 16.578 or 61.640, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment or an actuarial lump sum payment.

Section 7. If the QDRO is received after the member's retirement, then the alternate payee shall receive the percentage or amount of the member's retirement allowance as stated in the QDRO until the benefit payable to the member or the member's beneficiary ceases under the terms of the payment option previously selected by the member or until the death of the alternate payee.

Section 8. If the alternate payee dies prior to the member's death, retirement or withdrawal of account, no payment shall be made to the alternate payee. **[~~an amount shall be paid to the alternate payee's estate in a lump sum. In computing this amount, the member's benefit shall be determined as if the member had applied for benefits on the first day of the month following receipt of the QDRO. If the member was not eligible for monthly benefits on that date, the alternate payee's estate shall receive a portion of the member's contribution account calculated in accordance with Section 5 of this administrative regulation. At the time of the member's actual death, retirement or withdrawal from the system, the member's benefit shall be actuarially reduced to reflect the payment made to the alternate payee's estate.~~]**

Section 9. When benefits become payable to the alternate payee, the retirement system shall establish a separate account for the alternate payee which shall consist of the alternate payee's pro rata share of the member's contributions, service and benefit. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the member.

Section 10. The payment options shall be offered to the alternate payee on an Estimate of Monthly Retirement Allowance, Form 6A-QDRO, dated July 1991, incorporated by reference. The form can be obtained from the Kentucky Retirement Systems at its office at 1260 Louisville Road, Frankfort, Kentucky between 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: October 24, 1994
FILED WITH LRC: November 15, 1994 at 10 a.m.

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(As Amended)

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

RELATES TO: KRS 316.030
STATUTORY AUTHORITY: KRS 316.210(4)
NECESSITY AND FUNCTION: KRS 316.030 requires all applicants for an embalmer's license to have completed a course of study of one (1) year in the science and art of embalming, disinfection, and sanitation in an accredited school of embalming recognized by the Board of Embalmers & Funeral Directors. The function of this regulation is to clarify which courses of study at accredited schools are recognized by the board.

Section 1. **The course of study required by the provisions of KRS 316.030 shall have been completed at a school that:**

(1) Was accredited by the American Board of Funeral Service Education, Inc., when the applicant for an embalmer's license received a certificate, diploma, or degree from the school; and

(2) Required the applicant to attend classes on school premises for the entire year. **[~~A course of study of one (1) year in~~**

~~the science and art of embalming, disinfection, and sanitation in an accredited school of embalming shall meet all of the following before being recognized by the board as satisfying the requirement of KRS 316.030:~~

~~(1) The course of study shall be at a school which was accredited by the American Board of Funeral Service Education Inc. when the applicant for an embalmer's license received a certificate, diploma, or degree from the school; and~~

~~(2) The course of study shall be at a school which required the applicant to attend classes on school premises for the entire year as opposed to a school which gave the applicant credit for correspondence courses or courses taken at home.~~]

EDD PRESTON, President
APPROVED BY AGENCY: October 3, 1994
FILED WITH LRC: October 27, 1994 at 9 a.m.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Weights and Measures
(As Amended)

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, **40 CFR 80.27**
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 **shall** [~~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.

Section 10. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

ED LOGSDON, Commissioner
APPROVED BY AGENCY: December 12, 1994
FILED WITH LRC: December 12, 1994 at 4 p.m.

LABOR CABINET
Department of Workers' Claims
(As Amended)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260

NECESSITY AND FUNCTION: KRS 342.035 requires the Commissioner of the Department of Workers' Claims [~~Workers' Compensation Board~~] to promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges and reimbursements under KRS 342.020 are fair, current, and reasonable and limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. [~~of a like standard of living in the same community and where treatment is paid for by the injured person himself.~~] The increased security of payment afforded by the Workers' Compensation Act may be considered in determining what fees are reasonable. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. The function of this administrative regulation is to regulate hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Hospital" means any facility, surgical center, or psychiatric, rehabilitative or other treatment or specialty center which is licensed pursuant to Kentucky Revised Statutes Chapter 216B.

(2) "Hospital-based practitioner [~~physician~~]" means any provider of medical services [~~physician~~] [~~whose~~] [~~fees for~~] [~~services are billed by the hospital, and~~] who is an employee of the hospital **and who is paid by the hospital**.

(3) "Independent practitioner" means any **physician or other practitioner who performs services that are covered by the Workers' Compensation Medical Fee Schedule for Physicians on a contract basis and who is not a regular employee of the hospital.** [[~~provider of medical services who is not an employee of the hospital in which medical services have been rendered, and who provides services on a contract basis.~~]]

(4) "Unbundling" means the practice of submitting separate bills for services to any payor pursuant to this administrative regulation which are billed to payers other than pursuant to this administrative regulation on a global basis.

(5) [~~(4)~~] "Global basis" means the practice of submitting a bill for two (2) or more services as one (1) item only.

(6) [~~(5)~~] "New hospital" means a hospital which has not completed its first fiscal year.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for all hospitals as defined in Section 1(1) of this administrative regulation, for all compensable services and supplies provided on or after the effective date of this administrative regulation.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1) A hospital's base cost-to-charge ratio shall be based on the latest HCFA-2552 which has been supplied to the Cabinet for Human Resources, Department of Medicaid Services, pursuant to 907 KAR 1:376 and 907 KAR 1:013 on file as of November 30 of each calendar year. **The base cost-to-charge ratio is determined by dividing** [~~The calculation for cost shall be~~] the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, [~~divided~~] by the total patient revenues as

reflected on Line 25 of Worksheet G-2 of the HCFA-2552.

(2) The base cost-to-charge ratio shall be further modified to allow for a return to equity by the addition of twelve (12) [~~fifteen (15)~~] percentile.

(3) A hospital's adjusted cost-to-charge ratio shall not exceed eighty-five (85) percentile, including the twelve (12) [~~fifteen (15)~~] percentile addition, except for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Human Resources, Department of Medicaid Services. The adjusted cost-to-charge ratio for hospitals that service seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare shall not exceed ninety-seven (97) [~~100~~] percentile.

(4) The reimbursement to a hospital for services or supplies furnished to an employee which are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total allowable charges by its adjusted cost-to-charge ratio.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the Commissioner of the Department of Workers' Claims by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Commissioner of the Department of Workers' Claims. [~~Workers' Compensation Board.~~]

(2) A hospital may request a review of its assigned ratio by filing a written appeal with the Commissioner of the Department of Workers' Claims no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

Section 5. Revision of Hospital Cost-to-charge Ratio. (1) The Commissioner of the Department of Workers' Claims [~~Kentucky Workers' Compensation Board~~] shall calculate cost-to-charge ratios and notify [~~publish~~] each hospital of its [~~'s~~] adjusted cost-to-charge ratio on or before February 1 of each calendar year. A new hospital shall be assigned a [~~base~~] cost-to-charge ratio of eight (80) [~~eighty-three (83)~~] percentile until it has been in operation for one (1) full fiscal year. A "hospital", as defined in this administrative regulation, that does not file Worksheets A[~~-7~~] and G-2 of HCFA 2552 shall also be assigned a cost-to-charge ratio of eighty (80) percentile.

(2) Any assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the Commissioner of the Department of Workers' Claims [~~Workers' Compensation Board~~] pursuant to this administrative regulation.

Section 6. Calculation for Hospitals Located Outside the Commonwealth of Kentucky. (1) A hospital located outside the boundaries of the Commonwealth of Kentucky shall [~~will~~] be deemed to have agreed to be subject to the provisions of this administrative regulation if it accepts a patient for treatment who is covered under the Kentucky Workers' Compensation Act.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for in-state hospitals, using Worksheets A and G-2 of the HCFA 2552. [~~the latest cost-to-charge ratio for Medicaid purposes assigned to the hospital by the state where the hospital is located. An out-of-state hospital shall furnish its most recent cost-to-charge ratio for Medicaid purposes when submitting its bill for services.~~]

Section 7. Reports to be Filed by Hospitals. All bills submitted by a hospital pursuant to this administrative regulation shall be submitted on a uniform billing form as prescribed by the Kentucky Health Policy Board pursuant to KRS Chapter 216. [~~(UB-82) or the successor to this form prescribed by the Commissioner of Insurance, with the Kentucky Workers' Compensation Medical Provider's Certification attached. Unless a bill complies with this section, it shall not be considered a bill or statement for services for the purposes of KRS 342.020 and 342.035.~~]

Section 8. Billing and Audit Procedures. (1) Any hospital providing only the technical component of a procedure shall bill and be paid for the technical component only.

(2) Any independent practitioner [~~hospital-based physician~~] providing only the professional component shall bill for and be paid the professional component only. An independent practitioner [~~A hospital-based physician~~] billing for the professional component shall submit the bill to the insurer on the appropriate billing form prescribed by the Kentucky Health Policy Board pursuant to KRS Chapter 216. [~~HCFA 1500, or successor to this form approved by the Commissioner of Insurance with the Kentucky Workers' Compensation Medical Provider's Certification attached.~~]

[~~(3) All workers' compensation medical payment obligers administering or paying bills subject to this administrative regulation shall be required to audit the bills to ensure compliance with this administrative regulation.~~

~~(4) Any records or documents requested by a workers' compensation medical payment obligor shall be supplied by the hospital not later than ten (10) working days from the date the request for records or documents is received, unless good cause is shown for a failure to do so. A hospital shall not charge more than fifty (50) cents per page for reproducing the requested records or documents unless the requested records or documents total less than ten (10) pages, in which case a minimum five (5) dollar fee may be charged.~~]

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the **commissioner** [~~Workers' Compensation Board~~] setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2) An independent [~~hospital-based~~] practitioner **who does not receive direct compensation from the contracting hospital** shall use the [~~HCFA 1500 or UB-82, or successor~~] forms prescribed by the Kentucky Health Policy Board pursuant to KRS Chapter 216 [~~Commissioner of Insurance~~] when billing for professional services and shall be compensated pursuant to the Kentucky Medical Fee Schedule for Physicians adopted pursuant to 803 KAR 25:089 [~~803 KAR 25:090~~]. **An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital. The hospital may bill for the professional component of the service under the Workers' Compensation Medical Fee Schedule for Physicians in these circumstances.**

(3) Any hospital-based practitioners [~~physicians or other provider~~] performing services which are regulated pursuant to 803 KAR 25:089 [~~803 KAR 25:090~~] (Kentucky medical Fee Schedule for Physicians) in a hospital as defined in Section 1 of this administrative regulation shall not bill for services rendered pursuant to 803 KAR 25:089, but shall receive their payment or salary directly from the hospital employing them. [~~803 KAR 25:090 only.~~]

(4) Kentucky law requires the employer (or insurer) to provide all medical care necessary to cure and relieve the effects of the employee's injury. Accordingly, under no circumstances should the employee be billed for medical treatment under KRS 342.020. This shall not prohibit the hospital from billing the employee for items or services not provided for under the Kentucky Workers' Compensation Act.

(5) The practice of "unbundling," as defined in Section 1(3) of this administrative regulation, is hereby prohibited.

[~~Section 10. Kentucky Workers' Compensation Medical Provider's Certification. All bills submitted by a hospital or hospital-based physician pursuant to this administrative regulation shall be accompanied by a "Kentucky Workers' Compensation Medical Provider's~~

~~Certification."~~

~~KENTUCKY WORKER'S COMPENSATION~~
~~MEDICAL PROVIDER'S CERTIFICATION~~

~~(1) The undersigned who has submitted the attached statement for services (Form HCFA 1500 or Form UB 82, or successor) does hereby certify that s/he has reasonable grounds to believe that the medical services, supplies, or appliance(s) for which payment is sought were reasonably required as a result of the patient's having suffered a work related injury or occupational disease.~~

~~Medical Provider Date~~

~~(2) This certificate may be executed on behalf of the hospital or hospital based physician by an employee or agent who is also authorized to execute billing forms UB 82 or HCFA 1500 for that provider.~~

~~(3) Patient history, written or oral, and information from the employer, medical payment obligor, prior medical providers, referring providers, or their agents may furnish reasonable grounds for the belief that the medical services, supplies, or appliances were reasonably required for a work related injury or occupational disease.~~]

WALTER W. TURNER, Commissioner
APPROVED BY AGENCY: November 11, 1994
FILED WITH LRC: November 11, 1994 at noon

LABOR CABINET
Department of Workers' Claims
(As Amended)

803 KAR 25:110. Workers' compensation managed health care plans.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.735
NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish procedures and standards for certification of workers' compensation managed health care system health care plans pursuant to KRS 342.020. The function of a managed care plan is to assure that quality medical care will be delivered to the injured employee at a reasonable cost so as to expedite the injured employee's recovery and facilitate return to work.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(2) "Emergency care" means those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to serious physical or mental disability or death, or medical services that are immediately necessary to alleviate severe pain. "Emergency care" does not include follow-up care, except when immediate care is required to avoid serious disability or death.

(3) "Gatekeeper physician" means any qualified physician, as defined in KRS 342.0011, acting within the scope of his license and designated by a managed care plan as a "gatekeeper" empowered to make referrals of patients to other providers for specialized care or diagnostic services.

(4) "Managed health care system" means a health care network that utilizes gatekeeper physicians, performs utilization review, and does medical bill audits.

(5) "Managed care plan" means a written plan describing the operations of a managed health care system.

(6) "Provider" means any person or entity licensed, certified, or registered to provide medical services.

(7) "Revocation" means the termination of a managed health care plan certificate to provide services under the Kentucky Workers' Compensation Act prior to expiration of the certificate.

(8) "Service area" means a geographic area consisting of a county or group of counties of which no county shall be subdivided.

Section 2. Certification Process. (1) All managed care plans shall be certified by the commissioner. Any managed health care system may apply to have a plan or plans certified by the commissioner. Managed health care systems may operate one (1) or more plans.

(2) Applications for initial certification and renewal shall be submitted, in triplicate, in a form acceptable to the commissioner and shall contain the following information:

(a) System identification.

1. System name and address.

2. Date and state of incorporation.

3. Name, address, and phone number of each corporate officer and director, and of the person who will be the day-to-day plan administrator.

4. Name and address of each owner of more than five (5) percent of the stock or controlling interest in the entity.

5. Name, address, and phone number of the medical director, who shall be a medical doctor (M.D. physician) and who shall oversee and monitor compliance with the quality care, utilization review and credentialing provisions of the managed care plan.

6. Name, address, and phone number of the case manager who shall be qualified as either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist, or certified rehabilitation registered nurse who shall oversee and monitor case management provisions of the managed care plan.

7. Description of the system's organizational structure.

(b) System qualifications.

1. Description and map of the system's service area.

2. Name, address, phone number, and specialty of all participating providers, separately identifying those providers who shall serve as gatekeeper physicians. The list of available gatekeeper physicians shall include an appropriate choice of the different types of physicians described in KRS 342.0011. The system shall provide assurance that all licensing, registration, or certification requirements have been met and are current for the providers to practice in Kentucky (or border states wherein the provider practices) and that each participating provider shall maintain in full force and effect a professional malpractice policy with limits of no less than $250,000 for an occurrence of professional negligence.

3. A specimen of the agreement that each class of medical provider shall execute to participate in the system.

4. Specimens of the materials which the system shall provide to workers setting forth the grievance procedure and form, the requirements and restrictions of the system, and the means of accessing services and treatment within and outside of the service area. The applicant shall detail the time and means by which the materials shall be delivered to employees and employers.

5. Specimens of materials directed at management employees informing supervisors of the necessity of channeling injured workers to the managed care plan providers and giving immediate notice to the employer, insurance carrier, and plan of the occurrence of an injury.

Section 3. Financial Ability. Each managed health care system shall demonstrate to the commissioner that it has sufficient financial resources and professional expertise to perform all of the necessary functions of a managed health care system and managed care plan. Each managed health care system requesting certification shall demonstrate such resources and ability to the commissioner by the following:

(1) In the event the applicant has previously provided managed care or other similar medical and administrative services in the

Commonwealth of Kentucky, the applicant shall provide a summary and description of the administrative and medical services provided, together with a list of representative entities for which managed care related administrative or medical services have been provided; and

(2) In the event the applicant has not previously provided services related to the delivery of managed care in the Commonwealth, the commissioner shall require, prior to certification, that the applicant post either a performance bond or cash surety deposit in an amount of $500,000 with the office of the commissioner (by use of Form MC-1 or MC-2) to demonstrate sufficient financial resources to provide all of the administrative and medical services required to be performed under a managed care plan. **The** [~~Such~~] bond or cash surety shall be released by the commissioner sixty (60) days after the managed health care system demonstrates to the commissioner that all of its arrangements for rendering workers' compensation managed care services in the Commonwealth have been terminated.

(3) If the applicant has an audited financial statement addressing any of its prior operations for the preceding year, a copy of the applicant's most recent audited financial statement shall be submitted to the commissioner.

Section 4. Plan Qualifications. A copy of the managed care plan shall be submitted, in triplicate, with the application and shall demonstrate:

(1) Assurance of access to quality medical services in a prompt, effective manner for employees of employers using the managed care plan. The plan shall offer an adequate number of health care providers including gatekeeper, specialty and subspecialty physicians, and general and specialty hospitals to afford employees reasonable choice and convenient geographic accessibility to all categories of licensed care. The employee shall choose a gatekeeper physician when it becomes apparent that continuing care is required for an injury or disease compensable under KRS Chapter 342.

(2) That employers or insurers may contract with multiple managed health care systems in order to maximize access for their employees.

(3) That employees may access providers who are not participating plan providers:

(a) For emergency care as defined in Section 1 of this administrative regulation;

(b) When the employee is referred outside the managed care plan for medical services by a gatekeeper physician;

(c) When authorized treatment is unavailable through the managed care plan; **or**

(d) To obtain a second opinion when a managed care plan physician recommends surgery.

(4) Mechanisms to ensure continuity of care upon termination of contracts between the managed health care system, the employer, and/or participating providers**.** [**;**]

(5) Mechanisms for utilization review which shall prevent inappropriate, excessive**,** or medically unnecessary medical services and including:

(a) Treatment standards upon which utilization review decisions shall be based (including low back symptoms and injuries to the upper extremities and knees) assuring quality care in accordance with prevailing standards in the medical community of which the plan provider is a member. The standards shall conform to any practice parameters or guidelines for clinical practice adopted by the commissioner;

(b) Mechanisms requiring periodic review to determine that continued treatment of an injured employee is reasonable, appropriate**,** and medically necessary**,** and that treatment plans required by Section 12 of this administrative regulation have been timely prepared;

(c) Assurance that the managed health care system is certified or has contracted with a private review agent who is certified to conduct utilization review pursuant to the standards set forth in 906 KAR 1:080; **and**

(d) Adequate procedures for credentialing providers and evaluating the quality and cost effectiveness of services delivered under the plan**.** [**;**]

(6) Provisions for employer or carrier audit of the managed health care system's operations and the financial arrangements between the system and its providers.

(7) A grievance procedure meeting the requirements of Section 10 of this administrative regulation.

(8) Effective methods of informing employees, employers, and medical providers of the services provided by the plan and requirements imposed by the plan**,** including a twenty-four (24) hour toll free phone number by which information may be obtained concerning plan operations, after-office-hours care**,** and twenty-four (24) hour access to emergency care.

(9) A system to provide authorization numbers to medical providers and health facilities where preauthorization or continued stay review is required by the plan. **The** [~~Such~~] authorization numbers shall be recorded in the treatment authorization code section of the appropriate billing forms.

(10) Aggressive case management by either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist**,** or a certified rehabilitation registered nurse to coordinate the delivery of health services and return to work policies; promote an appropriate, prompt return to work; and facilitate communication between the employee, employer**,** and health care providers. The plan shall describe the circumstances under which injured employees shall be subject to case management and the services to be provided.

(11) A notice on Form MC-3 to be mailed to the Department of Workers' Claims for entry into the Department's computer database that indicates the employers who have become associated with a managed care plan.

Section 5. Plan Certification. (1) The commissioner shall notify the applicant in writing of the determination made upon the application for certification or modification thereof, within sixty (60) days of receipt of a complete application.

(2) A certificate shall be valid for a period of two (2) years and only for the service area and managed care plan or plans specified by the commissioner. Upon written request made at least sixty (60) days prior to expiration of the current certificate, the commissioner may recertify a plan for additional successive two (2) year periods. Geographical areas may be added upon the filing of a supplemental application demonstrating the managed health care system's ability to serve the expanded area.

(3) If an application does not meet the requirements for certification or expansion, the commissioner shall notify the applicant in writing and specify those items deemed deficient. The applicant is granted thirty (30) days from the date of notice by the commissioner to correct deficiencies through an amended application.

(4) Certifications of a managed care plan are not transferable. A new application for certification must be filed when fifty (50) percent or more of the ownership or controlling interest of a system has been transferred.

Section 6. Plan Modifications. (1) A managed health care system which either implements or experiences material variations as to any matter set forth in the original application or managed care plan shall obtain approval for **the** [~~such~~] modification by filing a request for modification with the commissioner.

(2) Intended variations shall not be implemented until approved by the commissioner.

(3) A modification outside the control of the system **shall** [~~must~~] be filed with the commissioner within fifteen (15) days of its occurrence.

(4) Within fifteen (15) days of entering into an agreement with an

employer or insurer to provide workers' compensation managed care services, the managed health care system shall submit notification thereof to the commissioner. The notification shall identify the employer or employers with whom the managed health care system has contracted and the certified managed care plan applicable to that employer. Notification shall be deemed approved unless disapproved by the commissioner in writing within fifteen (15) days of filing. The system shall promptly furnish any information deemed necessary by the commissioner to review the notice. When an employer or insurer terminates a contract with a managed health care system, the managed health care system shall file notification with the commissioner within fifteen (15) days of the occurrence, indicating the employers for whom managed care services have been terminated and the effective date of the termination.

Section 7. Suspension or Revocation of Certification. (1) The certification of a managed care plan by the commissioner may be suspended or revoked if:

(a) Service is not being provided according to the terms of the certified managed care plan, or in accordance with prevailing treatment standards, or in accordance with treatment standards or practice parameters adopted by the commissioner;

(b) The plan for providing services or the contract with the insurer or health care provider fails to meet the requirements of KRS Chapter 342 or this administrative regulation;

(c) Any material false or misleading information is intentionally submitted by the managed health care system or participating provider to the commissioner, the employer, or the insurer; or

(d) The managed health care system knowingly or negligently utilizes a health care provider whose license, registration, or certification has been suspended or revoked, or who is otherwise ineligible to provide treatment of the type rendered to an injured employee.

(2) The commissioner may investigate the operations of certified managed health care systems at any time and the system and its providers shall cooperate in any investigation by the commissioner. Should the commissioner believe that grounds for termination or suspension of a managed care plan certification exist, written notice setting forth **those** [~~such~~] grounds shall be mailed to the system. The system is granted fifteen (15) days from the date of the notice in which to file written response. Thereafter, the commissioner shall render a written decision by which the certification of the plan may be terminated, suspended, or conditionally continued to permit the correction of deficiencies directed.

Section 8. Appeal of Commissioner's Action. Any managed health care system may seek review in the Franklin Circuit Court within thirty (30) days of the date of the commissioner's final decision concerning its managed care plan.

Section 9. Coverage. (1) All employees of an employer for whom a managed care plan has been approved by the commissioner shall obtain medical services compensable under KRS Chapter 342 from the certified managed care plan of the employer, except for those injuries or diseases for which continuing treatment was initiated prior to the date the managed care plan for the employer was approved. However, when an employee under continuing care changes the designation of treating physician, the employee's provider choice shall be limited to providers under the certified managed care plan and medical services thereafter shall be obtained pursuant to the managed care plan.

(2) If initial emergency care following a compensable injury is rendered by a medical provider outside the managed health care plan, the injured worker may remain under the care of that provider so long as the provider complies with utilization review, reporting standards, and quality assurance mechanisms prescribed by the employer's managed care plan. Reimbursement of these nonplan providers shall be at the level prescribed by applicable workers' compensation fee schedules.

Section 10. Grievance Procedure. (1) Each workers' compensation managed care plan shall contain an expeditious, informal grievance procedure to resolve disputes by employees and providers relative to the rendition of medical services. A detailed description of the employee grievance procedure shall be included in informational materials provided to employees and a detailed description of the provider grievance procedure shall be included in all provider contracts.

(2) The grievance procedure shall meet the following requirements:

(a) Notice. A grievance is made when a written complaint or written request is delivered by the employee or provider to the managed health care system setting forth the nature of the complaint and remedial action requested.

(b) Time frame to file grievance. The employee or provider shall file a grievance within thirty (30) days of the occurrence of the event giving rise to the dispute.

(c) Resolution. The managed health care system shall render a written decision upon a grievance within thirty (30) days of receipt by the managed health care system of the grievance.

(d) Arbitration. Managed care plans may provide for alternate means of dispute resolution including arbitration and mediation. In that event final resolution of a grievance shall not be subject to the time constraints set forth in paragraph (c) of this subsection. In all [~~such~~] cases, resolution mechanisms shall be expeditious and where treatment matters are at issue reflect the need for prompt resolution.

(3) Record of grievance proceedings. The managed health care system shall maintain records for two (2) years of each formal grievance to include the following:

(a) A description of the grievance; the employee's name and address; names and addresses of the health care providers relevant to the grievance; and the managed health care system's and employer's name and address; **and**

(b) A description of the managed health care system's findings, conclusions, and disposition of the grievance.

(4) Appeal. Any employee or provider dissatisfied with the managed health care system's resolution of a grievance may apply for review by an administrative law judge by filing a request for resolution within thirty (30) days of the date of the system's final decision. Upon review by an administrative law judge the movant shall be required to prove that the system's final decision is unreasonable or otherwise fails to conform with KRS Chapter 342.

Section 11. Reporting. Each managed health care system having a certified managed care plan shall submit a report to the commissioner annually containing the following information:

(1) Number of employees treated by the managed care plan.

(2) Number of work-related injuries or diseases by ICD-9 code treated under the managed care plan in the preceding year.

(3) Breakdown by ICD-9 codes of injuries and diseases treated.

(4) Total medical costs.

(5) Average medical cost per injured employee by type of injury.

(6) Average medical cost per diseased employee by type of disease.

(7) Breakdown of medical cost elements as to type of physician utilized, hospital costs, drug costs, and other costs.

(8) Number of grievances filed, and summary of action taken.

(9) Number of days by type of injury and disease for which an employee has been released from work.

Section 12. Treatment Plans. Those sections of 803 KAR 25:096 concerning treatment plans and use of the Form 113 shall to the extent possible, apply to managed care plans. Each managed health care system shall retain treatment plans and make them available to the employee, employer, Special Fund, Uninsured Employers' Fund,

administrative law judges, or attorneys representing any of the parties, upon request.

Section 13. Provider Verification. (1) Each employer which provides medical services through a managed care plan will provide to the injured employee a written certification of workers' compensation managed care coverage as soon as practicable following notice of a compensable injury or disease requiring continuing medical services. The verification shall contain the following information:

(a) Employer name, address, and phone number;

(b) Name and telephone number of the managed health care system to be contacted; and

(c) Employee name and Social Security number.

(2) Possession of such verification is not to be construed as authorization for medical service or payment.

Section 14. Forms. (1) One (1) copy of Forms MC-1, MC-2, and MC-3 is filed herewith and incorporated by reference.

(2) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:

(a) Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) Louisville - Fourth Floor - The Meyer Building 624 West Main Street, Louisville, Kentucky 40202;

(c) Lexington - 950 National City Plaza, Lexington, Kentucky 40507;

(d) Paducah - 220B North 8th Street, Paducah, Kentucky 42001;

(e) Pikeville - The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501.

(d) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

WALTER W. TURNER, Commissioner
APPROVED BY AGENCY: November 11, 1994
FILED WITH LRC: November 11, 1994 at noon

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(As Amended)

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

RELATES TO: KRS 216B.010 to 216B.130, 216B.450 to 216B.459, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 216B.450 to 216B.459

NECESSITY AND FUNCTION: KRS 216B.042, 216B.105 and 216B.450 to 216B.459 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and services. This administrative regulation provides minimum licensure requirements regarding the operation of and services provided in psychiatric residential treatment facilities.

Section 1. Definitions. (1) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well-defined limits, based on the individual's license, education, training, experience, competence, and judgment.

(2) "Direct-care staff" means residential or child-care workers who directly supervise residents.

(3) "Freestanding" means a completely detached and separate building, street access, telephone service, dining, and street address.

(4) "Full-time equivalent (FTE)" for this administrative regulation means one (1) employee working thirty-seven and one-half (37.5) hours per week or a combination of the hours worked by more than one (1) part-time employee totaling thirty-seven and one-half (37.5) hours per week.

(5) "Governing body" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the facility is vested.

(6) "Holding" means forced positioning of a resident by staff without use of mechanical devices.

(7) "Licensure agency" means the Division of Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

(8) "Mental health associate" is an individual with a minimum of a bachelor's degree in a mental health related field.

(9) "Professional staff" means a psychiatrist; a psychologist with Ph.D. or master's degree and autonomous functioning, or master's degree under the supervision of a Ph.D.; a social worker with master's degree; a registered nurse with [~~bachelor's degree and~~] two (2) years' supervised experience in a mental health setting; a recreation therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential or mental health setting for children, or adolescents; and other professionals from disciplines related to the treatment of mental illness, such as a certified marriage and family therapist, occupational, or expressive therapist, with a master's degree in that discipline and specialized training or experience in the treatment of mental illness.

(10) "Psychiatric residential treatment facility (PRTF)" means a freestanding facility (other than a psychiatric inpatient hospital) with a maximum of eight (8) beds, except for those facilities licensed prior to April 9, 1992, which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) who are capable of self-preservation during an internal disaster. Any entity which has obtained approval for a certificate of need for a sixteen (16) bed facility prior to March 26, 1992, may be licensed by the cabinet as two (2) eight (8) bed facilities located on a common campus. After the effective date of this administrative regulation, no PRTF shall be licensed to be located on property which is contiguous with another licensed PRTF or psychiatric hospital, except as provided for in this subsection.

(11) "Restraint" means the use of a mechanical device to involuntarily restrain movement of the whole or a portion of a resident's body as a means of controlling a resident's physical activities to protect the resident or others from injury or the use of intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to the resident with the sole or primary purpose of controlling or limiting the physical activities of the resident. Restraint is differentiated from mechanisms usually and customarily employed during medical, diagnostic, or surgical procedures.

(12) "Seclusion" means the involuntary confinement of a resident in a room, which the resident is physically prevented from leaving, for any period of time.

(13) "Special treatment procedures" means any procedure such as restraint or seclusion and holding which may have abuse potential or be life threatening.

(14) "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant professional.

Section 2. Applicability. (1) A certificate of need shall be required for all psychiatric residential treatment facilities.

(2) If a residential treatment facility is located on grounds shared by another licensed facility other than a PRTF, the following shall apply:

(a) The residents of the residential treatment facility and the licensed facility with which it shares grounds shall not have any joint activities or interactions, except for organized education [~~and recreation~~] activities conducted by a school operated by the local educational authority for residents for whom it is determined by the

local educational authority that the program provided by the school is appropriate for all residents in the program and is provided in accordance with Section 12(6) of this administrative regulation, or organized recreational activities;

(b) The program director and direct-care staff shall not serve both the licensed facility with which it shares grounds and the residential treatment facility;

(c) If the provisions of paragraph (a) of this subsection are met, the only services or components of the physical plant that may be shared are those related to housekeeping, maintenance, dietary and recreational facilities or grounds.

(3) PRTF's that are located on the same grounds in accordance with Section 1(10) of this administrative regulation may share joint activities and staff.

Section 3. Licensure. The psychiatric residential treatment facility shall comply with all the conditions for licensure contained in 902 KAR 20:008.

Section 4. Governing Body. Each facility shall have a governing body with overall authority and responsibility for the facility's operation.

(1) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement, or legislative or executive act.

(2) A facility that is part of a multifacility system or is operated by a government agency shall have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body shall be specified in writing.

(4) If a business relationship exists between a governing body member(s) and the organization, there shall be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall include at least the following:

(a) Adopting bylaws that describe how the governing body, through the program director, shall develop policies and procedures and make sufficient resources available (e.g., funds, staff, equipment, supplies, and facilities) to assure that the facility is capable of providing appropriate and adequate services to residents;

(b) Overseeing the system of financial management and accountability;

(c) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care;

(d) Electing, appointing, or employing the program director, clinical director, and other supervisors or administrators to direct the clinical and administrative activities of the facility, and defining the qualifications, authority, responsibility, and function of such positions;

(e) Establishing an organization table and establishing bylaws, rules or policies and procedures to guide the relationships between itself, the administrative staff, the direct-care staff, the professional staff, and the community. The bylaws, rules or policies and procedures shall define the means by which the administrative, direct-care, and professional staffs cooperatively function, participate in the development of policies concerning program management and resident care, and report to the governing body. The bylaws, rules or policies and procedures shall be reviewed at least every two (2) years and revised as necessary; and

(f) Approving appointments to the professional staff and granting or revising clinical privileges upon the documented recommendation of the clinical director.

(6) The governing body shall meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) When a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 5. Program Director. (1) The program director shall be employed by the governing body and shall be responsible for the day-to-day management and ongoing direction of the facility's program. In the event of the program director's absence, he shall designate a person who shall be responsible for the day-to-day management of the facility.

(2)(a) The program director shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems.

(b) Minimum qualifications shall be those defined as professional staff in Section 1 of this administrative regulation, or at least a master's degree in [~~psychology, social work, nursing, or~~] education with appropriate licenses.

(c) The program director shall have two (2) years experience in services to children or adolescents including administrative responsibility in an organization for children and adolescents; three (3) professional references; two (2) personal references; and a police record check.

(d) If there is a prior crime conviction or pleas of guilty pursuant to KRS 17.165 or a Class A felony, the applicant shall not be employed.

(3) The program director shall be responsible to the governing body in accordance with the bylaws, rules or policies for the following:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff;

(b) Hiring and direction of personnel;

(c) Assuring that sufficient staff meeting minimum standards under appropriate supervision are on duty to meet the needs of the residents at all times;

(d) Approving purchases and payroll;

(e) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this administrative regulation;

(f) Advising the governing body of all significant matters bearing on the facility's licensure and operations;

(g) Preparation of reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents;

(h) Preparation of a written manual that defines policies and procedures which is regularly revised and updated; and

(i) Assuring that all written facility policies, plans, and procedures are followed.

(4) The program director shall attend and maintain documentation of attendance and participation of staff in continuing education programs.

Section 6. Administration and Operation. (1) Written plan.

(a) The governing body shall formulate and specify the facility's goals and objectives and describe its programs in a written plan so that the facility's performance can be measured.

(b) A copy of the written plan shall be given to all professional staff and to the program director.

(c) The written plan shall be reviewed at least annually and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the plan shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(d) The written plan shall include the following:

1. An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain

of command;

2. A service philosophy with clearly defined assumptions and values;

3. Estimates of the clinical needs of the children and adolescents in the area served by the facility;

4. The services provided by the facility in response to needs;

5. The population served, including age groups and other relevant characteristics of the resident population;

6. The intake or admission process, including how the initial contact is made with resident and the family or significant others;

7. The assessment and evaluation procedures provided by the facility;

8. The methods used to deliver services to meet the identified clinical needs of the residents served;

9. The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

10. The methods used to create a home-like environment for all residents;

11. The methods, means and linkages by which the facility will involve all residents in community activities, organization, and events;

12. The treatment planning process and the periodic review of therapy;

13. The discharge and aftercare planning processes;

14. The organizational relationships of each of the facility's therapeutic programs, including channels of staff communication, responsibility, and authority, as well as supervisory relationships;

15. How all professional services will be supervised by qualified, experienced personnel;

16. How all members of the professional and direct-care staff who have been assigned specific treatment responsibilities are qualified by training or experience and demonstrated competence and have appropriate clinical privileges; or are supervised by professional staff members who are qualified by experience to supervise such treatment;

17. How the facility will be linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Social Services offices and facilities, and school systems in the facility's service area; and

18. The means by which the facility provides, or makes arrangements for the provision of:

a. Emergency services and crisis stabilization;

b. Discharge and aftercare planning, that promotes continuity of care; and

c. Education and vocational services, whether provided by the facility or by agreement. Educational services to be provided by local education agency or a private agency, at a minimum, shall be arranged for sixty (60) days prior to the need for the service to be provided.

(2) Professional staff.

(a) The facility shall employ sufficient appropriately qualified professional staff to meet the treatment needs of residents and the goals and objectives of the facility.

(b) Professional staff shall meet all requirements in the licensing, registration, or certification laws relating to their respective professions.

(c) Staffing. The facility shall meet the following specific requirements with regard to staffing:

1. A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed to meet the treatment needs of the residents and the functions which shall be performed by a psychiatrist specified within this administrative regulation. If a facility has residents ages twelve (12) and under, the psychiatrist shall be board-eligible or board-certified in child psychiatry.

2. A recreational therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential, or mental health setting for children and adolescents shall be employed to meet the treatment needs of the residents and the functions which shall be performed by a recreational therapist specified within this administrative regulation.

3. A total of at least one (1) [~~two (2)~~] full-time staff shall be employed from one (1) [~~two (2)~~] of the following professions [~~(i.e., these staff cannot be from the same profession)~~]:

a. Psychologist with Ph.D. or master's degree and autonomous functioning, or master's degree under supervision of a Ph.D.;

b. Social worker with master's degree with two (2) [~~three (3)~~] years of inpatient or outpatient clinical experience in psychiatric social work, or a person who meets the qualifications of the professional staff referenced in Section 1(9) of this administrative regulation with two (2) years of experience in a residential setting for children; or

c. Registered nurse with two (2) [~~bachelor's degree and three (3)~~] years' supervised experience in a mental health setting.

4. Staff for the profession listed in subparagraph 3 of this paragraph who is not employed on a full-time basis, shall be employed or employed under contract at least ten (10) percent of full-time equivalency.

5. [~~There shall be a ratio of full-time equivalent professional staff to residents of 1:6.~~

~~6.~~] A member of the professional staff shall be on the unit or otherwise interacting with residents, in addition to planned verbal therapies, setting the tone of the therapeutic milieu at least two (2) hours each weekday and four (4) hours one (1) day each weekend during a nonschool waking-hour shift.

6. [~~7.~~] Appropriate professional staff shall be available to assist on-site in emergencies on at least an on-call basis at all times.

7. [~~8.~~] A physician shall be available on at least an on-call basis at all times.

(d) Clinical director. The governing body shall designate one (1) member of the full-time professional staff as clinical director.

1. In addition to the requirements related to his profession, the clinical director shall have at least a master's degree in a field related to the treatment of mental illness and two (2) years' supervisory experience in a program for children or adolescents with emotional problems.

2. The governing body shall define the authority and duties of the clinical director in its bylaws.

3. The clinical director may be the program director if the qualifications of both positions are met.

4. The clinical director shall supervise professional staff and be responsible for the maintenance of the facility's therapeutic milieu.

(e) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that specify the following:

1. The clinical privileges of professional staff;

2. The responsibility of professional staff for supervising and directing individuals who require supervision or direction in the provision of resident care services;

3. The responsibilities of physicians in relation to nonphysician members of the professional staff; and

4. The responsibility of professional staff for accounting to the governing body for the quality of clinical care provided to the residents, and for its ethical conduct and professional practice.

(3) Direct-care staff.

(a) The facility shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Direct-care staff shall be a mental health associate or hold a high school diploma or equivalency and have two (2) years' experience in a program in the mental health field serving children or adolescents. Completion of a twenty-hour (24) hour training curriculum meeting the requirements of subsection (8)(f) within one (1) month of employment may be substituted for experience, except that no direct-care staff so qualified shall be given clinical privileges in his first year of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan shall meet each of the following requirements:

1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for every eight (8) residents [~~of each living unit~~] at all times when residents awake and are not in school;

2. At least three (3) direct-care staff members shall be assigned to direct-care responsibilities [~~for each living unit~~] during normal waking hours when the residents are on-site [~~the unit~~]; however, if the number of residents present on-site [~~the unit~~] is six (6) or fewer, the number of direct-care staff members may be reduced to two (2);

3. At least one (1) direct-care staff member shall be assigned to direct-care responsibilities for each three (3) residents who are twelve (12) and under and one (1) for each four (4) adolescents who are over twelve (12) during all hours the residents are awake, not on the living unit, and not in school;

4. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep. A minimum of one (1) additional direct-care staff member who is a mental health associate [~~for each living unit~~] shall be immediately available on-site to assist with emergencies or problems which might arise;

5. If a member of the professional staff is directly involved in an activity with a group of residents, he may meet the requirement for a direct-care staff member; and

6. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that:

1. Specify the clinical privileges, if any, of each member of the direct-care staff;

2. Provide for the supervision of the direct-care staff; and

3. Describe the responsibilities of direct-care staff in relation to professional staff.

(4) Support staff.

(a) Environmental services. There shall be an adequate number of domestic and maintenance staff to maintain the facility's buildings and grounds in a healthful, comfortable condition and in good repair. Such services may be provided by contractual agreement.

(b) Clerical staff. The facility shall employ a sufficient number of clerical staff qualified by high school diploma or equivalency to maintain correspondence, records, reports and files.

(5) Student field placements/internships. The facility shall ensure that student interns are supervised directly by an appropriate paid staff member who will act as a liaison between the facility and the school making placements.

(6) Volunteers.

(a) The facility may use volunteers to help meet residents' basic needs for social interaction, self-esteem, and self-fulfillment.

(b) The governing body shall adopt written policies and procedures which address screening, selection, and supervision of all volunteers.

(c) Volunteers used within the program shall meet the qualifications for the positions for which they volunteer.

(d) Volunteers shall not be used in place of required staff.

(e) Volunteers shall be oriented to the facility's goals and services and given appropriate clinical background regarding the facility's residents.

(7) Part-time employees. Part-time employees shall meet minimum qualifications of full-time staff and shall not be utilized to the extent that continuity in resident care is disrupted by frequent shift changes or changes in personnel from day-to-day.

(8) Staff development.

(a) Appropriate staff development programs shall be provided for administrative, professional, direct-care, and support staff under the supervision and direction of the program director or designee(s). Responsibility for any part of the staff development program may be delegated to appropriately qualified individuals.

(b) The participation of the program director and professional, direct-care, and support staff in staff development programs shall be documented.

(c) Professional and direct-care staff shall meet the continuing education requirements of their profession or be provided with twenty (20) hours per year of in-service training by the facility.

(d) Library services shall be made available to meet the professional and technical needs of the facility staff. A facility which does not maintain a professional library shall have arrangements with a library or institution for use of its professional library.

(e) The facility shall communicate and collaborate, as appropriate, with national, state, and local mental health professional organizations in planning and providing ongoing training.

(f) The program director shall require that each staff member working directly with residents demonstrate basic knowledge in the following areas:

1. Child and adolescent growth and development;

2. Therapeutic principles and modalities used in the facility;

3. Building and maintaining a positive therapeutic milieu on the living unit;

4. Techniques of group and child management; and

5. Detection and reporting of child abuse and neglect.

(9) Employment practices.

(a) The facility shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The policies and procedures shall be written, systematically reviewed, and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The policies and procedures shall provide for the recruitment, selection, promotion, and termination of staff.

(d) The facility shall maintain job descriptions approved by the governing body for all positions specifying the qualifications, duties, and supervisory relationship of the position. Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, salary range for each position shall be provided.

(e) The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees. The governing body shall establish a mechanism for notifying employees of changes in the policies and procedures.

(f) Information on the following shall be included in the policies and procedures:

1. Employee benefits;
2. Recruitment;
3. Promotion;
4. Training and staff development;
5. Employee grievances;
6. Safety and employee injuries;
7. Relationships with employee organizations;
8. Disciplinary systems;
9. Suspension and termination mechanisms;
10. Rules of conduct;
11. Lines of authority;
12. Performance appraisals;
13. Wages, hours and salary administration; and
14. Equal employment opportunity and, when required, affirmative action policies.

(g) The personnel policies and procedures shall describe methods

and procedures for supervising all personnel, including volunteers.

(h) The policies and procedures shall require appropriate criminal history and police record checks for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

(i) The policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

(j) A personnel record shall be kept on each staff member and shall contain the following items:

1. Application for employment;
2. Written references and a record of verbal references;
3. Verification of all training and experience and of licensure, certification, registration, or renewals;
4. Wage and salary information, including all adjustments;
5. Performance appraisals;
6. Counseling actions;
7. Disciplinary actions;
8. Commendations;
9. Employee incident reports; and
10. Initial and subsequent health clearances.

(k) The policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l) Performance appraisals shall relate job description and job performance and shall be written. The criteria used to evaluate job performance shall be objective.

Section 7. Resident Rights. (1) The facility shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, the facility shall provide the resident and parent, guardian, or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's access to treatment, regardless of race, religion, or ethnicity;

(b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;

(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;

(d) Each resident's right to an individualized treatment plan;

(e) Each resident's and family's participation in planning for treatment;

(f) The nature of care, procedures, and treatment that he shall receive;

(g) The risks, side effects, and benefits of all medications and treatment procedures used; and

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility when the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice.

(4) The rights of residents shall be written in language which is understandable to the resident, his parents, custodians, or guardians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning resident rights shall assure and protect the resident's personal privacy within the constraints of his treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;

(b) Sending and receiving mail without hindrance or censorship; and

(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy must be limited, the resident and his parent, guardian, or custodian shall receive a full explanation. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

(a) To whom the grievance is to be addressed; and

(b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his parent, guardian, or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, television, movies, or photographs.

(9) The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his record maintained by the facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10) The resident shall be allowed to work for the facility only under the following conditions:

(a) The work is part of the individual treatment plan;

(b) The work is performed voluntarily;

(c) The patient receives wages commensurate with the economic value of the work;

(d) The work project complies with applicable law and administrative regulation; and

(e) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) Written policy and procedure developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian, or custodian.

(12) The facility shall prohibit all cruel and unusual disciplinary measures including the following:

(a) Corporal punishment;

(b) Forced physical exercise;

(c) Forced fixed body positions;

(d) Group punishment for individual actions;

(e) Verbal abuse, ridicule, or humiliation;

(f) Denial of three (3) balanced nutritional meals per day;

(g) Denial of clothing, shelter, bedding, or personal hygiene needs;

(h) Denial of access to educational services;

(i) Denial of visitation, mail, or phone privileges for punishment;

(j) Exclusion of the resident from entry to his assigned living unit; and

(k) Restraint or seclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(14) Written rules of resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body. Residents shall participate in the development of the rules to a reasonable and appropriate extent.

These rules shall be based on generally acceptable normal and natural behavior for the resident population served.

(15) The application of disciplinary measures shall relate to the violation of established rules.

Section 8. Resident Records. (1) The facility shall have written policies or procedures concerning resident records developed in consultation with professional staff and a registered records administrator and approved by the governing body.

(2) The facility shall maintain a written resident record on each resident, to be directly accessible to staff members caring for the resident.

(3) The resident record shall contain at a minimum:

(a) Basic identifying information;

(b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;

(c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

(d) The report by the parent, guardian, or custodian of the patient's immunization status;

(e) A psychosocial assessment of the resident and his family, including:

1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and

2. A summary of the resident's psychosocial needs.

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, when applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of the resident;

(i) Physical health assessment, including evaluations of the following:

1. Motor development and functioning;
2. Sensorimotor functioning;
3. Speech, hearing, and language functioning;
4. Visual functioning; and
5. Immunization status.

(4) The resident record shall also include:

(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident.

(b) Professional progress notes which shall be completed following each professional service except when the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the professional who provided the service.

(c) Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the residents. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly. Direct-care notes shall be signed and dated by the direct-care staff making the entry.

(d) Special clinical justifications for the use of special and unusual treatment procedures and reports.

(e) Discharge summary.

(f) If a patient dies, the resident record shall include a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.

(5) The facility shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian, or custodian or as otherwise authorized by law. The written consent shall contain the following information:

(a) The name of the person, agency, or organization to which the information is to be disclosed;

(b) The specific information to be disclosed;

(c) The purpose of disclosure; and

(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 9. Quality Assurance. (1) The facility shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.

(2) The facility shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the governing body and shall:

(a) Assign responsibility for the monitoring and evaluation activities;

(b) Delineate scope of care provided by the facility;

(c) Identify the aspects of care that the facility provides;

(d) Identify indicators (and appropriate clinical criteria) that can be used to monitor these aspects of care;

(e) Establish thresholds for the indicators at which further evaluation of the care is triggered;

(f) Collect and organize the data for each indicator;

(g) Evaluate the care when the thresholds are reached in order to identify problems or opportunities to improve care;

(h) Take actions to correct identified problems or to improve care;

(i) Assess the effectiveness of the actions and document the improvement in care; and

(j) Communicate relevant information to other individuals, departments, or services and to the facility-wide quality assurance program.

(3) The facility shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record should be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 10. Admission Criteria. (1) The facility shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.

(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:

(a) Types of admission (crisis stabilization, long-term treatment);

(b) Age and sex of accepted;

(c) Criteria that preclude admission;

(d) Clinical needs and problems typically addressed by the facility's programs and services;

(e) Criteria for discharge; and

(f) Any preplacement requirements of the resident, his parents, guardians, custodians, or the placing agency.

(3) A facility may only admit children with an emotional disability as defined in KRS 200.503(1) or a severe emotional disability as defined in KRS 200.503(2) [~~in accordance with HB 554 of the 1992 General Assembly~~] (this does not preclude the facility from admitting a child with multiple diagnoses) who meet its written admission criteria and for whom the facility finds:

(a) Less-restrictive treatment resources accessible and available in the resident's community will not meet his treatment needs;

(b) Proper treatment of the resident's psychiatric condition requires care and treatment under the direction of a psychiatrist within a psychiatric residential treatment facility;

(c) Proper treatment of the resident's psychiatric condition requires twenty-four (24) hour care in a facility which provides comprehensive and structured therapeutic mental health treatment in

a less structured environment than an inpatient hospital; and

(d) Care and treatment in a psychiatric residential treatment facility can reasonably be expected to improve the resident's condition or prevent further regression so that residential treatment facility services will no longer be needed, provided that a poor prognosis shall not in itself constitute grounds for a denial of admission if treatment can be expected to effect a positive change in prognosis.

(4) Residents admitted to the facility shall have obtained age six (6), but not attained age eighteen (18). Residents may remain in care until age twenty-one (21) if admitted by their 18th birthday. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit.

(5) Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan shall not be admitted.

Section 11. Resident Management. (1) Intake.

(a) The facility shall have written policies and procedures approved by the governing body for the intake process which addresses at a minimum the following:

1. Referral, records, and statistical data to be kept regarding applicants for residence;

2. Criteria for determining the eligibility of individuals for admission;

3. Methods used in the intake process which shall be based on the services provided by the facility and the needs of residents; and

4. Procurement of appropriate consent forms. This may include the release of educational and medical records.

(b) The intake process shall include an initial assessment of the resident performed by the professional staff. The results of the assessment shall be explained to the parent or guardian or custodian if appropriate, and to the resident. As a condition at admission, the assessment shall conclude that:

1. The treatment required by the resident is appropriate to the intensity and restrictions of care provided by the facility; and

2. Alternatives for less intensive and restrictive treatment are not available or accessible to the resident.

(c) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;

2. Temporary treatment plan including the proposed initial level of intervention with the resident, the health and safety needs, the education and activity plan, and legal, custody and visitation orders; and

3. Proposed discharge plan and anticipated length of stay.

(d) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;

2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and

3. Preparation of the staff and residents of the facility for the new resident.

(e) Upon admission each resident of school age shall have been certified or be referred for assessment as **a child with a disability** [~~handicapped~~] pursuant to **20 USC 1400** [~~PL 94-142~~].

(f) The temporary treatment plan shall be reviewed by all staff involved in the resident's treatment, approved by the clinical director and psychiatrist, and implemented upon admission.

(2) Assessment.

(a) A complete evaluation and assessment shall be performed for each resident which includes, but is not necessarily limited to, physical, emotional, behavioral, social, recreational, educational, legal, vocational, and nutritional needs.

(b) The physical examination of each resident shall be initiated within twenty-four (24) hours after admission and shall include, but not be limited to, evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status. If a resident's immunization is not complete as defined in the report of the Committee on Infectious Diseases of the American Academy of Pediatrics, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination, whichever is later.

(c) If the resident has had a complete physical examination by a qualified physician within the previous three (3) months which includes the requirements of subsection (b) of this section and if the facility obtains complete copies of the record, that examination may be used to meet the requirement for a physical examination in subsection (b) of this section.

(d) A physician shall be responsible for assessing each resident's physical health, his need for a current examination in spite of one done in the prior three (3) months, and his need for special clinical examinations and tests within twenty-four (24) hours of admission.

(e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.

(f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The resident's current emotional and behavioral functioning;

3. A direct psychiatric evaluation;

4. When indicated, psychological assessments, including intellectual, projective, and personality testing;

5. When indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and

6. An evaluation of the developmental age factors of the resident.

(g) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe personality disorganization or deterioration, or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:

1. Environment and home;

2. Religion;

3. Childhood history;

4. Financial status;

5. The social, peer-group, and environmental setting from which the resident comes; and

6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes,

and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age sixteen (16) and older, a vocational assessment of the resident shall be done which includes the following:

1. Vocational history;

2. Education history, including academic and vocational training; and

3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with and attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) When appropriate, a legal assessment of the resident shall be undertaken and shall include the following:

1. A legal history; and

2. A preliminary discussion to determine the extent to which the legal situation will influence his progress in treatment and the urgency of the legal situation.

(3) Treatment plans.

(a) Within seventy-two (72) hours following admission, the clinical director or a member of the professional staff designated by him shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team conference within ten (10) days of admission for any resident remaining in treatment. It shall be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section, include a substantiated diagnosis and the short-term and long-range treatment needs, and address the specific treatment modalities required to meet the resident's needs.

1. The treatment plan shall contain specific and measurable goals for the resident to achieve.

2. The treatment plan shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

3. The treatment plan shall specify criteria to be met for termination of treatment.

4. The treatment plan shall include any referrals necessary for services not provided directly by the facility.

5. The resident shall participate to the maximum extent feasible in the development of his treatment plan, and such participation shall be documented in the resident's record.

6. The treatment plan shall specify the ways in which the resident will participate in community activities, organizations, and events.

7. The treatment plan shall address ways in which the environment for the resident is normalized.

8. A specific plan for involving the resident's family or significant others shall be included in the treatment plan. The parent, guardian, or custodian shall be given a copy of the resident's master treatment plan. The master treatment plan shall identify the professional staff member who is responsible for coordinating and facilitating the family's involvement throughout treatment.

9. The treatment plan shall be reviewed and updated through multidisciplinary team conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter [~~for the first year of treatment~~].

10. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The master treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it, and approved by the clinical director.

(4) Progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include the following:

1. Documentation of implementation of the treatment plan;

2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and

3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress shall be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, when available, to include them in the resident record.

(d) The resident's progress and current status in meeting the goals and objectives of his treatment plan shall be regularly recorded in the resident record.

(5) Discharge planning. The facility shall have written policies and procedures for discharge of residents.

(a) Discharge planning shall begin at admission and be documented in the resident's record. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan. This plan shall be maintained in the resident's record and reviewed and updated with the master treatment plan.

(b) All discharge recommendations shall be determined through a conference, including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and, if indicated, the representative of the agency to whom the resident may be referred for aftercare service(s), and the affected local school districts. All aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.

(d) A facility deciding to release a resident on an unplanned basis shall:

1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;

2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency(ies) copies of the resident's records and discharge summary.

3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that such placement reasonably meets the needs of the resident; and

4. Provide a written statement explaining the reasons for discharge to the receiving agency.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:

1. Name, address, phone number, and relationship of the person to whom the resident was released;

2. Description of circumstances leading to admission of the resident to the facility;

3. Significant problems of the resident;

4. Clinical course of the resident's treatment;

5. Assessment of remaining needs of the resident and alternative

services recommended to meet those needs;

6. Special clinical management requirements including psychotropic drugs;

7. Brief descriptive overview of the aftercare plan designed for the resident; and

8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

(6) The facility shall request periodic follow-up reports from each agency providing services to the resident in accordance with the aftercare plan, and shall be responsible for documenting the outcome of the aftercare plan as possible.

Section 12. Services. The facility shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident.

(1) Mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 11 of this administrative regulation.

(b) The mental health services available through the residential treatment facility shall include the services listed below. These mental health services shall be provided directly by the residential treatment facility:

1. Case coordination services to assure the full integration of all services provided to each resident. Case coordination activities include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

2. Planned verbal therapies including formal individual, family, and group therapies. These therapies shall be provided on site. These therapies include psychotherapy and other face-to-face verbal contacts between staff and the resident which are planned to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit. Verbal contacts that are incidental to other activities are excluded from this service.

3. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself and to function effectively in community settings. Task and skill training activities include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Physical health services.

(a) The physical health services available through the residential treatment facility shall include the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement.

1. Assessments and evaluations as required in Section 11 of this administrative regulation;

2. Diagnosis, treatment, and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;

5. Health and sex education;

6. An ongoing immunization program; and

7. A physical examination within five (5) days of the client's planned date of discharge from the facility.

(b) When physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:

1. Referral of residents;

2. Qualifications of staff providing services;

3. Exchange of clinical information; and

4. Financial arrangements.

(3) Dietary services.

(a) The facility shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by the facility staff or through written contractual agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietetic service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a qualified dietician registered by the Commission on Dietetic Registration and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;

2. Shall not be withheld as punishment; and

3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

(g) Except for school lunches and meals at restaurants, all members of a living unit shall be provided their meals together as a therapeutic function of the living unit.

(4) Emergency services.

(a) The facility shall provide for the prompt notification of the resident's parents, guardian, or custodian in case of serious illness, injury, surgery, or death.

(b) The facility shall provide or arrange for the training of all direct-care and professional staff in first aid and CPR.

(c) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather. The plan shall be posted. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building. Fire drills shall be practiced in accordance with state fire administrative regulations.

(d) The facility shall have written procedures to be followed by staff in the event of a psychiatric, medical, or dental emergency of a resident that specifies:

1. Notification of designated member of the facility's chain of command;

2. Designation of staff person who shall decide to refer resident to outside treatment resources;

3. Notification of resident's parent, guardian, or custodian;

4. Transportation to be used;

5. Staff member to accompany resident;

6. Necessary consent and referral forms to accompany resident; and

7. Name, location, and telephone of designated treatment resources.

(e) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;

2. Licensed dentist and an alternate designee;

3. Licensed hospital; and

4. Licensed hospital with an accredited psychiatric unit.

(5) Pharmacy services. The facility shall have written policies and

procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the following requirements:

(a) Medications shall be administered by a registered nurse, physician, or dentist, except in the case of a licensed practical nurse, [~~or a~~] certified medication aide, or mental health associate under the supervision of a registered nurse. A mental health associate shall have successfully completed the medicine administration course approved by the Kentucky Board of Nursing for use in child caring facilities;

(b) Medications shall not be given without a written order signed by a physician, or dentist when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the physician or dentist within twenty-four (24) hours from the time the order is given;

(c) Psychotropic medications shall be prescribed only when clinically indicated as one (1) facet of a program of therapy. The facility shall ensure that no stimulant or psychotropic medication is administered solely for the purpose of program management or control, and that no medication is prescribed for the purposes of experimentation or research;

(d) All medications shall require "stop orders";

(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal;

(f) There shall be a systematic method for prescribing, ordering, receipting, storing, dispensing, administering, distributing and accounting for all medications;

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles;

(h) Self-administration of medication shall be permitted only when specifically ordered by the responsible physician and supervised by a member of the professional staff or a mental health associate. Drugs to be self-administered shall be stored in a secured area and be made available to the resident at the time of administration;

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered;

(j) Drugs brought into the facility by residents shall not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs are to be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

(6) Education/vocational services.

(a) Educational and vocational services available through the facility shall include the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents.

1. Educational services may be provided directly by the facility, or may be provided by written agreement with the local school district in which the facility is located or with a nonpublic school program which is specially accredited by the Kentucky Department of Education (KDE) and is approved by the KDE to provide special education services to **[~~handicapped~~]** students **with disabilities**.

2. If the educational services are provided by the facility, the school program must be specially accredited by the KDE and be approved by the KDE to provide special education services to **[~~handicapped~~]** students **with disabilities**.

3. Educational services provided by a local school district may be provided within the facility or within the local school district.

4. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.

5. In any case, education services approved by the Department of Education shall be available either on the same site or in close physical proximity to the residential treatment facility.

(b) When the education services are not provided directly by the facility, there shall be a written agreement between the provider of education services and the facility. The provider shall be a state education department-approved program. The written agreement shall, at a minimum, address:

1. Qualifications of staff providing services;

2. Participation of educational and vocational staff in the treatment planning process;

3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's master treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as **a child with a disability [~~handicapped~~]** pursuant to **20 USC 1400 [~~PL 94-142~~]**.

(e) The facility shall ensure that education services are developed and implemented in conjunction with the master treatment plan and meet the following requirements:

1. The resident's teacher shall be a member of the multidisciplinary team, when possible.

2. Each resident's master treatment plan shall include formal academic goals for remediation and continuing education.

3. Each resident eligible for special education services to the handicapped shall have treatment activities developed by the multidisciplinary team, which may be incorporated into the individualized treatment plan (ITP [~~IEP~~]) developed by the local school district. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate. The program director or designee shall request an invitation to attend all ITP [~~IEP~~] meetings. If allowed, the program director or designee shall attend all ITP [~~IEP~~] meetings.

4. To avoid unnecessary duplication and make maximum use of resources, the services provided by the education and treatment components for **[~~those~~]** children **with disabilities [~~identified as handicapped~~]** pursuant to **20 USC 1400 [~~PL 94-142~~]** shall be developed with the opportunity for input from both parties.

(f) The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan. The services shall be planned, implemented and supervised by a vocational counselor or appropriate therapist who may be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Activity services.

(a) The recreational therapist shall prepare a daily schedule of planned recreational activities for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be [~~in one-half (1/2) hour increments~~] for normal waking hours that residents are not in school, or in active treatment.

2. The schedule shall include a full range of activities including physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) The recreational therapist shall direct, consult with, and train staff responsible for leading the scheduled activities.

(c) The recreational therapist shall evaluate the effectiveness of the activity services.

(d) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(e) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. The facility shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

(a) Referral of residents;

(b) Qualifications of staff providing services;

(c) Exchange of clinical information; and

(d) Financial arrangements.

Section 13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion and holding which may have abuse potential or be life threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself or others or to prevent serious disruption of the therapeutic environment.

(2) Special treatment procedures shall not be used as punishment or as a convenience of staff.

(3) Special treatment procedures may be used only by trained, clinically-privileged staff.

(4) The facility shall have a written plan approved by the governing body for the use of special treatment procedures which at a minimum meet the following requirements:

(a) Any use of special treatment procedures requires clinical justification;

(b) A rationale and the clinical indications for the use of special treatment procedures shall be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques;

(c) The plan shall specify the length of time for which a specific approval remains effective; and

(d) The plan shall specify the length of time the special treatment procedure may be utilized.

(5) Restraint or seclusion may be ordered or carried out only after the physician who is authorizing the use of the procedure has conducted a clinical assessment or has consulted with a member of the clinical staff who has conducted a clinical assessment of the resident.

(6) Each written order for restraint or seclusion shall be time limited and shall not exceed twenty-four (24) hours. No PRN orders for restraint or seclusion may be written.

(7) Restraint or seclusion may be utilized in an emergency by trained, clinically-privileged staff. The emergency implementation of restraint or seclusion shall not exceed thirty (30) minutes at which time a physician staff member's oral order is required if use of the procedure is to continue. The physician's written order to confirm restraint or seclusion shall be entered in the resident's record as soon as possible, but not more than twenty-four (24) hours after the implementation of the procedure.

(8) Use of restraint or seclusion for a period of twenty-four (24) hours shall be approved by a committee made up of the professional staff, the clinical director, and the program director prior to the expiration of the first twenty-four (24) hour order.

(9) Staff who implement special treatment procedures shall have documented training in the proper use of the procedure used and shall be certified in physical management by a nationally recognized training program in which certification is obtained through skilled-out testing.

(10) A professional or direct-care staff member shall be constantly, physically present with a resident in restraint; and attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(11) A professional or direct-care staff person shall always be in the seclusion room with a resident twelve (12) years of age or under so long as the staff person is not placed in undue physical danger due to the relative size and strength of the resident who is in seclusion. Attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(12) Constant visual attention through physical presence, remote video, or window shall be paid to an adolescent who is in seclusion and over twelve (12) years of age or a resident who is under twelve (12) years of age if the staff person would be placed in undue physical danger due to the resident's relative size and strength. Professional or direct-care staff shall check the resident's breathing and talk to the resident every fifteen (15) minutes and shall attend to the resident's regular meals, bathing, and use of the toilet. This attention shall be documented in the resident's record.

(13) At no time may a procedure be used in a manner that causes undue physical discomfort, harm, or pain to a resident.

(14) All uses of special treatment procedures shall be reviewed on a daily basis by the clinical director and evaluated by him for the possibility of unusual or unwarranted patterns of use.

(15) A facility shall not use extraordinary risk procedures including, but not limited to experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(16) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by one (1) or more persons legally qualified to prescribe treatment addressing the rationale for use, methods to be used, specified time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian, or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

Section 14. Housekeeping Services. (1) The facility shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:

(a) The use, cleaning, and care of equipment;

(b) Assessing the proper use of housekeeping and cleaning supplies;

(c) Evaluating the effectiveness of cleaning; and

(d) The role of the facility staff in maintaining a clean environment.

(2) A laundry service shall be provided by the facility or through contractual agreement.

(3) Pest control shall be provided by the facility or through contractual agreement.

Section 15. Infection Control. (1) Because infections acquired in a facility or brought into a facility from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of

the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

WILLIAM M. GARDNER, Inspector General
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: November 15, 1994
FILED WITH LRC: November 15, 1994 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JANUARY 13, 1995

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 3:015. Borrower eligibility.

RELATES TO: KRS 164.744(1), 164.748(1), (3), (14), 164.753(2), 164.766, 34 CFR 682.405, 20 USC §1078, §1078-1, §1078-2, §1078-3, 1078-6, §1087kk

STATUTORY AUTHORITY: KRS 13A.100(1), 164.746(6), 164.748(4), 34 CFR §682.401(b)(10)(ii)

NECESSITY AND FUNCTION: KRS 164.744(1) empowers the authority to insure loans to students, provided that the loans meet the criteria of the federal Act. PL 102-325, enacted July 23, 1992, reauthorized the federal Act and made substantial changes in the insured student loan programs. The administrative regulation is necessary to prescribe the eligibility of borrowers and students who would benefit from authority insured student loans. This amendment is necessary to prescribe conditions under which a borrower who is in default on an authority insured student loan may qualify for reinstatement of eligibility for additional student financial assistance and rehabilitation of the defaulted loan. The amendment of this administrative regulation is also necessary to reflect the elimination of the Federal SLS Program, effective July 1, 1994, and the elimination of the minimum outstanding insured student loan indebtedness prerequisite to obtaining federal consolidation loan, pursuant to PL 103-66 (20 USC 1078-1 and 1078-3).

Section 1. Student Eligibility. Except as provided in Section 12 of this administrative regulation, a student is eligible to borrow or benefit from assistance for any academic year, whether or not the student has already obtained a first baccalaureate degree, under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, and the federal SLS programs if the student:

(1)(a) Is a regular student enrolled or accepted for enrollment as at least a half-time student in a degree, certificate, or other eligible program (including a program of study abroad approved for credit by the participating institution at which the student is enrolled) leading to a recognized educational credential at a participating institution; or

(b) Is, for one, consecutive twelve (12) month period, enrolled or accepted for enrollment for at least one-half (1/2) the normal full-time work load (for the course of study that the student is pursuing), as determined by the participating institution, in a course of study necessary for enrollment in an eligible program; or

(c) Is enrolled or accepted for enrollment for at least one-half (1/2) the normal full-time work load (for the course of study that the student is pursuing), as determined by the participating institution, in a program at a participating institution necessary for a professional credential or certification from a state that is required for employment as a teacher in an elementary or secondary school in that state;

(2) Is not enrolled in either an elementary or secondary school;

(3)(a) Has a high school diploma or its recognized equivalent; or

(b)1. Is above the age of compulsory school attendance in the state in which the participating institution he is attending is located; and

2. Has the ability to benefit from the training offered by that institution, according to the requirements of Section 2 of this administrative regulation;

(4)(a) Is a U.S. citizen or national; or

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

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

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

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

(5) If currently enrolled, is maintaining satisfactory progress in his course of study according to the institution's standards of satisfactory progress and, if applicable, the requirements of Section 3 of this administrative regulation;

(6) Has filed with the participating institution a statement of selective service registration status in accordance with Section 4 of this administrative regulation;

(7) Is a national of the United States, if enrolled or accepted for enrollment in a foreign school; and

(8) Meets the following conditions, if enrolled in a flight school program at a participating institution:

(a) Plans to pursue or is pursuing a full-time program leading to commercial flight ratings;

(b) Has completed ground school training or is taking it concurrently with flight training;

(c) Holds a private pilot's certificate or has sufficient flight hours to qualify for that certificate; and

(d) Holds at least a Class II medical certificate.

Section 2. Students Who Are Not High School Graduates. In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible to benefit from assistance under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan or the federal PLUS programs, the student shall meet one (1) of the following standards:

(1)(a) The student shall take an independently administered examination (approved by the secretary on the basis of compliance with standards for development, administration, and scoring as the secretary may prescribe in administrative regulations), and shall achieve a score, specified by the secretary, demonstrating that the student can benefit from the education or training being offered; or

(b) The student shall be determined as having the ability to benefit from the education or training in accordance with a process that a state may prescribe, which shall be effective for purposes of this section six (6) months after the date the process is submitted to the secretary, unless the secretary disapproves the process, taking into account the effectiveness of the process in enabling students without high school diplomas or the equivalent thereof to benefit from the instruction offered by institutions utilizing the process, and the cultural diversity, economic circumstances, and educational preparation of the populations served by the institutions;

(2) Enrollment prior to July 1, 1991. A student who was admitted to a participating institution for a period of enrollment beginning prior to July 1, 1991 and continues to be enrolled as a regular student on the basis of that student's ability to benefit from the institution's education or training program remains eligible to benefit from assistance under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan or the federal PLUS programs only if the student:

(a)1. Before admission, was administered a nationally recognized, standardized, or industry-developed test, subject to criteria developed by the institution's nationally recognized accrediting agency or association, that measures the student's aptitude to complete successfully the educational program to which he has applied; and

2. Demonstrated that aptitude on that test; or

(b) Receives a GED before the earlier of the student's certification or graduation from his program of study, or the completion of the student's first academic year of that program of study; or

(c) Enrolls in and successfully completes a remedial or develop-

mental educational program of not more than one (1) academic year that is prescribed by the institution, if the student is counseled before admission, or does not demonstrate the aptitude necessary to complete successfully the educational program to which he has applied on the test described in paragraph (2)(a)1 of this section.

Section 3. Satisfactory Progress. For the purpose of Section 1(5) of this administrative regulation, a student shall be considered to be maintaining satisfactory progress if, for a student who has not received assistance under the subsidized Robert T. Stafford Federal Student Loan, the federal PLUS, or the federal SLS programs, for a period of enrollment beginning before July 1, 1987, the participating institution:

(1) Reviews the student's academic progress at the end of each academic year, or its equivalent, as determined by the institution; and

(2) Determines that the student is making satisfactory academic progress at the end of that student's second academic year of attendance at the institution on the basis of a finding that:

(a) The student has at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements; or

(b) The student's failure to have at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements, was caused by:

1. The death of a relative of the student;

2. An injury or illness of the student; or

3. Other special circumstances; and

(3) Determines, in the case of a student who was not making satisfactory academic progress in accordance with subsection (2) of this section at the end of that student's second academic year of attendance at the institution, that the student is making satisfactory academic progress if that student subsequently obtains academic standing consistent with the institution's requirements for graduation at the end of a grading period.

Section 4. Statement of Registration Status. (1) Unless the participating institution determines, based on clear and unambiguous evidence, that the student is not required to be registered with Selective Service, a student who is applying for a subsidized or unsubsidized federal Stafford loan or a federal SLS loan, or who will benefit from a loan under the federal PLUS program, shall file a statement of registration status with the participating institution.

(2) Until a student files a statement of registration status required pursuant to subsection (1) of this section, the participating institution shall not, for any period of instruction:

(a) Disburse funds to the student under any authority insured student loan program; or

(b) Certify the institutional portion of the authority insured student loan application.

(3) In the statement of registration status, the student shall certify either that he is registered with Selective Service or that, for a specified reason, he is not required to be registered. This requirement shall not apply to a student who is:

(a) Enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

1. The Citadel, Charleston, South Carolina;

2. North Georgia College, Dahlonega, Georgia;

3. Norwich University, Northfield, Vermont; or

4. Virginia Military Institute, Lexington, Virginia;

(b) A commissioned officer of the Public Health Service who is on active duty as provided in section 6(a)(2) of the Military Selective Service Act; or

(c) Unable to present himself for registration for reasons beyond his control, such as being hospitalized, incarcerated, or institutionalized.

(4)(a) Except as provided in paragraph (b) of this subsection, a student required under subsection (1) of this section to file a statement of registration status shall do so once for each academic year. If the student's status under registration law changes during the academic year after he has completed the statement of registration status, the student shall not be required to file a new statement for that year.

(b) A participating institution may waive the requirement that a student file a statement of registration status once for each academic year if:

1. The institution already has on file a statement of registration status for that student; and

2. The student's status under registration law has not changed since the institution received the most recently filed statement of registration status.

(c) A participating institution which waives the requirement that a student file the statement of registration status is liable for any authority insured student loan provided to a student who was required to register, but who was not registered, if:

1. The institution made its determination that the student was not required to register on the basis of ambiguous information regarding his status under registration law; or

2. The institution had conflicting information about whether the student was required to register, and its determination that the student was not required to register was not reasonable in the light of all available information.

(d) An institution which accepts a statement of registration status from a student is liable for any authority insured student loan provided to a student who was required to register, but who was not registered, if the institution:

1. Has information that conflicts with the student's statement; and

2. Its acceptance of the student's representation on the statement regarding his status was not reasonable in light of all the available information.

Section 5. Eligible Borrower. (1) Student borrower. A student is eligible to borrow a subsidized and unsubsidized federal Stafford loan [~~and a federal SLS program loan~~], if the student:

(a) Meets the requirements of Section 1 of this administrative regulation; and

(b) Provides his Social Security number; and

(c) Authorizes the participating institution in writing to pay directly to the holder of the loan that portion of any refund of school charges that is allocable to the loan; and

(d) Except as provided in Section 6 of this administrative regulation, does not owe, and certifies that he does not owe a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs;

(e) Except as provided in Section 7 of this administrative regulation, is not in default, and certifies that he is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, [~~ICL,~~] the subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, federal Direct Loan, or federal Consolidation Loan programs;

(f) Has filed with the participating lender a statement of educational purpose in accordance with the requirements of Section 8 of this administrative regulation;

(g) As determined by the participating institution that he attends, except as provided in Section 9 of this administrative regulation, has not borrowed:

1. In excess of the annual loan limits under the [~~ICL,~~] subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, or federal SLS programs in the same academic year for which he has applied for assistance under any authority insured student loan program; and

2. In excess of the aggregate maximum loan limits under the [~~ICL,~~] Perkins Loan, subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, or federal Consolidation Loan programs;

(h) Is not serving in a medical internship or residency program;

(i) Except for a graduate or professional student:

1. Has received a determination of eligibility or ineligibility for a Pell Grant for the period of enrollment, and, if determined to be eligible, filed an application for a Pell Grant for such enrollment period; or

2. Has filed an application with the Pell Grant processor for the participating institution for the enrollment period, and received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a Pell Grant.

(j) Does not owe a refund of a grant awarded by the authority, and is not delinquent in repayment of any other financial obligation to the authority, except that ineligibility under this paragraph may be waived by the executive director of the authority upon the recommendation of a designated staff review committee for cause;

(k) Meets the additional requirements provided in Sections 9 and 10 of this administrative regulation applicable to the type of loan sought by the student; and

(2) Parent borrower. A parent is eligible to receive a federal PLUS Program loan if the parent:

(a) Is borrowing to pay for the educational costs of a dependent student who meets all of the qualifications set forth in Section 1 of this administrative regulation;

(b) Provides his Social Security number;

(c) Meets the qualifications pertaining to citizenship and residency status set forth in Section 1(4) of this administrative regulation;

(d)1. Except as provided in Section 6 of this administrative regulation, does not owe, and certifies that he does not owe a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs; and

2. Except as provided in Section 6 of this administrative regulation, the student for whom a parent is borrowing does not owe, and certifies that he does not owe a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs;

(e)1. Except as provided in Section 7 of this administrative regulation, is not in default, and certifies that he is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, [~~ICL,~~] the subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, federal Direct Loan, or federal Consolidation Loan programs; and

2. Except as provided in Section 7 of this administrative regulation, the student for whom a parent is borrowing is not in default, and certifies that he is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, [~~ICL,~~] the subsidized and unsubsidized Robert T. Stafford Federal Student Loan, federal PLUS, federal SLS, federal Direct Loan, or federal Consolidation Loan programs;

(f) Has filed with the participating lender a statement of educational purpose in accordance with the requirements of Section 8 of this administrative regulation; and

(g) For loans on which the first disbursement is made on or after July 1, 1993, does not have an adverse credit history;

(h) Does not owe a refund of a grant awarded by the authority, and is not delinquent in repayment of any other financial obligation to the authority, except that ineligibility under this paragraph may be waived by the executive director of the authority upon the recommendation of a designated staff review committee for cause.

Section 6. Refund of a Grant or Scholarship Overpayment. A student shall owe a refund on a grant if the student receives a grant overpayment. A student receives a grant overpayment if the student's grant payments exceed the amount he is eligible to receive or use. Notwithstanding Section 5(1)(d) and (2)(d) of this administrative regulation, an otherwise eligible student or an otherwise eligible parent borrower who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment shall be eligible to benefit from assistance under the subsidized and the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, and the federal SLS programs under the following conditions:

(1) Pell Grant overpayment.

(a) If an institution makes a Pell Grant overpayment to a student, that otherwise eligible student or an otherwise eligible parent borrower shall be eligible pursuant to Section 5(1)(d) or (2)(d) if the institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(b) If an institution makes a Pell Grant overpayment to a eligible student as a result of its own error, and cannot eliminate the overpayment under paragraph (a) of this subsection, the otherwise eligible student or otherwise eligible parent borrower shall be eligible pursuant to Section 5(1)(d) or (2)(d) of this administrative regulation if the student acknowledges the overpayment and agrees, in writing, to repay it within six (6) months.

(2) SEOG or SSIG overpayment. If an institution makes an SEOG or SSIG overpayment to a student, that otherwise eligible student or otherwise eligible borrower shall be eligible pursuant to Section 5(1)(d) or (2)(d) of this administrative regulation if the institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

Section 7. Default on a Loan. Notwithstanding Section 5(1)(e) and (2)(e) of this administrative regulation, an otherwise eligible borrower or student for whom a parent is borrowing who is in default on any loan made under the National Defense/Direct Student Loan, Perkins Loan, [~~ICL,~~] the subsidized or the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, the federal SLS, or the federal Consolidation Loan programs shall be eligible to benefit from assistance under an authority insured student loan program under the following conditions:

(1)(a) An otherwise eligible borrower or student for whom a parent is borrowing who is in default on a loan made under the subsidized or the unsubsidized Robert T. Stafford Federal Student Loan, the federal PLUS, the federal SLS, or the federal Consolidation Loan programs shall be eligible pursuant to Section 5(1)(e) or (2)(e) of this administrative regulation if the secretary, for a federally insured loan, or a guarantee agency, for a loan insured by that guarantee agency, determines that the otherwise eligible borrower has requested, in writing, reinstatement of eligibility or rehabilitation of the defaulted loan and has made satisfactory arrangements, as determined by the authority, to repay the defaulted loan.

(b) For purposes of paragraph (a) of this subsection, the otherwise eligible borrower shall be deemed to have made satisfactory arrangements to repay a defaulted authority insured student loan if the borrower or student for whom a parent is borrowing:

1. Submits a copy of the borrower's and the borrower's spouse's most recent federal income tax returns and complete documentary evidence of all sources of the borrower's family income, including, but not limited to, as applicable, proof of the borrower's and the borrower's spouse's disposable earnings for the two (2) most recent pay periods, welfare benefits, Social Security benefits, alimony and child support received, veterans' benefits, supplemental security income, workers' compensation and disability compensation, unemployment compensation, commissions, tips and self-employment income; and [~~Repays an amount necessary to bring the repayment obligation contractually current, and promises to make monthly payments on the remaining outstanding balance necessary to repay that balance within three (3) to five (5) years; or~~]

2. Submits complete verifiable information reflecting the reasonable and necessary current living expenses of the borrower and the borrower's spouse, including, but not limited to housing, food, utilities, medical costs, dependent care costs, work-related expenses, and other Title IV loan repayment and the remaining balance on such loans; and

3. Agrees to make monthly payments, determined at the sole discretion of the authority based upon evaluation of the borrower's disposable income and reasonable and necessary living expenses;

and

4. Does make in accordance with paragraph (c) of this subsection, at least three (3) consecutive agreed payments to reinstate eligibility for a federal consolidation loan or six (6) consecutive agreed [~~voluntary~~] payments to reinstate eligibility to receive other Title IV student financial assistance or twelve (12) consecutive agreed payments to qualify for consideration of rehabilitation of the defaulted loan, each [~~none~~] of which shall be received by the authority or its agent within fifteen (15) [~~are more than ten (10)~~] days of the schedule payment due date.

(c) For purposes of paragraph (b)3 and 4 of this subsection, payments shall be voluntarily made directly by the borrower (and not by anyone else on the borrower's behalf), shall not include payments received from setoff, garnishment or property execution, or under a court ordered bankruptcy or reorganization plan, and [~~delinquent, in an amount that is the greater of fifty (50) dollars, the originally scheduled payment prior to default, or twenty five (25) of the borrower's disposable pay, provided that the required payments~~] shall not exceed an amount that is determined by the [~~executive director of the~~] authority to be reasonable and affordable based on the borrower's [~~individual's~~] total financial circumstances. The amount of the borrower's nonexempt disposable earnings authorized by law which may be withheld pursuant to a judicial or administrative order of wage garnishment shall be considered reasonable and affordable, although the authority may prescribe a lower amount if the total financial circumstances of the borrower so warrant, in the judgment of the authority.

(d) For purposes of paragraph (b) of this subsection, disposable income shall include that part of compensation from an employer and other income from any source that remains after the deduction of any amounts required by law to be withheld, or any child support or alimony payments that are made under a court order or legally enforceable written agreement. Amounts required to be withheld by law include, but are not limited to, federal and state taxes, Social Security contributions, and wage garnishment payments.

(e) The authority may, at the time the borrower has completed twelve (12) monthly payments for rehabilitation of the defaulted loan, evaluate the borrower's capability to make monthly payments sufficient to repay the remaining balance with accruing interest and any costs over a nine (9) year period, and may decline rehabilitation if the authority determines that the borrower is not capable of making the necessary payments, representing a substantial risk of a subsequent default.

(f) Failure of the borrower to submit any and all information required under paragraph (b) of this subsection shall be grounds for the disallowance of that item in the calculation of the reasonable and affordable payment amount and shall be grounds for the denial of the request for rehabilitation, reinstatement, or consolidation loan.

(g) The borrower shall be provided with a written statement of the reasonable and affordable payment amount. The borrower shall have an opportunity to object to those terms by submitting a written objection, which the authority shall consider and upon which, within the authority's sole discretion, the authority may revise, amend, reject, or otherwise make a determination as to a change in the reasonable and affordable payment amount. The authority shall consider a written objection received by the authority within ten (10) days of the mailing to the borrower of the written determination of a reasonable and affordable payment amount.

(2) Defense/Direct Loan, Perkins Loan, and Income Contingent Loan programs. An otherwise eligible student who is in default on a loan made under the National Defense/Direct Student Loan, Perkins Loan, or Income Contingent Loan programs shall be eligible pursuant to Section 1(7) of this administrative regulation if the institution that made the loan or the secretary, if the loan has been assigned to the secretary, certifies that the student has made satisfactory arrangements to repay that loan.

(3) The participating institution may rely on the borrower's or student's written statement that he is not in default, unless the institution has information to the contrary.

(4) Neither a loan that is discharged in bankruptcy nor a defaulted loan that is paid in full after default shall be considered to be in default for purposes of this section.

Section 8. Statement of Educational Purpose. (1) In order to meet the requirement of Section 5(1)(f) and (2)(f) of this administrative regulation, an otherwise eligible borrower shall submit to the lender, each academic year for which a loan is sought, a written statement of educational purpose, on a form approved by the secretary, which need not be notarized, certifying that the loan proceeds will be used solely for costs of attendance at the school that the borrower, or the student on whose behalf a parent is borrowing, is or will be attending. In this statement the borrower shall include his Social Security number or if he does not have a Social Security number, his student identification number.

(2) Notwithstanding subsection (1) of this section, a student is only required to file the statement of educational purpose once for his course of study if:

(a) The course of study is one (1) academic year or less in length; and

(b) The student is expected to complete the course of study within a twelve (12) month period.

Section 9. Additional Eligibility Requirements for Receipt of a Subsidized Federal Stafford Loan. In addition to the requirements provided in Sections 1 and 5(1) of this administrative regulation, a student seeking a subsidized federal Stafford Loan shall:

(1) Have provided to the lender a statement from the participating institution, at which the student has been accepted for enrollment, or at which the student is in attendance, that:

(a) Sets forth the student's estimated cost of attendance;

(b) Sets forth, for the period for which the loan is sought, the amount of estimated financial assistance the student will receive:

(c) Sets forth a schedule for disbursement of the proceeds of the loan in installments;

(d) Evidences a determination of need for a loan and the amount of such need, as determined under part F of Title IV of the federal Act (20 USC 1087kk,et seq.);

(2) Provide to the lender at the time of application for a loan the student's driver's license number, if any;

(3) A participating institution shall not, in carrying out the provisions of subsection (2) of this section, provide a statement which certifies the eligibility of any student to receive any loan under this section in excess of the maximum amount applicable to such loan;

(4) Except as provided in subsection (3) of this section, a participating institution may refuse to certify a statement which permits a student to receive a loan or to certify a loan amount that is less than the student's determination of need, as determined under part F of Title IV of the federal Act (20 USC 1087kk, et seq.), if the reason for such action is documented and provided in written form to each student so affected.

[~~Section 10. Additional Eligibility Requirements for Receipt of a Federal SLS Loan. In addition to the requirements set forth in Sections 1 and 5(1) of this administrative regulation a student seeking a federal SLS loan for any period of enrollment, shall:~~

~~(1) Have received a determination of need for a subsidized federal Stafford Loan, and, if determined to have need for such a loan, have applied for such a loan;~~

~~(2) Be:~~

~~(a) A graduate or professional student;~~

~~(b) An undergraduate independent student; or~~

~~(c) An undergraduate dependent student, if the financial aid administrator determines and documents the determination in the institution's records, after review of the financial information submitted~~

~~by the student and considering the debt burden of the student, that exceptional circumstances will likely preclude the student's parents from borrowing a federal PLUS loan for purposes of the expected family contribution and that the student's family is otherwise unable to provide such expected family contribution; and~~

~~(3) Notwithstanding paragraph (3)(b) of Section 1 of this administrative regulation, has a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate.~~]

Section 10. [~~11.~~] Eligibility Requirements for Receipt of a Federal Consolidation Loan. (1) For the purpose of this section, an individual shall be eligible to borrow a federal Consolidation Loan, if, at the time of application for a consolidation loan, the individual[~~:~~

~~(a) Has an outstanding indebtedness on eligible student loans, at the time of application for a consolidation loan, of not less than $7,500; and~~

~~(b)~~] is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower, who has made satisfactory repayment arrangements pursuant to Section 7 of this administrative regulation, and who will reenter repayment through loan consolidation.

(2) An individual's status as an eligible borrower under this section terminates upon receipt of a consolidation loan under this section except:

(a) With respect to eligible student loans received after the date of receipt of the consolidation loan; and

(b) That loans received prior to the date of the consolidation loan may be added to the consolidation loan during the 180-day period following the making of the consolidation loan.

(3) A married couple, each of whom has eligible student loans, may be treated as if the couple were an individual borrowing under subsections (1) and (2) of this section if the couple agrees to be held jointly and severally liable for the repayment of a consolidation loan, without regard to the amounts of the respective loan obligations that are to be consolidated, and without regard to any subsequent change that may occur in the couple's marital status. Only one (1) spouse in a married couple applying for a consolidation loan need meet any of the requirements of subsection (1) of this section, except that each spouse shall:

(a) Individually make the initial certification that no other application is pending for a federal Consolidation Loan, or that the individual has sought and has been unable to obtain a federal Consolidation Loan from the holders of that individual's eligible loans selected for consolidation; and

(b) Agree to promptly notify the holder of the federal Consolidation Loan concerning any change of address.

(4) Eligible student loans. For the purpose of this section, student loans are eligible for discharge through a federal Consolidation Loan if the loans are:

(a) Made, insured, or guaranteed under part B of Title IV of the federal Act, except for loans made to parent borrowers under the federal PLUS loan program as in effect prior to October 17, 1986;

(b) Made under part E of Title IV of the federal Act; or

(c) Made under subpart 11 of part C of title VII of the Public Health Service Act.

Section 11. [~~12.~~] Conditions of Ineligibility. (1) Notwithstanding any other provision of this administrative regulation, no incarcerated student or parent is eligible to receive an authority insured student loan under this title.

(2) Loss of eligibility for violation of loan limits.

(a) No student shall be eligible to receive any loan under this administrative regulation if the participating institution determines that the student fraudulently borrowed in violation of the annual loan limits applicable to any loan made or insured under Title IV part B, part D or part E of the federal Act in the same academic year, or if the student fraudulently borrowed in excess of the aggregate maximum loan limits applicable to any loan made or insured under part B, part D or part E of the federal Act.

(b) If the participating institution determines that the student inadvertently borrowed amounts in excess of such annual or aggregate maximum loan limits, the institution shall allow the student to repay any amount borrowed in excess of the limits prior to certifying the student's eligibility for further authority insured student loans.

(3) An individual who previously had a federal Stafford loan, federal SLS loan, federal PLUS loan, or a federal Consolidation loan cancelled, due to disability, or discharged, by [~~bankruptcy or~~] compromise, shall not be eligible for an authority insured student loan until the borrower:

(a) Reaffirms the loan debt that was previously cancelled due to the borrower's total and permanent disability[~~, or was discharged by bankruptcy~~] or compromise; and

(b)1. In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

2. Signs a statement acknowledging that any new loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(4) A student shall not be eligible to borrow or benefit from an authority insured student loan for enrollment in a correspondence course of instruction, unless the course is part of a program leading to an associate, bachelor, or graduate degree.

(5) The financial aid officer at a participating institution shall reduce the amount of an authority insured student loan for which a student is otherwise eligible, if the financial aid officer determines that the student's cost of attendance is substantially reduced due to instruction by means of the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, computer conferencing, or video cassettes or discs, other than a course that is delivered using video cassette or disc recordings that is not delivered in person to other students of the participating institution.

(6) An individual shall not be eligible to borrow or benefit from an authority insured student loan to the extent the individual is determined by a court, pursuant to PL 100-690, to be ineligible to receive any federal benefits following conviction for any federal or state offense related to distribution or possession of controlled substances.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: December 6, 1994

FILED WITH LRC: December 16, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, February 28, 1995 at 10 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, February 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 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 at transcript is made. If you do not wish to be attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: Through September 30, 1994, 45,905 insured student loans, totaling $136,329,349, were in default. These borrowers could potentially qualify for rehabilitation/reinstatement of consolidation loans upon reaching agreement concerning reasonable and affordable payments. At that time, 249,461 Stafford loans were outstanding, along with 22,147 PLUS/SLS loans, providing, potentially, 271,608 loans whose borrowers could qualify for consolidation loans. The currently undeterminable number of potential new qualifiers would be derived from the 271,608 total who will ultimately owe less than the former $7,500 minimum for loan consolidation. (NOTE: The 271,608 loans reflect instances where borrowers have two or more loans in different categories, i.e., loan types, so the number of borrowers will be slightly lower.)

(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. No comments were received on this point.

(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. No comments were received on this point.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition for the:

1. First year following implementation: Borrowers who have defaulted in repayment of insured student loans will be eligible to apply for reinstatement of eligibility or loan rehabilitation, providing them with access to additional student financial aid. Borrowers who obtain loan consolidation may benefit from lower, centralized monthly payments for an extended repayment period, release from default status with resulting improved credit ratings, and re-eligibility for student financial aid. Each borrower who chooses to seek reinstatement of eligibility or loan rehabilitation or loan consolidation after default must initiate the process by written request, which will entail submission of additional documentations for him/her regarding his/her financial circumstances.

2. Second and subsequent years: Same as (1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Additional agency involvement will be necessary in the administration of loan rehabilitation and reinstatement of eligibility after default, and will be accomplished through shifting of assignments and/or personnel. No additional staffing needs are expected. The amendment to the administrative regulation provides generally for expanded borrower eligibility resulting from recent changes in the federal act. Expanded eligibility will translate into an increase of loan rehabilitation/reinstatement and consolidation volume by the agency with corresponding increase in administrative and operating expenditures (i.e. postage, telephone, computer usage, printing, etc.). Revenue to the federally restricted loan guarantee claims reserve fund will increase to the extent of federal payments of administrative cost allowance on loans rehabilitated from default (1% of principal amount of loans insured). Also, revenue to the federally restricted reserve fund will increase to the extent of payments received from repurchase by lenders of rehabilitated defaulted loans and consolidation of defaulted loans.

1. First year: The amount is unknown and the relative increase in costs and revenues depends upon the actual increase in volume of loan rehabilitation and consolidation.

2. Continuing costs or savings: Each request for reinstatement/rehabilitation involves additional paperwork; either is a six-step process. Again, no additional staffing needs are anticipated, thus precluding direct and indirect costs or savings.

3. Additional factors increasing or decreasing costs: This amendment to the administrative regulation reflects recent changes in the federal act that include less stringent minimum repayments and eliminating the minimum debt for consolidation. Since these changes are necessitated by statute for all program participants, there is no impact on competition. This expanded eligibility is expected to dramatically increase the demand for reinstatement/rehabilitation for defaulted student loans and applications for consolidation of student loans, both pre- and post-default.

(b) Reporting and paperwork requirements: Requests for reinstatement of eligibility or loan rehabilitation require additional paperwork for the affected borrowers in making a written request and providing supporting documentation. This amendment to the administrative regulation does not impose any reporting or paperwork requirements that are not mandatory under the federal act and applicable federal regulations. Increases in volume will necessarily result in a corresponding increase in the processing applications for rehabilitation/reinstatement, an increase in the paperwork associated with the processing and evaluation of applications and financial information, monitoring of payments, and contact with lender(s) for eventual repurchase after rehabilitation.

(4) Assessment of anticipated effect on state and local revenues: There is no effect on local revenue. There is no effect on state general fund revenue. However, the projected increase in demand for Kentucky Higher Education Assistance Authority insured loans will result in increased revenue to the statutorily created, federally restricted loan guarantee claims reserve fund dedicated to the operation of the loan insurance program. This increased revenue (which would include generally up to 1% of the original principal amount of loans as an insurance premium, plus federally paid administrative cost allowances) will offset any increased administrative/operating cost associated with the increased loan volume, except to the extent that the increase in loan volume consists of unsubsidized federal Stafford student loans (which do not qualify for payment of insurance premiums to the Kentucky Higher Education Assistance Authority).

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Federally restricted reserve fund maintained by agency pursuant to KRS 164.754.

(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. No comments were received on this point.

(b) Kentucky. None. No comments were received on this point.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no effective alternative to this amendment to the administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical are in which implemented and on Kentucky: The administrative regulation has no effect upon public health or the environment.

(b) State whether a detrimental effect on the environment or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: The administrative regulation has no effect upon public health or the environment.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Amending this administrative regulation to include recent changes in federal regulations eliminates any conflict, overlapping or duplication.

(a) Necessity of proposed regulation if in conflict: Same as (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Same as (5)

above.

(10) Any additional information or comments:

(11)Tiering: Was tiering applied? No. This amendment to the administrative regulation prescribes eligibility for participation in a voluntary program providing reinstatement/rehabilitation and/or consolidation of student loans. Tiering was not applied, because the amendment to the administrative regulation sets uniform eligibility standards under federal standards. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by the federal act, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR §682.400(b)(4), §682.401(b)(4) and (17)(ii), 34 CFR §682.405, 20 USC §1078-1 (as amended by PL 103-66) and 20 USC §1078-3(a)(3)(A) (as amended by PL 103-66 and 103-208).

2. State in sufficient detail the state compliance standards: The amendments to the administrative regulation provide for the eligibility of a borrower for additional insured student loans, despite a default on previous insured student loans, upon reinstatement of eligibility or rehabilitation of the defaulted loan. The amendments to the administrative regulation provide that an individual borrower in default on an insured student loan may request, in writing, either reinstatement or loan rehabilitation; submit documentation concerning the borrower's and the borrower's spouse's income and expenses; provides for a determination by KHEAA of a reasonable and affordable monthly payment amount, based upon the borrower's financial circumstances to which the borrower must agree in order to qualify for reinstatement of eligibility or loan rehabilitation; and the borrower must make six (6) timely, agreed monthly payments (in order to qualify for reinstatement of eligibility) or twelve (12) timely, agreed monthly payments (in order to qualify for loan rehabilitation). Upon completion of the six (6) required monthly payments, the borrower's eligibility for additional student financial assistance is reinstated. Upon completion of the twelve (12) required monthly payments, KHEAA will evaluate the borrower's ability to continue to repay the loan at a rate that will amortize the remaining balance over a nine (9) year period, and KHEAA will, upon a favorable determination, attempt to locate a lender willing to repurchase the loan. The amendments to the administrative regulation also delete references to the Supplemental Loans for Students (SLS) Program. The amendments to the administrative regulation also delete a requirement that a borrower have outstanding $7,500 in qualified insured student loans in order to obtain a federal consolidation loan.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. 34 CFR §582.401(b)(17)(ii) requires KHEAA, as a guarantor of insured student loans under the Federal Family Education Loan Program, to assure that all participants in its program meet the requirements of 34 CFR Part 682 and the federal Act (20 USC §1071 et seq.). 34 CFR §682.400(b)(4) requires KHEAA as a loan guarantor to enter an agreement with the U.S. Department of Education to provide for rehabilitation of defaulted insured student loans in accordance with 34 CFR §682.405. 682.401(b)(4) requires KHEAA as a loan guarantor to afford borrowers in default on an insured student loan an opportunity to obtain reinstatement of eligibility for additional federal student financial assistance upon agreeing to make six (6) timely reasonable and affordable monthly payments satisfactory to KHEAA. It further requires that those payments be established based upon the written request of the borrower to reinstate eligibility and analysis of documentation of the borrower's and the borrower's spouse's income and expenses. 34 CFR §682.405 provides an opportunity for a borrower to obtain rehabilitation of a defaulted insured student loan upon agreeing to make twelve (12) timely reasonable and affordable monthly payments satisfactory to KHEAA. It further provides that those payments be established based upon the written request of the borrower to reinstate eligibility and analysis of documentation of the borrower's and the borrower's spouse's income; and expenses. Upon completion by the borrower of the agreed twelve (12) monthly payments, KHEAA shall assess the borrower's capability to continue to make payments necessary to repay the loan over a remaining nine year period, and shall attempt to locate a lender willing to repurchase the loan. 20 USC §1078-1 (as amended by PL 103-66) repealed and eliminated the Supplemental Loans for Students (SLS) Program under the Federal Family Education Loan Program. 20 USC §1078-3(a)(3)(A) (as amended by PL 103-66 and 103-208) deleted a prior requirement that a borrower have outstanding at least $7,500 in qualified student loans in order to obtain a federal consolidation loan.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The regulation does not impose stricter requirements than the federal mandate. The Assistance Authority is provided with some discretion in the determination of the reasonable and affordable monthly payments necessary to obtain reinstatement of eligibility or rehabilitation of a defaulted insured student loan, and KHEAA is provided with some discretion in determining whether the borrower seeking loan rehabilitation is a viable candidate for that benefit based upon the ability of the borrower to repay the loan over a ten (10) year period.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 4:050. Set off of authority claims.

RELATES TO: KRS 44.030, 131.565, 164.740 to 164.785, 31 CFR 30.33, 31 USC 3718, 3720A

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4), (9), (10), (14), 34 CFR 30.33, 31 USC 3718, 3720A

NECESSITY AND FUNCTION: In accordance with KRS 131.565 and Section 2653 of the Federal Deficit Reduction Act of 1984, as amended by the Cash Management Improvement Act Amendments of 1992 (PL 102-589), the authority may enter agreements with the Kentucky Revenue Cabinet and with the federal government to provide for the withholding of income tax refunds owed to individuals indebted to the authority to satisfy claims established by the authority. In accordance with KRS 44.030, the authority may submit a claim to the State Treasurer to withhold any amount due to an individual from the treasury against a claim of the authority. This regulation sets forth the process for notification and appeal afforded to individuals in implementing a set off of authority claims through the Kentucky Revenue Cabinet, the State Treasurer, or the Internal Revenue Service.

Section 1. Notification. The authority shall send written notification by U.S. First Class Mail to the last known address of a person against

whom the authority has a claim of any indebtedness to the authority for a sum certain for which set off is sought pursuant to KRS 131.560, 44.030, or 31 USC 3718 [federal law]. Said notification shall contain information sufficient to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim, and the right to dispute the claim. The notification may contain such additional information as the authority may prescribe. Notification shall be sent not less than thirty (30) days prior to submitting [referring] the claim to the Kentucky Revenue Cabinet or to the State Treasurer or sixty-five (65) days prior to submitting the claim to the federal government for set off, and shall be deemed effective when placed with the Postal Service for delivery.

Section 2. Disputed Claims. (1) Any person notified pursuant to the Section 1 of this administrative regulation may petition the authority in writing [within thirty (30) days after notification] to dispute the claim of the authority. This written statement of appeal shall specify the basis on which the authority's claim is disputed, including any legal or equitable defense the petitioner may have against recovery by the authority. The petitioner may supplement the written statement of appeal at any time prior to a final determination with any additional documentation. The petitioner shall submit such additional documentation as the authority may require.

(2) Time period for disputing the authority's claim. The petitioner shall submit the written statement of appeal within:

(a) Thirty (30) calendar days of the date the notification described in Section 1 of this administrative regulation is sent for setoff of any income tax refund pursuant to KRS 131.560 or setoff of any amount due from the State Treasurer pursuant to KRS 44.030; or

(b) Sixty-five (65) calendar days of the date the notification described in Section 1 of this administrative regulation is sent for setoff of any income tax refund pursuant to 31 USC 3718, except that the statement of appeal may be submitted after the 65th day, but not later than fifteen (15) days after the date the authority mails copies of documents to the petitioner, if the petitioner requests to inspect records in advance with 34 CFR 30.33(c)(1).

Section 3. Federal Income Tax Setoff. (1) [(2)] Upon receipt of a written statement of appeal on a timely basis, the authority, or its designated representative, shall refrain from referring the authority's claim to the [Kentucky Revenue Cabinet or] federal government, and shall make a final written determination of the validity of the claim.

(2) The final determination shall be based on any documentation submitted by the petitioner, any other records relevant to the loan obligation from any other source, and relevant records of the authority, which shall be made available to the petitioner upon request, except that the petitioner may appear in person or by telephone to present additional facts upon request by the petitioner and explanation of why the authority cannot adequately resolve the issues raised by the petitioner by review of the documentary evidence. The petitioner's request to appear in person or by telephone shall include identification of the individuals that the petitioner wishes to have testify, identification of the specific issues regarding which the individuals are prepared to testify, and an explanation of the reasons why each individual's testimony is necessary to resolve the issues. The authority shall grant the petitioner's request to appear in person or by telephone if the authority determines, in its discretion, that the issues to be resolved require a determination of credibility or veracity. Such documentation and the record of any person or telephonic testimony shall constitute the record of the appeal.

(3) Upon a final determination upholding, in part or in whole, the claim of the authority, the claim may be referred by the authority to the [Kentucky Revenue Cabinet in accordance with KRS 131.565 or to the] federal government in accordance with 31 USC 3718 and 34 CFR 30.33(a) [federal law and regulations]. If the petitioner disagrees with the final, written determination of the authority, the petitioner may submit a written request for review of the decision by the Secretary of the U.S. Department of Education in accordance with 34 CFR 30.33(d)(3).

Section 4. [3.] (1) State income tax setoff - Any person, notified by the authority [Kentucky Revenue Cabinet] that an income tax refund may be [is being] withheld pursuant to KRS 131.560 because of a claim of the authority, [who disputes the validity of the authority's claim,] may petition the authority within the time period specified in Section 2(2)(a) of this administrative regulation [thirty (30) days following said notification] for a hearing in accordance with subsection (3) of this section.

(2) Setoff of amounts due from the State Treasurer pursuant to KRS 44.030. [Federal income tax set off] Any person, notified by the authority that an amount due from the State Treasurer may be withheld pursuant to KRS 44.030 [who disputes the validity of the authority's claim, as determined in accordance with Section 2 of this regulation,] may, within the time period specified in Section 2(2)(a) of this administrative regulation [thirty (30) days following the authority's written determination], petition the authority for a hearing in accordance with subsection (3) of this section.

(3) A hearing requested pursuant to this section shall be arranged and conducted in accordance with 11 KAR 4:030, Section 3(2) through (8), and if the petitioner disagrees in part or in whole with the final, written determination of the hearing officer, the petitioner may appeal the hearing officer's decision to the authority board in accordance with 11 KAR 4:030, Section 4. [may be conducted by a hearing officer or committee appointed by the authority's Board of Directors. At such a hearing, the petitioner may appear in person and may, at his/her expense, be represented by counsel. Evidence may be presented by testimony and/or written documentation. The hearing officer or committee shall prepare written findings of fact and conclusions for submission to the full board. The decision shall be made by the authority, and shall be final and conclusive as to all parties.]

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: December 6, 1994

FILED WITH LRC: December 16, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, February 28, 1995 at 10 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, February 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 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 at transcript is made. If you do not wish to be attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: For FY 93-94, a total of $1,595,671.41 was offset from the federal tax refunds of 2,363 accounts; a total of $191,272.35 was offset from the state tax refunds of 1,451 accounts; and $169,302.12 was offset from state payroll for 207 accounts.

(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. No comments

were received on this point.

(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. No comments were received on this point.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition for the:

1. First year following implementation: No costs or savings are anticipated. The changes to the administrative regulation clarify the procedures for disputing the debt. The changes do not impose a new or additional burden upon the individuals affected. Any increase or decrease that may be experienced in the number of hearings requested and held is believed to be independent of these changes and the clarification of procedures will have no effect on the number of accounts subjected to offset or the dollar amounts that may be withheld by offset. The changes in the administrative regulation are intended to clarify the procedures available to borrowers to challenge recovery of defaulted student loans through several different offset proceedings. There is no impact on competition. Although time frames are distinguished for requesting review of the debt for the different offset processes, the amendments do not impose additional or new paperwork requirements on the borrowers.

2. Second and subsequent years: Same as 1.above.

(3) Effects on the promulgating administrative body: In the history of submitting accounts for offset of state income tax refunds, the agency has never been requested to proceed to a hearing on the validity or amount of a debt subjected to state tax refund offset pursuant to KRS 131.565. To date KHEAA has had only one (1) request for review on a state payroll offset pursuant to KRS 44.030. (NOTE: In the past these accounts were already judgment accounts.) An average of 115 insured student loan defaulters typically request administrative review of a federal tax refund offset, and an average of 30% of the disputes are found in favor of the debtor, with borrowers being removed from the federal tax refund offset list for a variety of reasons, including payment arrangements, total and permanent disability, bankruptcies in progress, late payments unreported, and pending resolution of account status.

(a) Direct and indirect costs or savings: No costs or savings are anticipated. The changes to the administrative regulation clarify the procedures for disputing debt. Any increase or decrease in the number of hearings requested and held is considered independent of these changes and the clarification of procedures will have no effect on the number of accounts subjected to offset or the dollar amounts that may be withheld by offset.

1. First year: Same as (a) above.

2. Continuing costs or savings: Same as (a) above.

3. Additional factors increasing or decreasing costs: Same as (a) above,

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: Recoveries on defaulted insured student loans are returned to a federally restricted reserve fund and costs of conducting hearings are chargeable to that fund. There is no effect on local revenue. There is no effect on state General Fund revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Federally restricted reserve fund maintained by agency pursuant to KRS 164.754 and other agency receipts.

(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. No comments were received on this point.

(b) Kentucky. None. No comments were received on this point.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amendments to the administrative regulation merely clarify time frames and procedures related to challenging offset through different processes. There is no effective alternative to this administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical are in which implemented and on Kentucky: The administrative regulation has no effect upon public health or the environment.

(b) State whether a detrimental effect on the environment or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: The administrative regulation has no effect upon public health or the environment.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Amending this administrative regulation to reflect procedures in federal regulations pertaining to the federal tax offset process eliminates any conflict, overlapping or duplication.

(a) Necessity of proposed regulation if in conflict: Same as (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Same as (5) above.

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. This administrative regulation sets forth the procedures under which borrowers may request an administrative review or hearing regarding state and federal tax refund offsets and state payroll offsets. Tiering was not applied, because the administrative regulation sets uniform standards applicable to all borrowers affected by a particular offset process. The administrative regulation is intended to provide equal opportunity to seek review within parameters prescribed by the federal act and applicable state law, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution." The regulation provides equal treatment and opportunity for all applicants and recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR §682.410(b), 31 USC §3720A, 31 USC §3718 and 34 CFR §30.33.

2. State in sufficient detail the state compliance standards: With respect to the federal income tax refund offset process, the amendments to the administrative regulation provide that a borrower of a defaulted insured student loan shall be notified in advance of submitting the account to the Internal Revenue Service for offset of any income tax refund that may be due. The borrower shall be afforded sixty-five (65) days to request an administrative review by KHEAA of the borrower's dispute, if any, pertaining to the existence or amount of the debt.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. 34 CFR §682.410(b) requires KHEAA, as the guarantor of loans under the Federal Family Education Loan Program, to exercise due diligence in collection efforts on defaulted insured student loans. 31 USC §3720A and 31 USC §3718 authorize KHEAA, as loan guarantor, to submit defaulted insured student loans to the Internal Revenue Service through the U.S. Department of Education for setoff of any federal income tax refund that may be due the borrower. Pursuant to an agreement between KHEAA and the U.S. Department of Education, KHEAA is required to

notify the borrower at least 65 days in advance of submitting the account to the Internal Revenue Service and to conform to 34 CFR §30.33 regarding the borrower's opportunity to establish a voluntary repayment plan in lieu of federal tax refund offset or dispute the debt and seek an administrative review by KHEAA, with subsequent appeal to the U.S. Department of Education.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The administrative regulation does not impose stricter requirements than the federal mandate.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

GENERAL GOVERNMENT CABINET
Kentucky State Board of Podiatry
(Proposed Amendment)

201 KAR 25:011. Approved schools; examination application, fees.

RELATES TO: KRS 311.420
STATUTORY AUTHORITY: KRS 311.410(4)
NECESSITY AND FUNCTION: KRS 311.420 requires all persons engaging in the practice of podiatry in Kentucky to be licensed by the State Board of Podiatry. KRS 311.420 provides that each applicant shall submit to an examination conducted by the board. This administrative regulation establishes the procedures to be followed in obtaining an application, the fees to be charged, and the procedures relating to the examination and issuance of a license to practice podiatry in this state.

Section 1. (1) The board approves the following schools or colleges of podiatry as having standards and requirements adequate to satisfy the educational requirement for taking the podiatry examination for licensure:

(a) Barry University School of Podiatric Medicine, Miami Shores, Florida.

(b) California College of Podiatric Medicine, San Francisco, California.

(c) College of Podiatric Medicine and Surgery, Des Moines, Iowa.

(d) Dr. William M. Scholl College of Podiatric Medicine, Chicago, Illinois.

(e) New York College of Podiatric Medicine, New York, New York.

(f) Ohio College of Podiatric Medicine, Cleveland, Ohio.

(g) Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania.

(2) All other schools or colleges of podiatry shall have academic standards and requirements equivalent to the schools or colleges listed above as evaluated by the board in order to be approved by the board. Evaluation of the academic standards and requirements shall be made by the board after an applicant has filed an application for a license with the board.

Section 2. [~~All applications for examination shall be filed with the board at its principal office within the times prescribed by this administrative regulation.~~]

(1) Every applicant, otherwise eligible to take the examination pursuant to the provisions of KRS 311.420, shall file a completed [~~an~~] application with the board at its principal office at least forty (40) days prior to the date of the examination in order to be eligible to take the examination.

(2) The president of the board may permit a partially completed application to be filed if good cause is shown by the applicant.

(3) [~~(2)~~] The fee for the examination or reexamination shall be $250 and shall be paid when the application for examination or reexamination is filed with the board. The fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, or postal money order and shall not be refundable.

(4) [~~(3)~~] Any applicant who fails to attain a passing score as required by the board may apply to the board for reexamination.

JOSEPH P. LEONE, President
APPROVED BY AGENCY: November 10, 1994
FILED WITH LRC: January 4, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of February, 1995, at 9 a.m., in the Capitol Building, 1st Floor, 701 Capitol Avenue, Room 141, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of February, 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, Civil and Environmental Law Division, Box 2000, Frankfort, Kentucky 40602-2000, Telephone: (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact: William B. Pettus

(1) Type and number of entities affected: Approximately three to ten applicants seeking licensure as a podiatrist in Kentucky each year.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: 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 the application requirements and procedures. 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? (Explain why tiering was or was not used) Tiering was not applied because all applicants are treated uniformly under the law.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:049. Seasons for furbearers and small game on specified areas.

RELATES TO: KRS 150.010, 150.015, 150.021, 150.170, 150.175, 150.300, 150.340, 150.360, 150.365, 150.370, 150.399, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175

NECESSITY AND FUNCTION: To specify exceptions on wildlife management [certain] areas to statewide small game and furbearer hunting regulations. This amendment is necessary to adjust dates and other requirements on wildlife management areas, to establish standardized dog training and squirrel seasons on wildlife management areas, to remove federal areas from this administrative regulation and to comply with the formatting and language requirements of KRS Chapter 13A.

Section 1. All provisions of 301 KAR 2:251 shall apply unless specified otherwise by [specifically exempted in Section 5 of] this administrative regulation.

Section 2. On wildlife management areas owned or managed by the department:

(1) During periods when firearms are allowed for deer hunting, persons [Hunter Orange. (1) persons using a wildlife management area during periods when firearms are allowed for deer hunting] shall wear hunter orange garments of a solid unbroken pattern as outer coverings on at least the head, chest and back.

(a) [(2)] Mesh weave openings in the hunter orange garment shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color provided the section does not significantly obscure the hunter orange color of the garment.

(b) [(3)] Camouflage pattern hunter orange garments do not meet these requirements.

(c) [(4)] Waterfowl hunters are exempt from these hunter orange requirements.

(2) During dates when deer hunting with breech-loading firearms is allowed, persons shall not:

(a) Hunt small game or furbearers;

(b) Trap; or

(c) Allow unleashed dogs.

(3) Persons may hunt small game during the modern gun deer season on wildlife management areas where gun deer hunting is not permitted during the modern gun deer season.

(4) Unless specified otherwise in Section 3 of this administrative regulation, persons shall not allow their dogs to be unleashed from March 1 until the third Saturday in August, except:

(a) Persons participating in department-authorized field trials may use unleashed dogs.

(b) Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.

(5) Persons may hunt squirrels from June 1 through June 14.

(6) Persons shall not hunt on portions of wildlife management areas designated by signs as closed to hunting.

(7) Persons shall not enter portions of wildlife management areas designated by signs as closed to public access.

Section 3. [On all areas listed in Section 5 of this administrative regulation, and on the Pennyrile Forest and Tradewater Wildlife Management areas in Christian, Caldwell and Hopkins counties, small game and furbearer hunting or trapping or unleashed dogs are prohibited during deer hunts where breech loading firearms are allowed.

Section 4. Unleashed dogs are permitted year round during field trials authorized by the department.

Section 5.] Exceptions on Specific Wildlife Management Areas [to 301 KAR 2:251. (1) Ballard Wildlife Management Area, Ballard County. Areas closed to hunting are designated by signs.]

(1) [(2)] Barren River Wildlife Management Area[, Allen and Barren counties].

[(a)] Quail and rabbit: closed after [November 1 through] December 31.

[(b) Unleashed dogs are prohibited April 1 until the third Saturday in August.]

(2) [(3)] Beaver Creek Wildlife Management Area, including private inholdings. [McCreary and Pulaski counties; Mill Creek Wildlife Management Area, Jackson County; Cane Creek Wildlife Management Area, Laurel County; and all private inholdings within these areas.

(a) Squirrels: the Saturday preceding Labor Day through December 31.]

(a) [(b)] Grouse: October 1 through December 31.

(b) [(c)] Quail and rabbit: closed after [November 1 through] December 31.

(c) [(d)] Furbearer: December 5 through December 31. [All] Trappers shall complete a harvest survey form obtained from the area manager.

[(e) Unleashed dogs are prohibited March 1 until the Saturday preceding Labor Day.

(f) Shakeout season is closed on these areas.]

(3) [(4)] Big South Fork National River and Recreation Area, McCreary County.

(a) [Squirrels: Saturday preceding Labor Day through December 31.

(b)] Grouse: October 1 through December 31.

(b) [(c)] Quail and rabbit: closed after [November 1 through] December 31.

[(d) Unleashed dogs are prohibited March 1 until the Saturday preceding Labor Day.]

(4) Cane Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. Trappers shall complete a harvest survey form obtained from the area manager.

(5) Central Kentucky Wildlife Management Area[, Madison County].

(a) This area is closed to [all] small game and furbearer hunting except squirrels.

(b) Persons shall not allow their dogs to be unleashed from April 1 until the third Saturday in August, except:

1. Persons participating in department-authorized field trials may use unleashed dogs.

2. Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season. [Unleashed dogs are prohibited April 1 until the third Saturday in August.]

(c) At other times of the year, unleashed dogs are permitted only on Tuesdays, Thursdays, Saturdays, Sundays, or during permitted field trials.

(d) [All] Trappers shall obtain prior written permission from the area manager.

(e) [All] Hunters and dog trainers shall check in and out daily at the designated check station.

(6) Clay Wildlife Management Area[, Nicholas County].

(a) Quail and rabbit: closed after [November 1 through] December 31.

(b) Grouse: October 1 through December 31.

(c) [Squirrels: June 1 through June 14, and the Saturday preceding Labor Day through December 31.

(d) All] Hunters and dog trainers shall check in and out daily at the designated check station.

[(e) Unleashed dogs are prohibited March 1 through May 31 and June 15 until the Saturday preceding Labor Day.]

(7) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area[, Grant and Kenton counties].

(a) [Areas closed to hunting are designated by refuge signs.

(b)] Quail and rabbit: closed after [November 1 through] December 31.

(b) Persons shall not allow their dogs to be unleashed from April 1 until the third Saturday in August, except:

1. Persons participating in department-authorized field trials may use unleashed dogs.

2. Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.

[(c) Unleashed dogs are prohibited April 1 until the third Saturday in August.]

(c) [(d) All] Hunters and dog trainers shall check in and out daily at the designated check station.

(8) Daviess County Wildlife Management Area[, Daviess County].

[(a) This area is] Closed to hunting and trapping for small game and furbearers.

[(b) Unleashed dogs are prohibited April 1 until the third Saturday in August.]

(9) Dewey Lake Wildlife Management Area[, Floyd County; Paintsville Lake Wildlife Management Area, Johnson and Morgan counties; Fishtrap Lake Wildlife Management Area, Pike County; and Redbird Wildlife Management Area, Clay and Leslie counties.

(a) Squirrels: the Saturday preceding Labor Day through December 31].

(a) [(b)] Grouse: October 1 through December 31.

(b) [(c)] Quail and rabbit: closed after [November 1 through] December 31.

(c) [(d)] Furbearers: closed after December 31.

[(e) Unleashed dogs are prohibited March 1 until the Saturday preceding Labor Day.

(f) Shakeout season is closed on these areas.]

(10) Fishtrap Lake Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

(11) [(10)] Fleming Wildlife Management Area[, Fleming County].

(a) Quail and rabbit: closed after [November 1 through] December 31.

(b) Grouse: October 1 through December 31.

[(c) Squirrels: the Saturday preceding Labor Day through December 31.

(d) Unleashed dogs are prohibited March 1 until the Saturday preceding Labor Day.

(11) Fort Campbell Wildlife Management Area, Christian and Trigg counties.

(a) There shall be no hunting on Tuesdays or Wednesdays except when Tuesday or Wednesday is a federal holiday or as follows: December 20-21 and 27-28. There shall be no hunting on December 25 and January 1.

(b) Seasons, bag and possession limits.

1. Squirrels: third Saturday in August through January 31.

2. Quail: Thanksgiving day through the last day of February.

3. Rabbit: Thanksgiving day through the last day of February; bag limit five (5); possession limit ten (10).

4. Raccoon, foxes and opossum: taking with gun or dogs, Thanksgiving day through January 31; limit one (1) per person.

5. Coyote and groundhog: May 13 through August 17 and during any other authorized hunt.

(c) Permission shall be obtained for each hunt at building #6645.

(d) Hunters shall stay within their assigned area.

(e) Hunters shall obtain a hunting permit costing fifteen (15) dollars.

(f) All hunters between the ages of twelve (12) and eighteen (18) shall possess their own hunter safety certificate.

(12) Fort Knox Wildlife Management Area, Bullitt, Meade and Hardin counties.

(a) Furbearer trapping is prohibited.

(b) Unleashed dogs are prohibited April 1 until the third Saturday in August.

(c) Ruffed grouse hunting is open the month of December with a one (1) bird daily bag limit. All grouse must be checked at building #112.

(d) Area requirements.

1. Permission to hunt shall be obtained for each hunt at the Hunt Control Office.

2. Hunters shall stay in their assigned areas.

3. All hunters thirty-eight (38) years of age and younger shall possess their own hunter safety certificate.

4. Pistols, centerfire rifles and crossbows are prohibited.

5. Vehicles are prohibited off maintained roads, except as otherwise authorized.

6. All firearms shall be unloaded while in a vehicle, being carried in a nonhunting area, during nonhunting hours or after a hunter has taken the legal game bag limit.]

(12) [(13)] Grayson Lake Wildlife Management Area[, Carter and Elliott counties].

(a) [Areas closed to hunting are designated by signs.

(b)] Quail and rabbit: closed after [November 1 through] December 31.

(b) [(c)] Grouse: October 1 through December 31.

[(d) Squirrels: the Saturday preceding Labor Day through December 31.

(e) Unleashed dogs are prohibited March 1 until the Saturday preceding Labor Day.]

(c) [(f) All] Hunters and dog trainers shall check in and out daily at a designated check station.

(13) [(14)] Green River Lake Wildlife Management Area[, Taylor and Adair counties].

(a) Quail and rabbit: closed after [November 1 through] December 31.

(b) Grouse: closed to hunting and trapping.

(c) [Squirrel: June 1 through June 14, and September 1 through December 31.

(d) Unleashed dogs are prohibited March 1 through May 31 and June 15 through August 31.

(e) All] Hunters and dog trainers shall [must] check in and out daily at a designated check station.

(14) [(15)] Higginson-Henry Wildlife Management Area[, Union County].

(a) Quail and rabbit: closed after [November 1 through] December 31.

(b) [Squirrels: June 1 through June 14, and September 1 through December 31.

(c) Unleashed dogs are prohibited April 1 through May 31 and June 15 through August 31.

(d) All] Hunters and dog trainers shall check in and out daily at the designated check station.

[(e) Areas closed to hunting are designated by signs.]

(15) [(16)] Kleber Wildlife Management Area[, Owen and Franklin counties].

(a) Quail and rabbit: closed after [November 1 through] December 31.

(b) [All] Hunters and dog trainers shall check in and out daily at the designated check station.

[(c) Unleashed dogs are prohibited April 1 until the third Saturday in August.]

(16) [(17)] Lake Cumberland Wildlife Management Area [all Kentucky Department of Fish and Wildlife Resources managed lands on the north side of Lake Cumberland].

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after [November 1 through] December 31.

[(c) Unleashed dogs are prohibited March 1 until the third Saturday in August.

(18) Land Between the Lakes Wildlife Management Area (LBL), Trigg and Lyon counties.

(a) Hunting is prohibited in developed public use areas, safety zones and posted areas unless otherwise noted.

(b) Squirrels: From the third Saturday in August through the fourth Friday in September; December 1 through January 31; and during deer archery season only by legally licensed and equipped deer archery hunters.

(c) Quail and rabbit: December 1 through the last day of February.

(d) Raccoon and opossum.

1. Tuesday, Thursday, Friday and Saturday nights only, December 1 through January 31.

2. Daily bag limit one (1) per person per night.

3. Raccoon and opossum hunters shall check in and out nightly at designated check station.

4. Harvest report cards shall be displayed in vehicle windshield while hunting and submitted at the check station upon completion of each night's hunt.

5. Season shall be closed in some hunt areas as posted at designated hunter check stations.

(e) Field trials.

1. September 1 through March 31.

2. Scheduled basis only. Written requests shall be received by LBL at least ten (10) days prior to the proposed trial date.

3. Approval shall be obtained from LBL and the department's First District Captain.

4. Field trials shall be recognized club trials and each participant shall be on a club roster for that trial.

(f) Fox chasing: from sunset to sunrise; third Saturday in August through the third Saturday in September south of Highway 68 to the state line.

(g) Fox (gray and red) and bobcat: gun and archery, December 1 through January 31.

(h) Groundhog: daylight hours only. March 15 through March 31 and during the LBL deer archery season only by legally licensed and equipped deer archery hunters. All harvested animals shall be removed from the area. Gun hunting is prohibited in Hunt Area 8 and in that portion of Hunt Area 9 designated as the ORV area.

(i) Coyote: daylight hours only by legally licensed hunters during any LBL open season with weapons specified for that season.

(j) Bird dog, beagle and raccoon hound training season: during the entire month of October only in areas designated in the LBL Hunting and Angling Guide.

(k) All dogs shall wear a collar bearing the owner's name, address, and telephone number. Dogs shall not be used for hunting from the fourth Saturday in September through November 30, except in authorized field trials and designated dog training hunt areas.

(l) Trapping for furbearers and bobcats.

1. No person shall trap furbearers on LBL without a trapping permit. Permits shall be issued by public drawing, with unissued permits made available on a first come first served basis.

2. Authorized trappers shall trap in assigned areas only and shall report their harvest in accordance with LBL instructions.

3. Trapping season: fourteen (14) consecutive days beginning the second Monday in January for all furbearers.

4. Trapping devices.

a. No. 3 or smaller foot hold traps, padded traps and snares without self locking devices are permitted.

b. The jaws of No. 1 1/2 and larger foot hold traps used on land shall be offset three sixteenths (3/16) inch or be padded traps.

c. Water sets are restricted to No. 3 or smaller foot hold traps, padded traps, No. 330 or smaller Conibear type traps, and nonlocking snares.

(m) Bobcat: bobcats may be taken only by gun, archery or trapping.

1. The limit is two (2) bobcats per person per season by any legal method.

2. The bobcat harvest quota is twenty four (24). Should it be determined that the quota of twenty four (24) bobcats will be filled prior to January 31, the season shall close. A minimum of twenty four (24) hours notice of the time and date of closure shall be given.

3. All bobcats shall be tagged before leaving LBL and within forty eight (48) hours of harvest. Bobcats shall be tagged by LBL personnel upon presentation of the entire animal, skinned or unskinned, at LBL check stations, Golden Pond Administrative Office, or Patrol Office.

4. Bobcats shall be taken by hunting or by calling during daylight hours only. Callers shall use only hand or mouth operated calls.

(n) Weapons restrictions.

1. The use of crossbows, center fire rifles, center fire handguns, and shotguns with slugs or shot larger than BBs is prohibited for the taking of all species listed in this subsection.

2. Groundhogs may be taken with center fire rifles during the specified spring season.

(o) Crow: December 1 through the last day of February.]

(17) Mill Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. Trappers shall complete a harvest survey.

(18) [(19)] Nolin Reservoir Wildlife Management Area[, Edmonson, Grayson and Hart counties]. Quail and rabbit: closed after [November 1 through] December 31.

(19) Paintsville Lake Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

(20) Peal Wildlife Management Area[, Ballard and Carlisle counties].

(a) [Squirrels: the third Saturday in August through December 31.

(b)] Furbearer hunting: twenty (20) day season beginning the day after the modern gun deer season.

[(c) Shakeout season is closed on this area.]

(b) [(d)] Furbearer trapping: December 1 through 10, water sets only. Trappers selected by drawing conducted by the area manager.

(c) [(e)] Quail and rabbit: closed after [November 1 through] December 31.

[(f) Unleashed dogs are prohibited April 1 until the third Saturday in August.]

(21) Pennyrile Forest Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2). [Pine Mountain Wildlife Management Area, Letcher County. Unleashed dogs are prohibited March 1 until the third Saturday in August.]

(22) Pioneer Weapons Wildlife Management Area[, Bath and Menifee counties].

(a) Hunters shall not use breech-loading firearms. [on this area shall use muzzle loading rifles, muzzle loading pistols, muzzle loading shotguns, longbows, recurve bows, compound bows or crossbows.]

(b) Persons except authorized personnel shall not carry breech-loading firearms with ammunition in the chamber or magazine.

(c) Persons shall not hunt small game with shot larger than number two (#2).

[(b) Muzzle loading shotguns for taking squirrels, quail, grouse and rabbits shall not be used with shot larger than No. 2.

(c) Unleashed dogs are prohibited March 1 until the third Saturday in August.

(d) Breech loading firearms shall be unloaded in both the chamber and magazine unless possessed by authorized personnel.]

(23) Redbird Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

[(23) Reelfoot National Wildlife Refuge, Fulton County.

(a) Squirrels: the fourth Saturday in August through September 30 only in areas designated by signs as open to public hunting.

(b) Raccoon: four (4) consecutive nights beginning on the third Wednesday in October, and four (4) consecutive nights beginning on the fourth Wednesday in October on the Long Point refuge unit, with hunting allowed only during the hours of 7:30 p.m. to 12 midnight. No bag or possession limits.

(c) Hunters shall check in and out at designated check stations.]

(24) Robinson Forest Wildlife Management Area. Hunting is permitted under the requirements of 301 KAR 4:200. [, Breathitt, Perry and Knott counties, is closed to all hunting.]

[(25) Sloughs Wildlife Management Area, Henderson and Union counties. On the Frank Sauerheber Unit, areas designated by signs are closed to public access from October 15 through March 15.]

(25) [(26)] Taylorsville Lake Wildlife Management Area[, Spencer, Anderson and Nelson counties].

(a) The area east of Van Buren Boat Ramp is closed to public access the day after the deer quota hunt through March 15.

(b) Quail and rabbit: closed after [November 1 through] December 31.

(c) [All] Hunters and dog trainers shall check in and out daily at a designated check station.

(26) Tradewater Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

(27) West Kentucky Wildlife Management Area, McCracken County.

(a) Persons shall not hunt on [Hunting is prohibited on all] tracts designated by numbers followed by the letter "A".

(b) Quail and rabbit:

1. On Tracts 2, 3, 6 and 7: closed after [November 1 through] December 31.

2. On Tracts 1, 4 and 5: January 1 through 10, unless maximum acceptable harvest levels have been reached prior to January 10 as determined from hunter use data. Signs announcing closure will be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(c) [Squirrels: the third Saturday in August through December 31.

(d) Shakeout season is closed on this area.

(e) All] Hunters and dog trainers shall check in and out daily at the designated check station.

(d) Small game or furbearer hunters shall not use [(f)] rifles or ball or slug ammunition [of any type for taking small game is prohibited].

(e) Persons shall not allow their dogs to be unleashed from April 1 until the third Saturday in August, except:

1. Persons participating in department-authorized field trials may use unleashed dogs.

2. Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.

[(g) Unleashed dogs are prohibited April 1 until the third Saturday in August.]

(f) [(h)] Vehicular traffic on Tract 6 is prohibited February 1 through April 16.

(28) Westvaco Public Hunting Areas. Persons hunting on Westvaco Public Hunting Areas shall possess a valid Westvaco Hunting Permit.

(29) White City Wildlife Management Area[, Hopkins County]. Quail and rabbit: closed after [November 1 through] December 31.

(30) Yatesville Wildlife Management Area[, Lawrence County].

[(a) All] Hunters and dog trainers shall check in and out daily at a designated check station.

[(b) Areas designated by signs are closed to all public access.]

(31) Yellowbank Wildlife Management Area[, Breckinridge County].

(a) Quail and rabbit: closed after [November 1 through] December 31.

(b) [Squirrels: June 1 through June 14, and September 1 through December 31.

(c) All] Hunters and dog trainers shall check in and out daily at the designated check station.

[(d) Unleashed dogs are prohibited April 1 through May 31 and June 15 through August 31.

(e) Areas within Tract 1 designated by signs are closed to public access from October 15 through March 15.]

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY THE AGENCY: December 2, 1994

FILED WITH LRC: January 3, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 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 February 22, 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 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 60,000 small game and furbearer hunters utilize the wildlife management areas covered by this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation, which continues long-standing hunting and trapping seasons, will have no impacts on cost 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 public comments received. This administrative regulation will have no impact on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation imposes no new paperwork or reporting requirements. Some wildlife management areas required hunters to check in and check out.

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 administrative regulation imposes no new direct or indirect costs.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation imposes no new reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not impact state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and game fund.

(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: Hunting on, and other recreational uses of, wildlife management areas create positive economic impacts upon local economies in the vicinity of these areas. Each small game hunters spends approximately $200 annually for equipment, transportation, food and lodging.

(b) Kentucky: Same as for local areas.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative is applying statewide hunting seasons to wildlife management areas. This alternative was rejected because these areas, because of high public use, require different seasons or other requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Wildlife management areas represent environmentally valuable natural areas. This regulation allows public recreation on these areas while affording them needed protection from overuse.

(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: Without special regulations, wildlife management areas could lose valuable wildlife populations or other natural features.

(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:

(11) TIERING: IS tiering applied? (Explain why tiering was or was not used) Tiering was used in setting different seasons dates for various wildlife management areas, taking into account both biological concerns and hunter preference. Specific season dates or other requirements for wildlife areas allow public recreation while at the same time helping protect the flora and fauna of these areas.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.360, 150.365, 150.370, 150.390, 150.400, 150.410, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175

NECESSITY AND FUNCTION: To insure the permanent and continued supply of small game and furbearer species by protecting them from overharvest. This amendment is necessary to establish an early raccoon and opossum hunting season, to incorporate the provisions of, and repeal, 301 KAR 2:110, to allow trappers to place water sets closer than ten (10) feet apart, and to repeal 301 KAR 2:010 and 301 KAR 2:020.

Section 1. Definitions. (1) "Conibear-type trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap not set to drown an animal upon capture.

(3) "Foot-hold trap" means a commercially manufactured spring-loaded trap with smooth, metallic jaws which close upon an animal's foot.

(4) "Furbearers" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, weasels or striped skunk.

(5) "Hunter" means a person hunting small game or furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

(6) "Modern gun deer season" means the ten (10) day period beginning on the second Saturday of November.

(7) "Nonlocking snare" means a wire, cable or string loop without a device to keep the loop from loosening.

(8) "Padded trap" means a commercially manufactured [~~constructed~~] foot-hold trap with metal jaws padded with a soft, nonmetallic substance.

(9) "Small game" means squirrels, rabbits, quail or grouse.

(10) "Squirrels" means gray squirrels and fox squirrels in any combination.

(11) "Water set" means a trap set to drown an animal upon capture.

Section 2. Hunting and Trapping Seasons. (1) Squirrels: the third Saturday in August through December 31. The season is closed during the modern gun deer season.

(2) Rabbits and quail: November 1 through January 31. The

season is closed during the modern gun deer season.

(3) Grouse: the day after the modern gun deer season through the last day in February in Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

(4) Raccoon and opossum hunting: November 1 through noon on the day after the modern gun deer season.

(a) Persons shall not trap during this period.

(b) During the modern gun deer season, raccoon and opossum hunters shall not:

1. Hunt during daylight hours; or

2. Carry other than .22 caliber rimfire firearms.

(5) [~~(4)~~] Furbearers, hunting and trapping: from noon [~~at sunset~~] the day after the modern gun deer season through [~~12~~] noon, February 1.

(6) [~~(5)~~] Extended beaver season: the month of February.

(7) [~~(6)~~] Small game and furbearers taken by falconry: September 1 through February 15.

(8) [~~(7)~~] There is no closed season on:

(a) Chasing red and gray foxes and rabbits during daylight hours for sport and not to kill.

(b) Chasing raccoons or opossums for sport and not to kill.

(9) [~~(8)~~] Bobcats shall be taken only according to the provisions of 301 KAR 2:240.

Section 3. Small Game Bag and Possession Limits.

	Daily	Possession
Squirrels	6	12
Rabbits	4	8
Quail	8	16
Grouse	4	8

Section 4. Furbearer Hunter Limits. (1) There is no limit on furbearers except raccoons.

(2) A hunter shall not take more than one (1) raccoon within a twenty-four (24) hour period from noon to noon.

Section 5. Limits by Falconry. Falconers hunting within the falconry season but outside the dates specified in Section 2(1) through (6) [~~(5)~~] of this administrative regulation: no more than two (2) of any small game or furbearer species, singly or in the aggregate per day.

Section 6. Shooting Hours. (1) Small game or furbearers, except opossum and raccoon: daylight hours only.

(2) Raccoon and opossum: day or night, except night hunting only during the modern gun deer season.

Section 7. Use of Calls. Hunters may use hand- or mouth-operated calls or attracting devices.

Section 8. Hunters shall not possess buckshot or shotgun slugs.

Section 9. Raccoon and Opossum Hunting Restrictions. (1) Hunters shall not use lights from a boat to take raccoon or opossum.

(2) Except as specified in subsection (3) of this section, persons chasing raccoon or opossum from noon, February 1 through October 31 shall not use or carry:

(a) Firearms;

(b) Slingshots;

(c) Tree climbers;

(d) Squealers; or

(e) Other devices that are capable of killing, injuring or forcing raccoons or opossums from trees or dens.

(3) Persons participating in department-approved raccoon dog trials sanctioned by the following organizations may use squealers:

(a) The American Coon Hunters Association.

(b) The American Kennel Club/American Coon Hunters Association.

(c) The National Kennel Club.

(d) The Professional Kennel Club.

(e) The United Coon Hunters Association.

(f) The United Kennel Club.

Section 10. Trapping. (1) There are no daily or possession limits on furbearers taken by trapping.

(2) Traps used for dry-land sets shall be:

(a) Deadfalls;

(b) Wire cage or box traps;

(c) Number two (2) or smaller foot-hold traps;

(d) Padded traps with a jaw spread of six (6) inches or less;

(e) Number 220 or smaller Conibear-type traps; or

(f) Nonlocking snares;

(g) Set at least ten (10) feet apart.

(3) Any trap may be used as a water set except during the extended beaver season.

(4) [~~Traps shall be set at least ten (10) feet apart.~~

~~(5)~~] Traps shall not be set in trails or paths commonly used by humans or domestic animals.

(5) [~~(6)~~] Trappers may use lights from boats or vehicles.

Section 11. During the extended beaver season:

(1) Trappers shall not use dry land sets;

(2) Trappers shall use:

(a) Number three (3) or larger foot-hold traps;

(b) Padded traps having a jaw spread of at least five and one-half (5-1/2) inches;

(c) Conibear-type traps with a jaw spread of at least eight (8) inches; or

(d) [~~Nonlocking~~] Snares.

Section 12. 301 KAR 2:010, 301 KAR 2:020 and 301 KAR 2:110 are hereby repealed.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY THE AGENCY: December 2, 1994

FILED WITH LRC: January 3, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 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 February 22, 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 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 251,000 small game hunters and 700 trappers participate in the seasons proposed by this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation, which continues long-standing hunting and trapping seasons, will have no impacts on cost 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 public comments received. This administrative regulation will have no impact on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation imposes no new paperwork or reporting 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: This administrative regulation imposes no new direct or indirect costs.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation imposes no new reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not impact state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and game fund.

(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: The provisions of this administrative regulation apply statewide.

(b) Kentucky: Small game hunters annually spend over $50 million for equipment, transportation, food and lodging in Kentucky. This administrative regulation, by allowing for the continuance of hunting seasons, assures the perpetuation of this economic benefit.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative is closure of hunting seasons. This alternative was rejected because small game and furbearer populations are at levels which can sustain hunter or trapper harvest and provide recreational and economic benefits to the Commonwealth.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Hunting and trapping seasons help limit the population growth of some species, which could pose both environmental and public health problems if allowed to grow unchecked.

(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: Without hunting or trapping, populations of some animals, particularly furbearers, could grow to levels that would pose threats to agricultural crops, increase the incidence wildlife diseases, or cause damage to ecosystems.

(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:

(11) TIERING: IS tiering applied? (Explain why tiering was or was not used) Tiering was used in setting different seasons dates for various species, taking into account both biological concerns and hunter preference.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:010. Definitions.

RELATES TO: KRS Chapters 246, 257

STATUTORY AUTHORITY: KRS Chapter 257, 257.030

NECESSITY AND FUNCTION: Definitions and terms to clarify interpretation of regulations relating to the Division of Animal Health [~~Livestock Sanitation~~].

Section 1. Definitions and Terms. (1) "Commissioner" means the Commissioner of the Department of Agriculture.

(2) "Department" means the Department of Agriculture.

(3) "Board" means the State Board of Agriculture.

(4) "Persons" shall include any individual, firm, association, partnership or corporation.

(5) "Stockyards" means any livestock yard, concentration point, [~~packing plant~~] or any other public place where livestock is [~~regularly~~] assembled for sale or exchange and is bought, sold or exchanged at auction or upon a commission or other basis.

(6) "Posted stockyards" means stockyards regulated by the United States Secretary of Agriculture under the Packers and Stockyards Act, 1921 (42 Stat. 159).

(7) "Premises" means any portion of land or any structure erected on land or any vehicle or vessel used in the transportation of passengers, goods or livestock.

(8) "Communicable disease" includes hog cholera, coccidiosis, brucellosis, anaplasmosis, leptospirosis, encephalomelitis, anthrax, blackleg, salmonellosis, catarrhal influenza of cattle, contagious pleuropneumonia, foot and mouth [~~mount~~] disease or apthous fever, glanders, hemorrhagic septicemia maladie du coit or dourine, mange of cattle, necrobacillosis and foot rot in sheep, hydrophobia, rinderpest, scabies in cattle, Texas tick or southern cattle fever, tuberculosis, paratuberculosis or Johne's disease, pseudorabies, velogenic visceraltrophic Newcastle disease or any other disease proclaimed by the board to be of a transmissible character.

(9) "Garbage" means waste consisting entirely or in part of animal waste resulting from handling, preparing, cooking, and consuming of food including the offal from animal carcasses or parts thereof, but excluding such waste from ordinary household operations which is fed directly to swine on the same premises.

(10) "Interstate" means movement into or through any other state.

(11) "Intrastate" means movement solely within the boundaries of the Commonwealth of Kentucky.

(12) "Concentration" or "assembly point" means any place where livestock or animals are assembled, moved, gathered, combined, collected or brought together by any person using any method or vehicle for sale, resale or barter.

(13) "Recognized slaughtering center" means a slaughtering establishment approved in accordance with state and federal regulations where slaughtering facilities are provided and to which animals are regularly shipped and slaughtered.

(14) "Chief livestock health [~~sanitary~~] official" means State Veterinarian of the Division of Animal Health [~~Livestock Sanitation~~],

Department of Agriculture, or his authorized representative.

(15) "Livestock" means animals used or raised on a premises of the bovine, caprine, equine, porcine, avian, ovine and ratite [~~lapin~~] species.

(16) "Feeder cattle" means steers of any breed, spayed heifers or open heifers of the beef breed only under eighteen (18) [~~twenty-four (24)~~] months of age which are [~~primarily~~] intended for slaughter after reaching [~~having reached~~] the desired feeding stage.

(17) "Official brucellosis vaccinate" means a female bovine [~~animal~~] vaccinated [~~against brucellosis~~] with an approved Brucella vaccine as specified in the [~~against brucellosis with an approved Brucella vaccine with the~~] vaccination protocol set forth by the State Veterinarian's office. Animals must be vaccinated by a licensed, accredited veterinarian, by [~~or~~] authorized representative of the department or by designated federal personnel. Each animal shall be [~~and~~] permanently identified with an official calfhood vaccination tag or by an official tattoo. Each animal shall be [~~and~~] tattooed with the official vaccination tattoo. All vaccinates shall be recorded on an official vaccination certificate [~~as a vaccinate~~] and reported at the time of vaccination to the appropriate state or federal agency [~~on official forms as provided~~].

(18) "Health certificate" or "certificate of veterinary inspection [~~examination~~]" means a legible record covering the requirements of the state of destination accomplished on an official form of a standard size from the state of origin or an equivalent form of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, that is prepared and issued by a licensed, accredited veterinarian. For purposes of these regulations the term "certificate of veterinary inspection [~~examination~~]" shall be the same as, equal to, and used interchangeably with the term "health certificate."

(19) "Approved [~~health~~] certificate of veterinary inspection" means an official [~~health~~] certificate of veterinary inspection approved by the chief livestock health [~~sanitary~~] official of the state of origin.

(20) "Virulent hog cholera virus" means the living agent capable of causing hog cholera that is found in the clear serum, plasma, defibrinated blood, whole blood or other tissue derived from pigs sick of hog cholera; or in any material used as a vehicle for perpetuating such living agent.

(21) "Farm of origin" means a farm where livestock [~~to be moved interstate~~] were born and remained prior to movement, or where such livestock have remained for not less than six (6) months immediately prior to movement, and which has not been used in the past six (6) months to assemble, buy or sell livestock brought in from other sources. For swine, the applicable time period prior to movement shall be ninety (90) days.

(22) "Infectious" or "contagious disease" means any disease condition that can be transmitted from one animal to another either directly or indirectly.

(23) "Owner" or "operator" means a person, firm, corporation or company responsible for the operation of a stockyard, sale, public stockyard, farm or ranch.

(24) "State-federal approved stockyard" means a stockyard that has complied with state and federal requirements for specific movements of livestock and has been approved by the chief livestock health [~~sanitary~~] official and federal area veterinarian in charge of the area where the stockyard does business.

(25) "Licensed, accredited veterinarian" means a graduate veterinarian who is qualified by a state examining board and is approved by the federal government and Commonwealth of Kentucky.

(26) "Area veterinarian in charge" means federal veterinarian in charge of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture in Kentucky.

(27) "Move" or "movement" means the act of moving, shipping or transporting livestock by any means, method or vehicle; delivering, receiving or collecting livestock by any means, method or vehicle by any person by land, water or air for sale, resale or barter.

(28) "Assembled cattle" are animals without a common owner, consignor or herd of origin brought together during transportation to market and commingled in a common enclosure.

ED LOGSDON, Chairman

APPROVED BY AGENCY: January 4, 1995

FILED WITH LRC: January 5, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, February 22, 1995 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Donna Greenwell Dutton

(1) Type and number of entities affected: All persons who sell or exhibit livestock 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 were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: 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:

(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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(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:

(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. This regulation is a definitional section and is the same for all persons who sell and exhibit animals in Kentucky.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:020. General requirements.

RELATES TO: KRS Chapter 246, 257

STATUTORY AUTHORITY: KRS Chapter 257, 257.030

NECESSITY AND FUNCTION: Clarify general health requirements and provisions concerning interstate and intrastate movement of all classes of animals.

Section 1. General Requirements and Provisions. (1) Certificate of Veterinary Inspection. [~~Health certificates.~~]

(a) Certificate of Veterinary Inspection [~~Health certificates issued for cattle, sheep, swine, dogs, cats, bison, goats, poultry and horses~~] shall be void thirty (30) days after date of inspection and issuance.

(b) Approved [~~health~~] Certificates of Veterinary Inspection or permits required for all movements of livestock except equine prior to movement.

(c) Certificate of Veterinary Inspection [~~Health certificates~~] shall specify herd certification, accreditation, qualification, and validation [~~and accreditation~~] number when applicable together with the date of the last herd test.

(d) Certificate of Veterinary Inspection [~~Health certificates~~] shall contain the name and address of the consignor, consignee, herd status and an accurate description and identification of livestock. The [~~health~~] Certificate of Veterinary Inspection shall contain a statement certifying that the livestock and animals are free from evidence of an infectious [~~or~~] contagious communicable or parasitic disease or exposure thereto.

(e) Certificate of Veterinary Inspection [~~Health certificates~~] stipulating vaccination shall indicate date of [~~birth and~~] vaccination, name, serial number and expiration date of biologic or agent used.

(2) Permits.

(a) Permits shall be obtained from the State Veterinarian, Division of Animal Health [~~Livestock Sanitation~~], Kentucky Department of Agriculture.

(b) Permits shall specify the number, description, identification, origin, destination, arrival, date, name of consignor and consignee, and terms of compliance for movement of livestock involved.

(c) Permits can be obtained for movement of livestock in lieu of an approved [~~health~~] Certificate of Veterinary Inspection prior to movement except where noted. Approved [~~health~~] Certificate[~~s~~] of Veterinary Inspection shall follow in routine administrative procedure in the movement of livestock.

(d) [~~Permits in addition to approved health certificate required for cattle from area not modified certified, scabies infected area, and tick quarantined area.~~

~~(e)~~] All livestock, animals and poultry entering the Commonwealth under permit shall be consigned to a natural person who is a resident of the state or to a legal entity authorized to do business within the state.

(3) Owner and shipper's declaration shall be accepted only for imported animals originating directly from the farm of origin and proceeding directly to immediate slaughter or to a public stockyard or state-federal approved stockyard for reconsignment to immediate slaughter with no diversion whatever enroute.

(4) No livestock, animals or poultry that are known to be affected with or that have been exposed to any infectious or contagious, communicable or parasitic disease, or that originated from a quarantined area or quarantined herd shall be imported into Kentucky or transported intrastate within Kentucky.

(5) All imports or interstate movements not in compliance with existing regulations and statutes shall be subject to isolation and quarantine for compliance. No titer resulting from the standard tube test for brucellosis shall be accepted in the case of imports unless the animal or animals showing titer are negative to the card test. All required tests for quarantined imports shall be conducted at no expense to the Commonwealth of Kentucky. Imports not in compliance to existing statutes and regulations shall not be eligible for indemnity payments.

(6) All brucellosis blood tests and other required laboratory tests shall be conducted in a state-federal approved laboratory.

(7) All tuberculin, brucellosis or other required tests and vaccinations shall be accomplished by a licensed, accredited veterinarian or authorized representative of the chief livestock health [~~sanitary~~] official, or by authorized federal personnel. All procedures performed for the purpose of complying with Kentucky livestock health requirements including, but not limited to, vaccinating, testing, branding and individual animal identification shall be performed using standards approved by the chief livestock health official.

(8) All procedures required prior to change of ownership including, but not limited to vaccinating, testing, branding and individual identification shall be the responsibility of the seller prior to sale except where noted. This shall be accomplished prior to the livestock being moved from the seller's premises.

(9) [~~(8)~~] All livestock and poultry consigned for interstate movement shall comply with the regulations and statutes of state of destination prior to movement or be approved for movement subject to the regulations and statutes of that state.

(10) [~~(9)~~] An approved [~~health~~] Certificate of Veterinary Inspection or a [~~health~~] Certificate of Veterinary Inspection submitted for approval or a permit shall be present in the office of the chief livestock health [~~sanitary~~] official at least seventy-two (72) hours prior to scheduled date of any sale or exhibition to occur in the Commonwealth of Kentucky.

(11) [~~(10)~~] The owners and operators of railway cars, trucks or other conveyances that have been used for the movement of livestock or animals infected with or exposed to any infectious, contagious or communicable disease shall have such vehicles cleaned and disinfected under official supervision. Such certificate of cleaning and disinfecting shall be attached to the waybill or be in possession of the operator or carrier.

ED LOGSDON, Chairman

APPROVED BY AGENCY: January 4, 1995

FILED WITH LRC: January 5, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, February 22, 1995 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Donna Greenwell Dutton

(1) Type and number of entities affected: All livestock owners 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 were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no increased reporting and paperwork requirements.

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: There will be no additional reporting and paperwork requirements.

(b) Reporting and paperwork requirements:

(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: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation clarifies general health requirements concerning the movement of all animals.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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. This regulation treats all livestock owners in Kentucky the same.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:040. Entry into Kentucky.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030

NECESSITY AND FUNCTION: To establish [~~specify~~] health requirements for entry, including sales or exhibition, for [~~admission of all~~] livestock and animals into Kentucky.

Section 1. General Provisions. (1) All animals, except as noted, shall be accompanied by an approved health Certificate of Veterinary Inspection. [~~Health~~] Certificate[s] of Veterinary Inspection means a legible record covering the requirements of the state of destination accomplished on an official form of a standard size from the state of origin or an equivalent form of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, that is prepared and issued by a licensed, accredited veterinarian. An approved [~~health~~] Certificate of Veterinary Inspection means an official [~~health~~] Certificate of Veterinary Inspection approved by the chief livestock health [~~sanitary~~] official of the state of origin.

(2) A permit may be obtained by calling (502) 564-3956, on weekdays from 8 a.m. to 4:30 p.m. and (502) 564-3956, recording evenings and weekends. Evening and weekend permits are not issued for designated species where noted. Permit number shall be recorded on Certificate of Veterinary Inspection.

(3) All required testing shall be conducted by a state-federal approved laboratory.

(4) Certificate of Veterinary Inspection shall be void thirty (30) days after date of issuance for entry into Kentucky, except as noted. [~~If animals are from tuberculosis accredited or brucellosis certified herds, health certificates shall show accreditation and certification number with date of last herd test for tuberculosis and brucellosis.~~

~~(3) Cattle entering Kentucky shall be vaccinated, tested, or branded as required in 302 KAR 20:055.~~

~~(4) Cattle may enter approved state-federal livestock markets in Kentucky without permits. Upon entry to the market these cattle shall comply with the specific provisions of this regulation for subsequent movement to a premise in Kentucky or shall comply with other state of destination requirements.~~]

Section 2. Cattle. (1) General requirements.

(a) A permit is required prior to entry for all cattle except steers and spayed heifers. Permit number shall be recorded on Certificate of Veterinary Inspection.

(b) Cattle moving directly from a farm of origin may enter an approved state-federal livestock market in Kentucky without a permit or Certificate of Veterinary Inspection as described in 302 KAR 20:070.

(c) If animals are from a tuberculosis accredited or a brucellosis certified herd, Certificate of Veterinary Inspection shall show herd accreditation and herd certification number with date of last herd test for tuberculosis and brucellosis.

(2) Specific Diseases.

(a) Brucellosis. [~~Negative results from an approved state-federal laboratory.~~

~~(b) Official vaccinate. A female bovine animal vaccinated with an approved reduced dosage Brucella vaccine while four (4) through ten (10) months of age permanently identified as a vaccinate. Date of birth and date of vaccination shall be recorded on the health certificate.~~

~~(c) Import requirements for cattle originating in Class "C" states and areas:~~

~~1. Sexually intact heifers for feeding and/or grazing.~~

~~a. Prior entry permit required.~~

~~b. Heifers must be less than twelve (12) months of age.~~

~~(i) No long tailed heifers.~~

~~(ii) Must not weigh more than 500 pounds.~~

~~c. Heifers must be branded with the letter "F" on the right or left side of the tail head, or hip. If on the tail head, the brand must be placed between the fourth and seventh coccygeal vertebrae. The brand size must be a minimum of two (2) inches by three (3) inches in size.~~

~~d. The heifers must be individually identified on an official certificate of veterinary examination or "health certificate." The "F" brand alone will not suffice as the means of identification.~~

~~e. All "F" branded heifers will be quarantined on arrival on Kentucky premises approved by the state veterinarian for feeding purposes only. The "F" branded heifers may then move only to slaughter when accompanied by proper movement permits.~~

~~2. Sexually intact cattle for breeding and/or dairy purposes must comply with one (1) of the following:~~

~~a. Originate from a brucellosis certified free herd and be accompanied by an official certificate of veterinary examination or "health certificate" showing the date of the last herd test.~~

~~b. Originate from a nonbrucellosis quarantined herd that had a complete negative brucellosis herd test of all eligible cattle within the past twelve (12) months. The individual cattle being shipped must have had a negative brucellosis test within thirty (30) days of shipment.~~

~~c. A prior permit is also required and should be recorded on the certificate of veterinary examination or the "health certificate."~~

~~3. All sexually intact cattle for breeding and dairy purposes will be quarantined on arrival and retested for brucellosis sixty (60) to 120 days after arrival in Kentucky.~~

~~4. Prior permits may be obtained by calling 502/564-3956, 57, 58, 59 on weekdays from 8 a.m. to 4:30 p.m. and 502/564-3956, recording evenings and weekends.~~

~~(d) Import requirements for cattle originating in Class "B" states and areas.~~

~~1. Sexually intact heifers for feeding and/or grazing purposes.~~

~~a. Prior entry permit required.~~

~~b. Heifers must be less than twelve (12) months of age.~~

~~(i) No long tailed heifers.~~

~~(ii) Must not weigh more than 500 pounds.~~

~~c. Heifers must be branded with the letter "F" on the right or left side of the tail or hip. If on the tail head, the brand must be placed between the fourth and seventh coccygeal vertebrae. The brand size must be a minimum of two (2) inches by three (3) inches.~~

~~d. The heifers must be individually identified on an official certificate of veterinary examination or "health certificate." The "F" brand alone will not suffice as the means of identification.~~

~~e. All "F" branded heifers will be quarantined on arrival in Kentucky on premises approved by the state veterinarian for feeding purposes only. The "F" branded heifers may then move only to slaughter when accompanied by proper movement permits.~~

~~2. Sexually intact cattle for breeding and/or dairy purposes must comply with one (1) of the following:~~

~~a. Originate from a brucellosis certified free herd and be accompanied by an official certificate of veterinary examination or "health certificate" showing the date of the last herd test.~~

~~b. Originate from a nonbrucellosis quarantined herd that had a complete negative brucellosis herd test of all eligible cattle within the past twelve (12) months. The individual cattle being shipped must have had a negative brucellosis test within thirty (30) days of shipment.~~

~~c. A prior permit is also required and must be recorded on the certificate of veterinary examination or "health certificate."~~

~~3. All sexually intact cattle, except vaccinates from brucellosis certified free herds, will be quarantined on arrival and retested for brucellosis sixty (60) to 120 days after arriving in Kentucky.~~

~~4. Prior permits may be obtained by calling 502/564-3956, 57, 58, 59 on weekdays from 8 a.m. to 4:30 p.m. and 502/564-3956, recording evenings and weekends.~~

~~(e)~~] Import requirements for cattle originating in Class "A" or Class "Free" states or areas.

1. Sexually intact bovines twelve (12) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry unless exempted by one (1) of the following:

a. Originate directly from a brucellosis certified free herd; or

b. Official calfhood vaccinate of the dairy breeds less that twenty (20) months of age or official calfhood vaccinate of the beef breeds less than twenty-four (24) months of age; or

c. Open heifers less than eighteen (18) months of age designated for feeding purposes. Diversion of "feeder" heifers for use as breeding animals without meeting applicable test requirements shall be a violation of this administrative regulation.

2. Heavy springers and cows postpartum shall be test eligible regardless of age.

3. Heifers for exhibition in carcass classes shall be officially identified but shall not be required to be brucellosis tested if accompanied by Certificate of Veterinary Inspection. [~~heifers for feeding and/or grazing purposes.~~

~~a. Prior entry permit required.~~

~~b. Heifers must be less than eighteen (18) months of age.~~

~~c. Heifers must be branded with the letter "F" on the right or left side of the tail head or hip. If on the tail head, the brand must be placed between the fourth and seventh coccygeal vertebrae. The brand size must be a minimum of two (2) inches by three (3) inches.~~

~~d. The heifers must be individually identified on an official certificate of veterinary examination or "health certificate." The "F" brand alone will not suffice as the means of identification.~~

~~e. The "F" branded heifers may enter only premises approved by the state veterinarian for feeding purposes. The "F" branded heifers may then move only to slaughter when accompanied by proper movement permits.~~

~~2. Sexually intact cattle for breeding and/or dairy purposes must comply with one (1) of the following:~~

~~a. Originate from a brucellosis certified free herd and be accompanied by an official certificate of veterinary examination or "health certificate" showing the date of the last herd test.~~

~~b. All cattle except the above must have a negative brucellosis test within thirty (30) days of shipment.~~

~~c. A prior permit is also required and must be recorded on the certificate of veterinary examination or "health certificate."~~

~~3. All sexually intact cattle, except vaccinates from brucellosis certified free herds, will be quarantined on arrival and retested for brucellosis sixty (60) to 120 days after arriving in Kentucky.~~

~~4. Prior permits may be obtained by calling 502/564-3956, 57, 58, 59 on weekdays from 8 a.m. to 4:30 p.m. and 502/564-3956, recording evenings and weekends.~~

~~(f) Import requirements for cattle originating in Class "Free" states or areas, same as for class "A" states.~~

~~(g) Import requirements for intact males. Bulls of all ages must meet the import requirements of intact female cattle of their respective states, in accord with the above state classification requirements as listed for "C," "B," "A," or "Free."~~

~~(h) Intact female cattle under four (4) months of age.~~

~~1. No female cattle (intact) under 120 days of age, can enter the Commonwealth of Kentucky from states or areas classed as "C" or "B," except calves nursing cows which enter Kentucky from certified free herds. Such calves must then comply (under quarantine from "C" states) with the vaccination requirement in the Kentucky regulation, 302 KAR 20:055 at four (4) months of age.~~

~~2. Female cattle (intact) under 120 days of age, from states or areas classed as "A" or "Free" may enter the Commonwealth of Kentucky, upon entry, they will be quarantined to the farm of destination and later comply with the vaccination or branding requirement as defined in 302 KAR 20:055. Release of the quarantine will be effected~~

with documentation of satisfactory compliance with this aforementioned regulation.

(i) Spayed heifers. Female cattle, having been ovariectomized, and properly identified with an "open spade" brand, may move without restriction into Kentucky, as do steers, when accompanied by the required certificate of veterinary examination or "health certificate."]

(4) [(j)] Bison. Bison shall comply with [have] the same entry requirements as [do] bovine[s].

(b) [(2)] Tuberculosis.

1. [(a)] Cattle six (6) months of age or older for dairy, [and] breeding or exhibition purposes shall be negative to an official tuberculin test within sixty (60) days prior to [of] date of entry, unless exempted by one (1) of the following: [or originate directly and immediately from:]

a. Originate directly from a tuberculosis [1.] accredited free herd; or

b. Originate directly from a tuberculosis [2.] eradicated free state; or

c. Unweaned nursing calves accompanied by their dam shall be officially identified but shall not be required to be tuberculosis tested unless thy are offered for sale individually.

2. [(b)] Cattle classified as suspects or cattle originating from a quarantined herd shall not be imported.

3. [(c)] Reciprocal agreements with adjoining states may be effective in lieu of specific requirements.

4. [(d)] Bison six (6) months of age or older shall be negative to an approved tuberculosis test within sixty (60) days prior to [of] entry, or originate from an accredited herd.

5. Feeder cattle from a modified accredited state or area are exempt from tuberculosis testing requirements unless required by the chief livestock health official.

6. Steers and heifers for carcass classes shall be officially identified but shall not be required to be tuberculosis tested if originate from an accredited herd or from a tuberculosis free state.

(3) Other disease requirements.

(a) Scabies. No cattle affected with or exposed to scabies or from an area quarantined because of scabies shall be imported, shipped, driven or otherwise moved into Kentucky except in accordance with regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, and only then after first securing written permit from the chief livestock health [sanitary] official or his authorized representative.

(b) Ticks. No cattle infested with ticks (Margarophus Annulatus) or exposed to tick infestation shall be shipped, trailed, driven or otherwise moved into Kentucky for any purpose.

(c) No cattle from a state-federal tick quarantined area shall be shipped, trailed, driven or otherwise moved into Kentucky except in accordance with regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, and only then after first securing written permit from the chief livestock health [sanitary] official or his authorized representative.

(d) Cattle infected with warts, ringworm or any contagious, infectious or communicable disease are not eligible for entry.

(4) Other movements.

[(a) Feeder cattle. Feeder cattle are defined as nonpregnant heifers of the beef breeds under eighteen (18) months of age, spayed heifers, and steers of all breeds. Feeder cattle from "TB Free" states or areas only are exempt from testing requirements.

(b)] Slaughter cattle. Cattle consigned for immediate slaughter may be imported without official test for brucellosis or tuberculosis provided such cattle are consigned for immediate slaughter to a recognized slaughtering establishment [center] under state, federal or municipal inspection or to an approved state-federal stockyard or federal stockyard for reconsignment [directly] to a recognized slaughter[ing] establishment. Animal(s) [center. Any animal or animals] diverted enroute will be in violation of this regulation.

(5) Exhibition. All cattle shall be in compliance with requirements noted above and shall be accompanied with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

[(a) Brucellosis.

1. Breeding cattle six (6) months of age and older, except official vaccinates under eighteen (18) months of age, shall be negative to an official serological test for brucellosis within thirty (30) days of entry or originate directly and immediately from a certified free herd.

2. Steers and heifers for carcass classes shall be positively identified but shall not be required to be brucellosis tested if accompanied by an approved health certificate.

(b) Tuberculosis.

1. Cattle six (6) months of age or older shall be negative to an official tuberculin test within sixty (60) days of entry or originate directly and immediately from an accredited herd or a tuberculosis eradicated free state.

2. Reciprocal agreements with adjoining states may be effective in lieu of specific requirements.

3. Steers and heifers for carcass classes shall be positively identified but shall not be required to be tuberculosis tested if accompanied by approved health certificate.]

Section 3. Horses. (1) General requirements.

(a) All horses and other equidae entering Kentucky[, except unweaned foals, and other equidae, for any purpose other than for immediate slaughter] shall be accompanied by a Certificate of Veterinary Inspection. [an official health certificate of state of origin issued by a state, federal or licensed accredited veterinarian and such] Certificate shall include all tests that have been conducted as well as all vaccinations including vaccination date and type of vaccine used. [:

(a) Veterinarian's statement that examination was made within the past thirty (30) days and revealed the animal to be free from symptoms of any infectious disease or exposure thereto; and]

(b) [Have] Attached to the Certificate of Veterinary Inspection shall be a copy of a [thereto a copy of] certificate of report from a laboratory approved by the USDA showing the animal(s) to be negative to an AGID test or other USDA approved test for equine infectious anemia [within the past six (6) months].

(c) Horses with evidence of a contagious, infectious or communicable disease or exposure thereto shall not be eligible for entry.

(2) Specific diseases.

(a) Equine infectious anemia.

1. [(2)] All horses and other equidae [past] six (6) months of age or older except unweaned foals accompanied by their dam, [and other equidae] offered for [public] sale shall be negative to an AGID test or other USDA approved test for equine infectious anemia within [past] six (6) months prior to entry. [Only horses offered for sale for slaughter only shall be exempt from this requirement.]

2. [(3)] All horses and other equidae six (6) months of age or older, except unweaned foals accompanied by their dam, offered for entry for reasons other than sale (i.e., entry into fairgrounds, livestock showgrounds, public boarding stables, [and for] trail rides, [or] racing, etc.) shall be negative to an [test for] AGID test or other USDA approved test for equine infectious anemia within twelve (12) months prior to entry. [and shall be accompanied by certificate of report from a laboratory approved by the USDA.]

(b) Veterinarian's statement that examination was made within the past thirty (30) days and revealed the animal(s) to be free from symptoms of a contagious, infectious or communicable disease or exposure thereto.

[(4) All reactors to AGID test for equine infectious anemia shall be officially, permanently identified using numbers and letter 61A with a brand on left neck region.

(5) All reactors not slaughtered or euthanized shall be isolated and quarantined. This isolation shall include stabling in a stall that is screened to preclude entry and exit of mosquitoes, stable flies and horse flies during those seasons of the year when such insects are

~~prevalent. These animals will also be kept at least 200 yards from all other horses.~~

~~(6) The movement of any quarantined reactor shall be done only on permission of representative of the Department of Agriculture.~~

~~(7) All horses in a herd in which a reactor is found shall be quarantined pending a negative test of all horses.~~]

Section 4. Swine. (1) General requirements.

(a) A permit shall be obtained prior to movement for all swine entering for breeding and feeding purposes.

(b) All swine shall be officially identified by a state-federal approved [~~must have a permanent means of~~] identification, except as noted in 302 KAR 20:220.

(c) If animals are from validated and qualified herds, the Certificate of Veterinary Inspection [~~examination~~] shall show herd validation and qualification number with date of last herd test for brucellosis and pseudorabies.

(2) Specific diseases.

(a) Garbage fed swine. Swine fed raw garbage shall not be imported for any purpose. Swine fed properly cooked garbage are eligible for import directly to a state or federal inspected slaughtering establishment only.

(b) Brucellosis. All swine for breeding purposes six (6) months of age or older shall be negative to an official [~~test for~~] brucellosis test within thirty (30) days prior to [~~of date of~~] entry or originate directly and immediately from a validated herd. No agglutination in dilution of 1-50 shall be accepted unless the individual or individuals to be imported are negative to an official card or PCFIA test. On entry, animals must be quarantined for no less than thirty (30) days and must show a negative post movement brucellosis test within thirty (30) to sixty (60) days of entry.

(c) [~~Hog cholera.~~

~~1. No treatment required or allowed.~~

~~2. Permit. A permit is required from the state veterinarian's office before entry on breeding and feeding swine in the event of an emergency disease outbreak.~~

~~3. All feeding and breeding swine to be held in isolation and under quarantine for a minimum of thirty (30) days.~~

~~4. All swine for feeding and breeding purposes must be identified by ear tag or ear notch to the farm of origin.~~

~~(d)~~] Pseudorabies. All swine imported for breeding, sale or exhibition purposes [~~six (6) months of age or older~~] shall be negative to an official [~~(approved)~~] blood test within thirty (30) days prior to [~~of date of~~] entry or originate directly and immediately from a qualified herd, and originate from a farm free of pseudorabies for the past six (6) months as evidenced on the Certificate of Veterinary Inspection [~~examination~~]. On entry, animals must be quarantined [~~for no less than thirty (30) days~~] and shall [~~must~~] show a negative post movement pseudorabies test within thirty (30) to sixty (60) days of entry.

(d) [~~(e)~~] Feeder pigs. All feeder pigs must also comply with 302 KAR 20:210, Pseudorabies surveillance.

(3) Other movements.

[~~(a) Registered feedlots. Not applicable.~~

~~(b) Salesyards and markets. No vaccination or treatment if consigned to recognized slaughtering center or to public stockyard or approved stockyard for reconsignment to recognized slaughtering center within ten (10) days of date of entry.~~

~~(c)~~] Farm premises. Identity to the farm of origin must be maintained on all breeding and feeding swine imported from farm premises to an approved stockyard or farm of destination.

(4) [~~(d)~~] Exhibition. All swine shall be in compliance with requirements noted above for swine with a Certificate of Veterinary Inspection issued [~~examination~~] within thirty (30) days prior to [~~of~~] entry. [~~See subsection (2)(b), (c), and (d) of this section.~~]

Section 5. Sheep. (1) General requirements. Certificate of Veterinary Inspection must have prior approval by the chief livestock health official of the state of origin.

(2) Specific diseases.

(a) Scrapie. [~~No sheep or lambs shall be imported that originated from or are known to be exposed to flocks under surveillance for scrapie.~~]

1. Entry or sale. No sheep or lambs shall be imported that originate from or known to be exposed to flocks listed as a scrapie affected surveillance flock by USDA APHIS VS. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC) shall be eligible for entry or sale. The Certificate of Veterinary Inspection shall document the flock is in compliance with the USDA VSFC Program.

2. Entry or exhibition.

a. Sheep or lambs shall be eligible for exhibition which originate from a flock enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC).

b. Sheep and lambs which originate from a flock listed as a surveillance flock by USDA APHIS Veterinary Services may be eligible for exhibition only if no clinical scrapie has occurred in the origin flock within the last eighteen (18) months and if no animal(s) from the flock of origin had positive scrapie confirmed by the National Veterinary Services Laboratory (NVSL) within the past eighteen (18) months. A statement by the veterinarian issuing Certificate of Veterinary Inspection shall document origin flock is in compliance with the USDA VSFC Program and the origin flock has not had clinical scrapie within the past eighteen (18) months and no animal(s) from the origin flock has been diagnosed as positive for scrapie by NVSL within the past eighteen (18) months.

c. All sheep and lambs for exhibition shall be in compliance with other requirements as noted in this administrative regulation for sheep and lambs and in addition shall be identified individually by ear or flank tattoo, ear tag or microchip. Such identification shall be entered on an approved Certificate of Veterinary Inspection.

(b) Scabies. All sheep or lambs for breeding or feeding purposes imported from a farm, ranch or like premises shall be accompanied by an approved [~~health~~] Certificate of Veterinary Inspection indicating such sheep and lambs originated directly and immediately from an official scabies eradicated free area.

(c) Sore mouth. Any sheep or lambs showing lesions of contagious exythma shall not be imported.

(d) Sheep and lambs infected with a contagious, infectious and communicable disease are not eligible for entry, sale or exhibition.

(2) Other movements.

[~~(a) Apparently~~] Healthy sheep and lambs may be imported into Kentucky for immediate slaughter when consigned directly to a recognized slaughtering center approved by the chief livestock health [~~sanitary~~] official of Kentucky or to a public stockyard, a state-federal approved stockyard, concentration point or public stockyard when reconsignment [~~reconsigned~~] from that point is [~~direct~~] to immediate slaughter.

(3) [~~(b)~~] Exhibitions [~~and shows~~]. All sheep and lambs for exhibition shall be in compliance with [~~to~~] requirements noted above as specified for sheep and in addition shall be identified individually by ear or flank tattoo, [~~or~~] ear tag or microchip. Such identification shall be entered on an approved [~~health~~] Certificate of Veterinary Inspection.

Section 6. Goats. (1) Specific diseases.

(a) Scabies. All goats must originate from a scab-free area.

(b) Scrapie. No goats from a herd under surveillance for scrapie or those that are known to have been exposed to or that are progeny shall be imported.

(c) [~~(2) Exhibition and sale.~~

~~(a)~~] Brucellosis. Animals six (6) months of age or older shall have an official negative [~~tube or card~~] test within [~~last~~] thirty (30) days prior to entry or originate directly and immediately from a certified herd.

(d) [~~(b)~~] Tuberculosis. Animals six (6) months of age or older shall have an official negative tuberculin test within [~~last~~] sixty (60) days

prior to entry or originate directly and immediately from accredited herd.

(2) Exhibition. All goats for exhibition shall be in compliance with requirements noted above as specified for goats with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 7. Poultry. (1) General requirements. Poultry shall be individually identified with an official leg or wing band on the Certificate of Veterinary Inspection which shall accompany the animals.

(2) Specific diseases.

[~~(a)~~] Salmonella Pullorum. Negative agglutination test within thirty (30) days prior to [~~of~~] date of entry. The laboratory conducting the test and test results shall be recorded on a Certificate of Veterinary Inspection and certificate shall accompany poultry.

(3) Other movements.

[~~(b)~~] Chicks and hatching eggs shall originate from a flock under the National Poultry [~~and/~~]or National Turkey Improvement Plan.

(4) [~~(2) Entry and/or~~] Exhibition. [~~Approved health~~] Certificate of Veterinary Inspection stating compliance with above requirements and in addition thereto all poultry shall be inspected prior to exhibition for evidence of any contagious, infectious, [~~contagious~~] or communicable disease of poultry. [~~Any~~] Evidence of any contagious, infectious or communicable[~~, infectious or contagious~~] disease shall be justification for the elimination of said poultry from exhibition [~~and/~~]or sale at no expense to the Commonwealth of Kentucky.

Section 8. Psittacine Birds. As regulated by Title 9, Part 82 Code of Federal Regulations[~~, filed herein by reference~~].

Section 9. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a [~~health~~] Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for three (3) year immunity by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, (Inc.); qualifies dog if it is one (1) year of age when vaccinated: provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish a Certificate of Veterinary Inspection. [~~an approved health certificate.~~]

(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Bureau for Health Services, Kentucky Cabinet for Human Resources.

Section 10. Fur Bearing Animals, Domesticated Wild Animals and Zoo Animals. Wild and semiwild animals under domestication or in custody may be imported into the state if accompanied by a permit and [~~health~~] Certificate of Veterinary Inspection and provided that a report of the number of animals is made to the chief livestock health [~~sanitary~~] official of Kentucky within ten (10) days and that immediate opportunity for examination is afforded a representative of the Division of Animal Health [~~Livestock Sanitation~~], Kentucky Department of Agriculture, to determine the health status of such animal or animals and the imports are presented for the administration of all laboratory procedures and tests deemed necessary by the chief livestock health [~~sanitary~~] official of Kentucky. Transportation permit required on wild, game animals, birds and fish. Permit to be obtained from Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601 (telephone 502-564-3400).

Section 11. Ratites (Ostrich, Emu, Rhea, Cassowary, Kiwi, etc.). (1) General requirements.

(a) A permit shall be obtained by calling (502) 564-3956 weekdays between the hours of 8 a.m. to 4:30 p.m. prior to entry into Kentucky. Permit number shall be recorded on the Certificate of Veterinary Inspection and certificate shall accompany ratite(s) on entry.

(b) All ratites shall have a permanent official identification approved by a state-federal agency.

(c) Any ratite with evidence of a contagious, infectious or communicable disease shall not be eligible for entry.

(2) Specific diseases.

(a) Ratites shall be negative to an official test for Avian Influenza within thirty (30) days of entry.

(b) Ratites shall be negative to an official test for Salmonella Pullorum within thirty (30) days of entry.

(c) Certificate of Veterinary Inspection shall include a statement that ratites are healthy and are not known to have been exposed to any contagious, infectious or communicable diseases within the last six (6) months.

(3) Exhibition. Ratites presented for exhibition shall be in compliance with requirements noted above as specified for ratites with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 12. Camelids (Llamas, Alpacas, Camels, etc.). (1) General requirements.

(a) A permit shall be obtained prior to entry of camelids into Kentucky by calling (502) 564-3956 weekdays between the hours of 8 a.m. to 4:30 p.m. Permit number shall be recorded on Certificate of Veterinary Inspection and certificate shall accompany animal(s) on entry.

(b) Camelids not weaned, when accompanied by their dam, shall be identified and recorded on the dam's Certificate of Veterinary Inspection.

(2) Specific diseases.

(a) Brucellosis. Camelids six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry.

(b) Tuberculosis. Camelids six (6) months of age or older shall be negative to an official axillary tuberculin test within sixty (60) days prior to entry.

(3) Exhibition. All camelids for exhibition shall be in compliance with requirements noted above as specified for camelids with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

ED LOGSDON, Chairman

APPROVED BY AGENCY: January 4, 1995

FILED WITH LRC: January 5, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, February 22, 1995 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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: Donna Greenwell Dutton, General Counsel, Department of

Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Donna Greenwell Dutton

(1) Type and number of entities affected: All persons who sell or exhibit livestock 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 were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: All animals sold or exhibited in Kentucky need permits provided by the Department of Agriculture, Division of Animal Health or a certificate of veterinary inspection.

2. Second and subsequent years: All animals sold or exhibited in Kentucky need permits provided by the Department of Agriculture, Division of Animal Health or a certificate of veterinary inspection.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.

2. Continuing costs or savings: The costs will generally be the same each year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(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: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(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: This regulation amends section of the regulation and adds additional requirements for other sections pertaining to the health of animals in Kentucky. These amendments are necessary for the health and well-being of animals in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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. This regulation establishes the same requirements for all persons who sell and exhibit animals in Kentucky.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:055. Brucellosis vaccination, testing and branding requirements.

RELATES TO: KRS Chapter 257, 257.020, 257.030, 257.040, 257.060, 257.070, 257.115

STATUTORY AUTHORITY: KRS 257.020, 257.030

NECESSITY AND FUNCTION: To specify the requirements for vaccination against the disease brucellosis, and to define the requirements for testing [~~and/~~]or branding [~~for eligible heifers not vaccinated~~].

[~~Section 1. General Provisions. (1) All eligible animals as defined in Section 2 of this regulation shall be handled according to the procedural requirements outlined in Section 3 of this regulation.~~

~~(2) All eligible female animals which comply by vaccination with this regulation shall be vaccinated with an approved Brucella vaccine, following the vaccination protocol set forth by the state veterinarian's office.~~

~~(3) Note that Section 3 of this regulation requires that all eligible animals that are vaccinated as defined in Section 2 of this regulation must be vaccinated between four (4) and ten (10) months of age.~~

~~Section 2. Eligible Animals. (1) Female bovine animals four (4) months to ten (10) months of age which enter the Commonwealth of Kentucky for feeding or breeding purposes. Animals going to one (1) state or federally approved livestock market, or to an approved livestock assembly facility or directly to slaughter or spayed animals that have been branded with "open spade" brand or animals for exhibition purposes only are exempt. Eligible female animals entering the state shall move to only one (1) market or approved livestock assembly facility and one (1) additional approved assembly point, for the purposes of complying with this regulation and the Kentucky entry regulation, 302 KAR 20:040, when said animals are to remain in Kentucky. If the eligible female animals are to move out of state the animals shall comply with the specific entry requirements of their ultimate state of destination.~~

~~(2) Female bovine animals four (4) months to ten (10) months of age purchased at a Kentucky livestock market, must be vaccinated, "F" branded on the hip or tail head or tested at the market with a quarantine for retest at sixty (60) to 120 days afterward, to move to a farm in Kentucky. Females younger than four (4) months of age, may, if in compliance with Kentucky entry regulation above, move to a farm in Kentucky under quarantine pending compliance with this regulation at four (4) months of age.~~

~~(3) Female bovine animals four (4) months to ten (10) months of age which are presented for change of ownership by private treaty must comply with one of the listed vaccination, testing, or branding procedural requirements as outlined in Section 3 of this regulation. The farm of origin, with the individual animal identification ear tag number must appear on the forms (vaccination, branding, or testing) utilized to effect compliance with the state of destination requirements. The above shall be completed prior to the animals being moved from the seller's premise and no animals shall be moved without permanent ear tag identification. The above requirements are the seller's responsibility. Eligible females under four (4) months of age may move to the purchaser's premise in Kentucky and comply under quarantine at four (4) months of age. Eligible female animals changing ownership to be moved out of state must meet the entry requirements of the state of destination and must be accompanied by a certificate of veterinary examination or "health certificate" verifying compliance. This shall be the purchaser's responsibility.~~]

Section 1. Vaccination and Branding Protocol. [~~3. Procedural Requirements.~~] (1) Female [~~Eligible~~] animals which are vaccinated must be officially vaccinated between four (4) and ten (10) months of age with an approved reduced dosage Brucella vaccine and identified by a vaccination tattoo in the ear and an official vaccination ear tag, or, in the case of registered cattle, by an identification tattoo.

(a) [A] Vaccination tattoo shall be placed in the right [~~in~~] the ear and shall legibly identify the quarter of the year, shield and the calendar year of vaccination.

(b) [~~An~~] Official vaccination ear tag shall be placed in the right ear and shall identify the animal according to the state of origin, official vaccinate status and individual identification number.

(2) [~~Eligible~~] Animals must be vaccinated, [~~"F"~~] branded, or tested by, or under the supervision of, a licensed, accredited veterinarian or by an authorized agent of the board or by authorized federal personnel (i.e., includes "S" branding).

(3) Official documentations of the above listed procedures will be promptly conveyed to the office of the state veterinarian on appropriate forms provided by same.

(4) Animals on Kentucky farms or changing ownership on a Kentucky farm can be vaccinated with funds appropriated by the Commonwealth of Kentucky if available. [~~The cost of vaccination at a livestock market is the responsibility of the purchaser.~~]

(5) No person shall tamper with the vaccination tattoo or official vaccination ear tag, and no person shall retattoo any animal unless approval is first obtained from the Kentucky State Veterinarian or from Kentucky's area veterinarian in charge (AVIC). [~~Division of Livestock Sanitation.~~] No person shall tamper with an official brand, ear tag or other individual animal identification device.

(6) Location of brands: "S" on the face or hip, "open spade" on the hip.

Section 2. Procedure Requirements. (1) Sexually intact females twelve (12) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to change of ownership unless exempted by one (1) of the following:

(a) Originate directly from a brucellosis certified free herd; or

(b) Official calfhood vaccinate of the dairy breeds less than twenty (20) months of age or official calfhood vaccinate of the beef breeds less than twenty-four (24) months of age; or

(c) Open heifers less than eighteen (18) months of age designated for feeding purposes. Diversion of "feeder" heifers for use as breeding animals without meeting applicable test requirements shall be a violation of this administrative regulation; or

(d) Identified with a "S" brand. Such animals shall move directly to recognized slaughter facilities or to designated quarantined feedlots in states approving such movement.

(2) [~~(6)~~] Female bovine animals sold through a Kentucky livestock market when eligible [~~returning to a Kentucky farm~~] shall be identified as to farm of origin.

[~~(7) All animals exported from Kentucky shall meet the requirements of the state of destination. The options for heifers to remain in Kentucky are:~~

~~(a) Heifers four (4) to ten (10) months of age, shall be vaccinated or "F" branded on hip or tail head;~~

~~(b) Heifers eleven (11) to eighteen (18) months of age, shall be tested, official calfhood vaccinated, "F" branded or "S" branded;~~

~~(c) Such "F" branded heifers may move to approved farms in Kentucky only and may not be used for breeding purposes; specific farms will be approved by the state veterinarian for feeding purposes and those premises will be routinely checked by division field personnel.~~]

(3) [~~(8)~~] Fattened heifers, intended for slaughter only, or consigned directly to a slaughter facility must meet federal requirements.

[~~(9) The age of test eligible female animals (eighteen (18) months of age) shall be determined when the age is apparent upon the emergence of the first pair of permanent incisor teeth (i.e., the nippers).~~

~~(10) Movement of "F" branded heifers. Such heifers may move to approved farms in Kentucky only and may not be used for breeding purposes. Specific farms will be approved by the state veterinarian for feeding purposes, and those premises will be routinely checked by division field personnel.~~

~~(11) Movement of "S" branded cattle. Such cattle must move directly to recognized slaughter facilities, or to designated quarantined feedlots in states approving such movement.~~

~~(12) "F" branded cattle which become pregnant. It shall be considered a violation of this regulation to breed or to otherwise cause any "F" branded female to become pregnant or to keep any "F" branded female which is pregnant.~~]

(4) [~~(13)~~] Spayed heifers[~~:~~] may move freely in Kentucky, [~~as do steers~~] when in compliance with appropriate movement certification. Such heifers are identified with an "open spade" brand.

[~~(14) Location of brands: "S" on the face or hip, "F" on the hip, "open spade" on the hip.~~

~~(15) Minimum size of the "F" brand: two (2) inches by three (3) inches.~~

~~(16) Movement of test eligible animals back to another farm in Kentucky after purchase at a livestock market or following private purchase. These animals will be moved under quarantine to the Kentucky premise for a second brucellosis test. Quarantines will be released upon the results of the sixty (60) to 120 day negative serology results and shall be paid for by the purchaser, unless the test is done at a livestock market under first point testing qualifications. An animal which is under quarantine shall not be commingled with animals in an established herd unless a second negative test is accomplished sixty (60) to 120 days after purchase or movement under quarantine is permitted by the state veterinarian.~~

~~(17) All animals exported from Kentucky shall meet the requirements of the state of destination.~~

~~(18) The procedures for vaccinating, testing, branding, and individual animal identification shall be approved by the state veterinarian and shall be performed under the supervision of a licensed accredited veterinarian or performed at a Kentucky livestock market under the supervision of the official market veterinarian.~~]

(5) [~~(19)~~] Approved livestock assembly facility. [~~As listed in Section 2 of this regulation,~~] These facilities will be approved by the Department of Agriculture and be designated only for cattle assemblage. Vaccination, testing [~~and~~/]or branding requirements must be met prior [~~upon entry~~] to release of animals from these facilities, and records of state and farm of origins must be kept by the operators. Animals imported into Kentucky and remaining in Kentucky after entering an approved livestock assembly facility must also meet Kentucky's entry requirements [~~in accord with the state of origin,~~] 302 KAR 20:040. Animals [~~Kentucky origin nonvaccinates remaining in Kentucky must be~~] tested for brucellosis by the designated veterinarian shall [~~and~~] remain at the facility until the results are known negative. [~~Such animals may enter a Kentucky premise under quarantine, pending a sixty (60) to 120 day release upon demonstration of negative results of the second negative brucellosis test.~~]

(6) The test eligible age of eighteen (18) months shall be determined by the loss of the first pair of temporary incisor teeth.

(7) The test eligible age for official calfhood vaccinated females of dairy breeds shall be twenty (20) months of age and shall be determined by the partial eruption of the first pair of permanent incisors (twenty (20) months of age or older).

(8) The test eligible age for official calfhood vaccinated females of beef breeds shall be twenty-four (24) months of age and shall be determined by the first pair of permanent incisors fully erupted (two (2) years of age or older).

(9) Heavy springers or cows postpartum shall be tested eligible regardless of age.

ED LOGSDON, Chairman

APPROVED BY AGENCY: January 4, 1995
FILED WITH LRC: January 5, 1995 at noon
PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, February 22, 1995 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Donna Greenwell Dutton
(1) Type and number of entities affected: All cattle owners 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 were received.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: There will be no increase in compliance, reporting and paperwork requirements.
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 effect.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: There will be no increase in reporting and paperwork requirements.
(b) Reporting and paperwork requirements:
(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: Existing personnel will be used for enforcement.
(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.
(a) Geographical area in which administrative regulation will be implemented: No public comments were received.
(b) Kentucky: No public comments were received.
(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.
(8) Assessment of expected benefits:
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation sets forth the requirements for brucellosis vaccination, testing and branding. Additionally, it amends the test eligible age for official calfhood vaccination from 20 to 24 months of age.
(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.
(c) If detrimental effect would result, explain detrimental effect:
(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: 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. This regulation treats all cattle owners in Kentucky the same.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:065. Sale and exhibition of Kentucky origin livestock in Kentucky.

RELATES TO: KRS Chapter 257
STATUTORY AUTHORITY: KRS 257.030
NECESSITY AND FUNCTION: To specify [~~general sanitary and~~] health requirements for [~~in relation to~~] the sale and exhibition of Kentucky livestock in Kentucky. Sale and exhibition requirements for out-of-state livestock refer to 302 KAR 20:040, Entry into Kentucky.

Section 1. General Requirements. (1) All animals, except as noted, shall be accompanied by a Certificate of Veterinary Inspection. Certificate of Veterinary Inspection shall be void 150 days after issuance for exhibition. Certificate of Veterinary Inspection shall be void thirty (30) days after issuance for sale.
(2) All required testing shall be conducted by a state-federal approved laboratory.

Section 2. [~~1.~~] Cattle. (1) General requirements.
[~~(a) All animals, except as noted, shall be accompanied by an approved health certificate. Health certificates shall be void 150 days after issuance for exhibition and thirty (30) days after issuance for sale.~~]
(a) [~~(b)~~] If animals are from an accredited or certified herd[~~s~~], Certificate of Veterinary Inspection [~~health certificate~~] shall document [~~show~~] accreditation and certification number with date of last herd test for tuberculosis and brucellosis.
(b) [~~(c)~~] Blood tests for brucellosis must be conducted by an approved [~~in~~] a state-federal laboratory and shall be negative according to recommended procedures of the Uniform Methods and Rules published by APHIS, VS, USDA.
(c) [~~(d)~~] Cattle presented for change of ownership shall [~~must~~] comply with 302 KAR 20:055[~~, Brucellosis vaccination, testing and branding requirements~~].
(d) Cattle infected with warts, ringworm or any contagious, infectious or communicable disease are not eligible for sale or exhibition.
(2) Brucellosis.
(a) Sale. Breeding animals, beef and dairy twelve (12) months of age or older shall be negative to an official brucellosis test [~~All breeding cattle must be tested~~] within thirty (30) days prior to change of ownership unless exempted by one (1) of the following. This will be the sellers' responsibility and the cattle may not be moved until the test results are found to be negative. [~~Following a change of ownership whether by private sale, consignment, production, performance, contract, or otherwise all cattle shall be quarantined for retest between sixty (60) to 120 days unless originating from a certified herd.~~]
1. Originate directly from a certified herd.

2. Official calfhood vaccinates of dairy breeds under twenty (20) months of age or official calfhood vaccinates of beef breeds under twenty-four (24) months of age.

3. Heavy springers and cows postpartum are test eligible regardless of age.

(b) Exhibition. Animals twelve (12) [~~six (6)~~] months of age or older shall be negative to an official test for brucellosis within 150 days prior to [~~of~~] date of exhibition, unless exempt by one (1) of the following:

1. Originate directly from a certified herd.

2. Official calfhood vaccinates of dairy breeds under twenty (20) months of age or official calfhood vaccinates of beef breeds under twenty-four (24) months of age. [~~Official vaccinates under eighteen (18) months of age for all breeds.~~]

3. Steers and spayed heifers shall [~~. Must~~] be accompanied by a Certificate of Veterinary Inspection and certificate shall [~~approved health certificate~~] show[~~ing~~] individual identification. No brucellosis test required.

4. Heavy springers and cows postpartum are test eligible regardless of age.

(3) Tuberculosis.

(a) Sale. No test required. [~~Animals six (6) months of age or older shall be negative to an official tuberculin test within sixty (60) days of date of sale, unless exempt by one (1) of the following:~~

~~1. Originate directly from an accredited herd or a tuberculosis free state.~~

~~2. Originate directly from a herd in which all animals six (6) months of age or older are negative to an official tuberculin test within last twelve (12) months of date of sale.~~]

(b) Exhibition. No test required.

Section 3. [~~2.~~] Performance Bull Testing Program. (1) All animals shall be accompanied by a Certificate of Veterinary Inspection. [~~approved health certificates.~~]

(2) Brucellosis. Animals entered in this program shall, if twelve (12) [~~six (6)~~] months of age or older, be negative to an official brucellosis test within thirty (30) days prior to [~~of~~] date of entry or originate directly and immediately from a certified herd.

(3) Tuberculosis. No test required. [~~All animals six (6) months of age or older shall be negative to an official tuberculin test within sixty (60) days or originate directly and immediately from an accredited herd.~~]

Section 4. [~~3.~~] Horses. Specific diseases. Equine infectious anemia. (1) Sale. All horses and other equidae, except unweaned foals accompanied by their dam, six (6) months of age or older to be sold, offered for sale, traded, given away, leased, or moved for the purpose of change of ownership shall be negative to an AGID test or other USDA approved test for equine infectious anemia within the previous six (6) months. Equine which are offered for sale at approved auction markets without proof of a negative test for EIA within the previous six (6) months shall have a blood sample drawn at the market by the approved market veterinarian at the seller's expense.

(2) Exhibition. All horses and other equidae, except unweaned foals accompanied by their dam, six (6) months of age or older, offered for exhibition (i.e., entry into fairgrounds, livestock show grounds, public boarding stables, trail rides, racing, etc.) shall be negative to an AGID test or other USDA approved test for equine infectious anemia within twelve (12) months.

[~~(1) All horses entering Kentucky, except unweaned foals, and other equidae, for any purpose other than for immediate slaughter shall be accompanied by an official certificate of veterinary examination of state of origin issued by a state, federal or licensed accredited veterinarian and such certificate shall include:~~

~~(a) Veterinarian's statement that examination was made within the past thirty (30) days and revealed the animal to be free of symptoms of any infectious disease or exposure thereto; and~~

~~(b) Shall include any tests that have been conducted as well as all vaccinations including vaccination date and type of vaccine used; and~~

~~(c) Have attached thereto a copy of certificate of report from a laboratory approved by the USDA showing the animal(s) to be negative to AGID test for equine infectious anemia within the past six (6) months, if offered for sale.~~

~~(2) No horses shall be sold, offered for sale, traded, given away, or moved for the purpose of change of ownership unless accompanied by evidence of an official negative test for equine infectious anemia within six (6) months of sale or movement except as listed in this subsection. Equine which are offered for sale at approved auction markets will have a blood sample drawn at the market by the market's veterinarian at the seller's expense. Equine which are accompanied by an original negative certificate of test for equine infectious anemia, dated within the past six (6) months, may be exempt from the testing by the market's veterinarian provided the certificate positively identifies the equine which is being offered for sale.~~

~~(3) All horses and other equidae offered for entry into fairgrounds, livestock show grounds, public boarding stables, and for trail rides or racing shall be negative to tests for AGID within twelve (12) months and shall be accompanied by certificate of report from a laboratory approved by the USDA.~~

~~(4) All reactors to AGID test for equine infections anemia shall be officially, permanently identified using numbers and letter 61A with a brand on the left neck region.~~

~~(5) All reactors not slaughtered or euthanized shall be isolated and quarantined. This isolation shall include stabling in a stall that is screened to preclude entry and exit of mosquitoes, stable flies and horse flies during those seasons of the year when such insects are prevalent. These animals will also be kept at least 200 yards from all other horses.~~

~~(6) The movement of any quarantined reactor shall be done only on permission of representative of the Department of Agriculture.~~

~~(7) All horses in a herd in which a reactor is found shall be quarantined pending a negative test on all horses.~~]

Section 5. [~~4.~~] Swine. (1) General requirements.

(a) [~~All swine for exhibition and sale must be accompanied by a certificate of veterinary examination which shall be void 150 days after issuance for exhibition and thirty (30) days after issuance of sale.~~

~~(b)~~] All swine shall [~~must~~] have an official [a] permanent [~~means of~~] identification.

(b) [~~(c)~~] If animals originate from a validated and qualified herd[s], the Certificate of Veterinary Inspection [~~examination~~] shall document herd [~~show~~] validation and qualification number with date of last herd test for brucellosis and pseudorabies.

(2) Brucellosis.

(a) Sale. All swine, except barrows, six (6) months of age or older shall have a negative test within thirty (30) days prior to sale [~~test~~] in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, or originate directly and immediately from a validated herd.

(b) Exhibition. All swine, except barrows, six (6) months of age or older shall have a negative brucellosis test within 150 days prior to date of exhibition [~~test~~] in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, or originate directly and immediately from a validated herd. Swine exhibiting in a terminal market hog show in which all swine proceed directly to slaughter are exempt from test requirements if no other livestock are present in the exhibition area. The exhibition area shall not be used for livestock exhibition purposes until properly cleaned and disinfected in accordance with state-federal requirements.

(3) Pseudorabies.

(a) Sale. All swine[~~, six (6) months of age or older,~~] shall be negative to an official pseudorabies [~~approved~~)] blood test within thirty (30) days prior to sale or originate directly and immediately from a

qualified herd.

(b) Exhibition. All [~~out of state~~] swine[~~, six (6) months of age or older,~~] shall be negative to an official pseudorabies [~~(approved)~~] blood test within 150 [~~thirty (30)~~] days prior to date of [~~consignment for~~] exhibition or originate directly and immediately from a qualified herd. Swine exhibiting in a terminal market hog show in which all swine proceed directly to slaughter are exempt from test requirements if no other livestock are present in the exhibition area. The exhibition area shall not be used for livestock exhibition purposes until properly cleaned and disinfected in accordance with state-federal requirements.

(c) Feeder pigs. All feeder pigs shall [~~must~~] comply with 302 KAR 20:210, Pseudorabies surveillance.

Section 6. [~~5.~~] Sheep. (1) General requirements.

(a) All sheep and lambs shall be officially identified by ear or flank tattoo, official ear tag or by microchip and entered on a Certificate of Veterinary Inspection.

(b) Sheep and lambs infected with any contagious, infectious or communicable disease are not eligible for sale or exhibition.

(2) Scrapie.

(a) Sale.

1. No sheep or lambs shall be consigned that originate from or are known to be exposed to flocks listed as a scrapie affected surveillance flock by USDA APHIS VS.

2. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC) shall be eligible for sale. Certificate of Veterinary Inspection shall document flock is in compliance with the USCA VSFC Program.

(b) Exhibition.

1. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC) shall be eligible for exhibition. Certificate of Veterinary Inspection shall document flock is in compliance with the USDA VSFC Program.

2. Sheep and lambs which originate from a flock listed as a surveillance flock by USDA APHIS VS may be eligible for exhibition only if no clinical scrapies has occurred within the origin flock within the last eighteen (18) months and if no animal(s) from the flock of origin had positive scrapie confirmed by the National Veterinary Service Laboratory (NVSL) within the last eighteen (18) months. A statement by the veterinarian issuing the Certificate of Veterinary Inspection shall document this requirement for exhibition. [~~No sheep or lambs shall be consigned that originated from or are known to be exposed to flocks under surveillance for scrapie.~~]

(3) [~~(2)~~] Scabies. All sheep or lambs for breeding and feeding purposes consigned from a farm, ranch or like premises shall be accompanied by a[~~n approved~~] health Certificate of Veterinary Inspection indicating such sheep and lambs originated directly and immediately from an official scabies-eradicated-free area.

(4) [~~(3)~~] Sore mouth. Any sheep or lambs showing lesions of contagious exythma shall not be eligible for exhibition or sale. [~~consigned~~].

[~~(4) Sale. All sheep and lambs consigned shall be identified individually by ear tattoo or ear tag and entered on an approved health certificate which is good for thirty (30) days after issuance.~~

~~(5) Exhibition. All sheep and lambs consigned shall be identified individually by ear tattoo or ear tag and entered on an approved health certificate which is good for 150 days after issuance.~~]

Section 7. [~~6.~~] Goats. (1) Scabies. All goats must originate from a scab-free area.

(2) Scrapie. No goats from a herd under surveillance for scrapie that are known to have been exposed to or that are progeny shall be considered.

(3) Brucellosis.

(a) Sale. Animals six (6) months of age or older shall have a negative test within thirty (30) days prior to sale [~~test~~] in accordance with the Uniform Methods and Rules published by APHIS, VS, USDA, as applies to the bovine test or originate directly from a certified herd [~~and be accompanied by an approved health certificate which shall be void thirty (30) days after issuance~~].

(b) Exhibition. Goats six (6) months of age or older shall be negative to an official blood test for brucellosis within 150 days prior to [~~of~~] exhibition or originate directly from a certified herd [~~and be accompanied by an approved health certificate which shall be void 150 days after issuance~~].

(4) Tuberculosis.

(a) Sale. Animals six (6) months of age or older shall have negative tuberculin test within [~~last~~] sixty (60) days prior to sale or originate directly and immediately from an accredited herd.

(b) Exhibition. Goats six (6) months of age or older shall be negative to an official tuberculosis test within 150 days prior to exhibition or originate directly from an accredited TB free herd. [~~No test required.~~]

Section 8. [~~7.~~] Poultry. (1) General requirements. Poultry shall be individually identified with an official leg or wing band on a Certificate of Veterinary Inspection. Certificate shall accompany poultry when presented for sale or exhibition.

(2) Salmonella Pullorum. Sale and exhibition. Negative agglutination test within thirty (30) days prior to date of sale or within 150 days prior to date of exhibition. A Certificate of Veterinary Inspection shall accompany bird(s) when presented for sale and exhibition and shall document laboratory conducting test and test date.

(3) Chicks and hatching eggs shall originate from a flock under the National Poultry or National Turkey Improvement Plan. [~~Negative pullorum agglutination test within thirty (30) days for sale and/or exhibition. Test record must accompany poultry.~~]

Section 9. [~~8.~~] Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a [~~health~~] Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies, or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for a three (3) year immunity by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, (Inc.), qualifies a dog if it is one (1) year of age when vaccinated; provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish a [~~an approved health~~] Certificate of Veterinary Inspection.

(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Department for Health Services, Kentucky Cabinet for Human Resources.

Section 10. Ratites (Ostrich, Emu, Rhea, Cassowary, Kiwi, etc.). (1) General requirements.

(a) A permit shall be obtained by calling (502) 564-3956 weekdays between the hours of 8 a.m. - 4:30 p.m. prior to sale of all ratites in Kentucky. This permit number shall appear on the Certificate of Veterinary Inspection accompanying the animals.

(b) All ratites shall have a permanent official identification approved by a state-federal agency.

(c) Any ratite with evidence of a contagious, infectious or communicable disease shall not be eligible for sale or exhibition.

(2) Specific diseases.

(a) Ratites shall be negative to an official test for Avian Influenza

within thirty (30) days prior to sale.

(b) Ratites shall be negative to an official test for Salmonella Pullorum within thirty (30) days prior to sale.

(c) Veterinarian's statement that the ratite is not showing signs of any contagious, infectious or communicable disease.

(3) Exhibition. Ratites shall be negative to an official test for Avian Influenza and Salmonella within 150 days prior to date of exhibition.

Section 11. Camelids (Llamas, Alpacas, Camels, etc.). (1) Brucellosis.

(a) Camelids six (6) months of age or older shall be negative to an official brucellosis test within 150 days prior to date of exhibition.

(b) Camelids six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to date of sale.

(c) Camelids not weaned, when accompanied by their dam shall be identified and recorded on the dam's Certificate of Veterinary Inspection.

(2) Tuberculosis.

(a) Camelids six (6) months of age or older shall be negative to an official axillary tuberculin test within 150 days prior to date of exhibition.

(b) Camelids six (6) months of age or older shall be negative to an official axillary tuberculin test within sixty (60) days prior to sale.

(c) Camelids not weaned, when accompanied by their dam shall be identified and recorded on the dam's Certificate of Veterinary Inspection.

ED LOGSDON, Chairman

APPROVED BY AGENCY: January 4, 1995

FILED WITH LRC: January 5, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, February 22, 1995 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Donna Greenwell Dutton

(1) Type and number of entities affected: All persons who sell and exhibit livestock 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 were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Generally, this proposed amendment "cleans up" the existing regulation. This amendment makes changes for the sale and exhibition of Kentucky cattle, bulls, horses and swine in Kentucky and amends sections pertaining to the diseases associated with cattle, horses and swine. Also, this regulation adds new sections pertaining to the sale and exhibition of Kentucky sheep, goats, poultry and ratites in Kentucky.

2. Second and subsequent years: Generally, this proposed amendment "cleans up" the existing regulation. This amendment makes changes for the sale and exhibition of Kentucky cattle, bulls, horses and swine in Kentucky and amends sections pertaining to the diseases associated with cattle, horses and swine. Also, this regulation adds new sections pertaining to the sale and exhibition of Kentucky sheep, goats, poultry and ratites in Kentucky.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: There will be no increase in reporting and paperwork requirements.

(b) Reporting and paperwork requirements:

(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: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation sets forth sanitary and health requirements for the sale and exhibition of Kentucky livestock in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(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: This regulation is in compliance with the Code of Federal Regulations and is consistent with foreign countries import requirements.

(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. This regulation treats all persons who sell and exhibit livestock in Kentucky the same.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:070. Stockyards.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030

NECESSITY AND FUNCTION: To designate sanitary requirements, and operational procedures in all stockyards relative to disease control.

Section 1. Operating Sale Requirements. (1) The owner or

manager operating a stockyard shall arrange for an accredited, licensed veterinarian approved by the Department of Agriculture to be present in said sales point to carry out the provisions of this regulation.

(a) A licensed, accredited veterinarian seeking approval by the board to be designated official market veterinarian shall make application and state that he (she) will comply with this and all associated regulations relative to the responsibilities of the position.

(b) The official market veterinarian shall be responsible to replace himself with another approved (by the board) veterinarian in the event he finds it necessary to be absent from the market.

(c) The official market veterinarian shall not resign his (her) duties without written notice to the sale company and the state veterinarian's office at least ten (10) days prior to resignation.

(d) The failure or neglect to properly perform any of the responsibilities and duties of the official market veterinarian shall be cause for disapproval and immediate removal from the market.

(2) The person operating a stockyard shall provide separate pens [~~or a yarded division~~] for isolating animals classed as reactors to brucellosis or any communicable disease. Said pens are to be permanently identified as "bangs" pens and the word is to be spelled out on the gates to such pens. The pens shall be constructed so as to facilitate easy cleaning and disinfecting after each use. The pens must have concrete floors and complete walls (no fences or gates to permit contact with adjacent animals). Any watering troughs or feed bunks in the "bangs" pens shall be located so that no other livestock in the market can access them at any time. All reactor animals shall be yarded in the "bangs" pens and shall be sold last. Such animals shall be identified as reactors on the invoices of both the buyer and the seller. The "bangs" pens may not be used at any time for any other than for known brucellosis reactors, or brucellosis suspects going directly to a recognized slaughter establishment. Temporary "bangs" pens may be used when necessary if prior approval for the use of such pens has been obtained from an agent of the State Board of Agriculture. Temporary pens must be identified as "bangs" pens as provided in this section.

(3) The owner operating a stockyard shall provide adequate space, utilities, hot water and assistance for the accredited, licensed veterinarian to officially carry out the provisions of this regulation. All licensed Kentucky livestock markets shall provide the following requirements for the market's testing laboratory:

(a) Constructed and equipped so as to be maintained at room temperature (normal working temperature) in both summer and winter (i.e., heaters and air conditioners).

(b) Provide a sink with hot and cold running water.

(c) Be equipped with a refrigerator in good working condition.

(d) Be constructed so that the market veterinarian shall have sufficient space and privacy to conduct the required tests and fill out the associated records and forms.

(e) Be constructed so that it can be kept clean easily and locked at all times when not in use.

(f) Contain a work counter and sufficient shelf space, cabinets with locks, and storage space to keep forms, ear tags, etc., as required by the official market veterinarian in carrying out his (her) duties.

(g) The laboratory shall be supplied with adequate artificial light. The electrical wiring must be adequate to carry at a minimum a centrifuge, electrical refrigerator, cooling facility and have at least two (2) additional electrical outlets.

(h) The laboratory must be located so as to be convenient for the veterinarian and the public while conducting his (her) duties as the official market veterinarian.

(4) The owner or operator shall furnish and maintain one (1) or more cattle chutes suitable for restraining animals for inspection of any infectious, contagious or parasitic condition, testing, tagging, branding and other procedures routinely required in providing livestock sanitary services and identification for movement at stockyards.

(5) The owner or operator shall maintain records of the seller and purchaser of all livestock for one (1) year. These records to be made available to Department of Agriculture representatives for inspection upon request during regular business hours.

(6) The owner or operator shall provide adequate facilities and service at a reasonable cost, if not available at or near the yards, for cleaning and disinfecting cars, trucks or other vehicles which have transported to the stockyards animals known to be infected with or exposed to a contagious, infectious, communicable or parasitic disease with a disinfectant approved by the chief livestock health [~~sanitary~~] official.

Section 2. General Requirements. (1) All stockyards shall be maintained in a workable and sanitary condition. Stockyards shall be inspected as required by a representative of the board.

(2) After an occurrence of any infectious, contagious, parasitic or communicable disease of livestock in a stockyard, exposed facilities capable of transmitting disease shall be cleaned and disinfected with approved disinfectants in a manner approved by the chief livestock health [~~sanitary~~] official.

(3) Livestock found to be infected and showing clinical or diagnostic symptoms of an infectious, contagious, parasitic or communicable disease shall upon recommendation of stockyard veterinarian or authorized representative of the chief livestock health [~~sanitary~~] official be quarantined in an isolated portion of the yards for treatment, additional diagnostic laboratory procedures, disposition to slaughter or other disposition pursuant to accepted methods of disease prevention and control.

(4) All livestock originating from a quarantined herd or premises shall be sold under permit for immediate slaughter.

(5) The card test shall be the official test for brucellosis at stockyards. All animals showing positive reaction to the card test must be identified and sold for immediate slaughter, unless quarantined by the state veterinarian or agent of the board for further testing. The Concentrate Immunoassay Technology (CITE) test may be used as a supplemental test to the card test when available. Indemnity will be paid for reactors disclosed by stockyard test as long as state- federal funds are available.

(6) Upon disclosure of a card positive classified animal [~~reactor(s)~~] by the stockyard veterinarian, or by state-federal personnel, all female and breeding cattle in the consignment shall be classified as brucellosis [~~are~~] exposed cattle, unless other USDA approved brucellosis tests are conducted and interpretation of such test(s) are reported negative. When other USDA approved tests are not conducted the card positive animal and all animals in the consignment except steers and spayed heifers shall [~~and must~~] be returned to the farm of origin under quarantine for retesting or sold for slaughter with proper identification. Assembled cattle are considered to be a herd.

(7) Exposed animals and reactor animals will be identified as described in Title 9, CFR, 78.7 and 78.8[~~, herein filed by reference~~].

(8) Female bovine animals sold through a Kentucky livestock market returning to a Kentucky farm shall be identified as to farm of origin. [~~Cattle entering the market shall be vaccinated, tested or branded as required in 302 KAR 20:055.~~]

(9) The market veterinarian or the sale company shall not be responsible for the results of any tests that are performed properly or any reactor animals found in the market. All reactor animals shall revert back to the consignor.

Section 3. Veterinary Compensation. Accredited veterinarians shall receive for any services rendered a fee that has been agreed on by the stockyard operators and the accredited veterinarians. Such fees shall be deducted from the seller's check or added to the buyer's check, depending upon conditions of sale and shall be paid to the accredited veterinarian, except for those services reimbursed pursuant to a state-federal cooperative program. Reimbursement for brucellosis

vaccinations done at a Kentucky farm pursuant to a state cooperative program may be made under such terms and conditions as the state veterinarian may approve.

Section 4. Veterinary Duties. The stockyard veterinarian shall perform the following described duties in cooperation with representative(s) of the department. The market veterinarian must arrive at the market in sufficient time to do all the required testing and inspection prior to the beginning of the sale.

(1) Examine, validate and issue certificates pertinent to the movement of livestock to be sold.

(2) Conduct required test of livestock.

(3) Visually inspect all livestock for clinical signs of contagious, infectious diseases.

(4) Obtain blood samples. Aid and assist in conducting of associated laboratory tests. Submit such specimens to state- federal laboratory for confirmation. Such specimens shall be posted by mail or delivered directly to state-federal laboratory.

(5) Compile and present such reports as are routinely required to the chief livestock health [~~sanitary~~] official.

(6) Report the presence of any animal showing symptoms suggestive of a "reportable" disease or any other disease that the market veterinarian feels poses the threat of spread of a communicable livestock disease which may warrant the actions of the state veterinarian.

(7) Copies of all forms must be forwarded to the office of the state veterinarian by the official market veterinarian immediately after the sale. All official forms, certificates, or documents and official stamps, shall be kept in the exclusive possession of the market veterinarian and shall be dated and signed by him/her only at the time they are filled out and issued. Under no circumstances shall any official document be presigned or prestamped by the market veterinarian. The use of any official stamp by persons other than the approved market veterinarian or state livestock inspector or official, or federal employee is expressly prohibited. The approved market veterinarian shall be solely responsible for the unauthorized use or improper issuance of any official document or the use of any official stamp.

(8) The market veterinarian must remain at the market a reasonable length of time to allow buyers to get their livestock approved for release.

(9) The market veterinarian must use separate bleeding needles and syringes for each animal bled. He must follow accepted standards for sterility to prevent the transmission of infectious agents to livestock being tested.

(10) [~~The market veterinarian or the sale company shall not be responsible for the results of any tests that are performed properly or any reactor animals found in the market. All reactor animals shall revert back to the consignor.~~

~~(11)~~] All cattle, excluding steers and spayed heifers, returning to a Kentucky farm shall not be removed from Kentucky markets unless accompanied by an official release form signed by the market veterinarian or an agent of the board or by authorized federal personnel. All cattle must meet the state of destination's requirements. [~~Movement of Kentucky cattle age eighteen (18) months or older moved from a stockyard back to another farm in Kentucky after purchase at a livestock market or following private purchase: these animals will be moved under quarantine to the Kentucky premise for a second brucellosis test. Quarantines will be released upon the results of the sixty (60) to 120 day negative serology results and shall be paid for by the purchaser, unless the test is done at a livestock market under first point testing qualifications. An animal which is under quarantine shall not be commingled with animals in an established herd unless a second negative test is accomplished sixty (60) to 120 days after purchase or movement under quarantine is permitted by the state veterinarian.~~]

Section 5. Cattle Requirements. (1) Tuberculosis.

(a) Imports. Cattle six (6) months of age or older for dairy and breeding purposes shall be negative to an official tuberculin test within sixty (60) [~~thirty (30)~~] days of date of entry or originate directly and immediately from an accredited herd or eradicated free state.

(b) Cattle classified as suspects or those originating from a quarantined herd shall not be imported.

(c) Reciprocal agreements with adjoining states may be effective in lieu of specific requirements.

(d) Kentucky cattle: no tuberculosis requirements if to a Kentucky destination.

(2) Brucellosis.

(a) All cattle twelve (12) [~~six (6)~~] months of age or older offered for sale at the stockyard for breeding and diary purposes, shall be negative to an official brucellosis test. The above described cattle shall have blood samples tested, at sellers or purchaser's expense, at the stockyard unless exempt by the following:

1. Consigned on a Certificate of Veterinary Inspection documenting animal(s) originated from a herd that had a complete herd test that was negative to brucellosis within the previous thirty (30) days.

2. Originate directly and immediately from a certified herd and accompanied by a Certificate of Veterinary Inspection or herd certification may be documented by presenting a valid herd test record (4-33 brucellosis test record) along with a valid herd certification number.

3. Official vaccinates of dairy breeds under twenty (20) months of age and official vaccinates of beef breeds under twenty-four (24) months of age.

4. [~~can be moved with a complete herd test within thirty (30) days with an approved health certificate.~~

~~1. Official vaccinates identified by an official vaccination tattoo and ear tag which are under eighteen (18) months of age. Appearance of permanent "nipper" incisors which are under eighteen (18) months of age (i.e., test required of these cattle with "two (2) teeth").~~

~~2.~~] Heavy springers and cows postpartum shall be required to test, regardless of age.

[~~3. Cattle from brucellosis certified free herds may be exempt from testing requirement if in accord with 302 KAR 20:040, Entry into Kentucky.~~]

(b) Back tagged cattle.

1. All mature cattle eighteen (18) months or older, as indicated by the presence of the first pair of permanent incisor teeth, except steers and spayed heifers, consigned to any stockyard, shall be back tagged in a routine manner prescribed by the department.

2. Back tags placed on slaughter cattle shall not be removed at any time or by any person only under specific instructions from the chief livestock health [~~sanitary~~] official.

3. Materials for the back tagging program shall be furnished by the department and/or Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

(c) All back tagged test eligible breeding animals, [~~breeding, dairy and back tagged cattle requiring testing~~] shall be tested at [~~the~~] first point of [~~assembly or~~] concentration.

(d) Open heifers less than eighteen (18) months of age designated for feeding purposes are not required to be brucellosis tested. Diversion of "feeder" heifers for use as breeding animals without meeting applicable test requirement shall be a violation of this administrative regulation. [~~All cattle for feeding purposes and grazing shall comply with 302 KAR 20:055, Brucellosis vaccination, testing and branding requirements.~~]

Section 6. Swine Requirements. (1) [~~As prescribed in 302 KAR 20:080.~~

~~(2) Effective January 1, 1971, all serum requirements for swine moving into or through the State of Kentucky were rescinded.~~

~~(3)~~] Breeding swine.

(a) All breeding swine six (6) months of age or older shall be negative to an official [(~~approved~~)] blood test for brucellosis and

pseudorabies within thirty (30) days prior to date of sale and be accompanied by proof of negative test results, or originate directly and immediately from a validated and qualified herd.

(b) Breeding swine not tested for brucellosis and pseudorabies prior to arrival at stockyards must be consigned directly to slaughter, unless purchase is in compliance with subsection (5) of this section. [~~or may be moved under quarantine to a Kentucky farm with prior approval of the state veterinarian or agent of the state board. However, breeding swine moved under quarantine may not be commingled with a pseudorabies free herd.~~]

(c) Testing of breeding swine at stockyards is prohibited.

(2) [~~(4)~~] Feeder pigs. All feeder pigs must comply with 302 KAR 20:210, Pseudorabies surveillance.

(3) [~~(5)~~] Livestock markets buying stations, and concentration points handling all classes of swine.

(a) Swine moving interstate from markets to be in compliance with Title 9, Part 76, CFR, [~~herein filed by reference,~~] including health certification by the accredited veterinarian authorized by the state to furnish such services.

(b) Slaughter swine leaving premises to be consigned only for immediate slaughter to a recognized slaughtering establishment approved for this purpose in accordance with federal and state regulations.

(c) Markets to maintain well-constructed pens and swine- handling facilities that are clean and in good repair.

(d) Markets to provide pens surfaced with impervious material for holding and handling all [~~feeder pigs and breeding~~] swine.

(e) Markets to provide satisfactory, well-lighted facilities for inspection and proper restraint.

(f) Clean and disinfect holding and handling pens, alleys and other facilities used in selling swine after use by each lot of swine under procedures specified by state and federal agencies to guard against spread of disease.

(g) Maintain records of origin [~~margin~~] and destination for all swine entering market and grant federal and state inspectors access to such records. Identification as to farm where farrowed shall be maintained for all feeder pigs and breeding stock and all slaughter swine which may be diverted for purposes other than slaughter. Records shall be maintained for one (1) year.

(h) Feeding and breeding swine must be placed in pens separate and apart from slaughter swine. All swine designated for slaughter must be delivered directly to an approved slaughter establishment with no diversion en route, except when movement is in compliance with subsection (5) of this section.

(i) Permit no cull pigs to enter market unless provisions are made to pen such pigs separate and apart from all other swine so contact with healthy swine does not occur. Facilities used by these swine will not be used by other swine until cleaning and disinfecting have been accomplished. Further, cull swine to be permanently identified by an ear tag in the right ear, quarantined directly to slaughter or quarantined back to premises of origin. [~~to the purchaser, and released from said quarantine by consignment to slaughter only.~~] A cull pig is defined as one which does not pass veterinary inspection for health.

(j) Permit no garbage fed swine to enter market unless provisions are made to handle and pen such swine separate and apart from all other swine to avoid contact with other marketable swine.

(k) Permit no swine to be moved [~~into or~~] from the market unless the market veterinarian or a state/ [~~or~~] federal inspector releases such swine.

(l) Require all buyers of swine to determine the purpose of their movement. If for slaughter and there is any reason to believe the swine might be diverted (underweight swine, thin sows, etc.) the inspector may require that such swine be identified by ear tag and consigned to slaughter on a special permit. Further, any swine with which these swine mingle shall cause the entire lot to be ineligible for movement except to slaughter.

(m) Permit no feeder pigs or breeding swine to remain in the market more than seventy-two (72) hours.

(n) No feeding or breeding swine are to be allowed in any market for resale within twenty-eight (28) [~~thirty (30)~~] days from prior sale date.

(4) [~~(6)~~] Livestock markets, buying stations and concentration points handling slaughter swine only.

(a) Swine moving interstate to be in compliance with Title 9, Part 76, CFR, [~~herein filed by reference,~~] and applicable state regulations.

(b) Accept swine only for slaughter and [~~to~~] permit no swine to leave market except for slaughter only.

(c) Markets to maintain well-constructed pens and swine- handling facilities that are clean and in good repair.

(d) Maintain records of origin and destination for all swine entering market and grant federal and state inspectors access to such records. Records shall be maintained one (1) year.

(e) Isolate all swine suspected of being affected with or exposed to infectious disease, promptly notify the state or federal agency, and hold such swine in isolation pending instructions on disposition.

(f) Clean and disinfect holding and handling pens, alleys, and other facilities used in selling swine under procedures specified by state and federal agencies to guard against spread of disease.

(5) Swine slaughter class: farm slaughter only.

(a) The number of swine purchased for farm slaughter for family consumption only shall not exceed six (6) head of animals per premises within twelve (12) months.

(b) Swine shall not be commingled with other swine on the purchaser's premises. Purchaser shall notify swine producers within a two (2) mile radius of purchaser's premises, on which the swine shall be quarantined, that swine have been purchased for farm slaughter. Any objection by a swine producer within a two (2) mile radius during the thirty (30) day quarantine period shall be evaluated by the state veterinarian. The state veterinarian shall determine if there is reason to order the quarantine swine slaughtered within seventy-two (72) hours of receipt of the complaint.

(c) Slaughter class of swine purchased from a state-federal stockyard approved to handle all classes of swine shall comply with the following:

1. All swine shall be identified with an official slaughter ear tag and shall have a secondary identification via a flop tag. The purchaser shall be responsible for identifying swine prior to release of swine from stockyard.

2. The Kentucky Department of Agriculture shall supply tags and equipment for identifying swine.

3. A thirty (30) day quarantine to the purchaser's premises shall be issued by state-federal personnel. Quarantine shall serve as a release from the stockyard and shall accompany the movement of such swine.

4. All swine shall be slaughtered within thirty (30) days of purchase.

5. Owner shall document date of slaughter, place of slaughter or state-federal slaughter establishment.

(d) Slaughter class of swine for home consumption may be purchased from a state-federal stockyard approved to handle slaughter swine only, but shall move directly to a state-federal approved slaughter establishment. Such movement of slaughter swine shall comply with the following:

1. All swine shall be identified with an official slaughter swine ear tag. Purchaser shall be responsible for identifying swine prior to release of swine from the stockyard.

2. All swine shall move with an official release issued by state-federal personnel or by the market veterinarian.

3. Owner shall document slaughter of animal(s) within seven (7) days of purchase.

Section 7. Sheep and Goat Requirements. (1) As prescribed in 302 KAR 20:040.

(2) Before the beginning of a sale all sheep and goats to be sold

for breeding purposes that are free from evidence of infectious, contagious or parasitic disease shall be separated from all other sheep and goats in a part of the yard provided for this purpose.

(3) All sheep and goats that as individuals or any part of an assembled group show evidence of any infectious, contagious, communicable or parasitic disease must be sold for immediate slaughter or otherwise disposed of under permit issued by the chief livestock health [~~sanitary~~] official.

(4) Goats for dairy or breeding purposes if free from evidences of any infectious, contagious, or parasitic disease shall originate directly and immediately from a brucellosis certified free herd or if six (6) months of age or over be negative to an official brucellosis test within thirty (30) days of date of sale.

Section 8. Horse Requirements. All horses offered for sale shall be in compliance with 302 KAR 20:065.

ED LOGSDON, Chairman

APPROVED BY AGENCY: January 4, 1995

FILED WITH LRC: January 5, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, February 22, 1995 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Donna Greenwell Dutton

(1) Type and number of entities affected: All stockyards owners in Kentucky and all persons buying and selling livestock in Kentucky stockyards.

(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 were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This amendment makes changes in requirements for cattle brought through a stockyard. This section also adds a new section pertaining to swine purchased for farm slaughter.

2. Second and subsequent years: This amendment makes changes in requirements for cattle brought through a stockyard. This section also adds a new section pertaining to swine purchased for farm slaughter.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: There will be no increase in reporting and paperwork requirements.

(b) Reporting and paperwork requirements:

(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: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation sets forth the sanitary requirements and operational procedures for all stockyards relative to disease control.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(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: 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. This regulation treats all stockyard owners and persons buying and selling livestock the same.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:210. Pseudorabies surveillance.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030

NECESSITY AND FUNCTION: The prevention of the spread of pseudorabies, via the movement (both intrastate and interstate) of feeder pigs within market channels. [~~Breeding swine in Kentucky on farms which produce and sell feeder pigs will be required to be tested as will~~] Breeding swine on farms of origin which produce feeder pigs may be required to be tested. [~~imported into Kentucky.~~]

Section 1. Definitions. [~~As used in this regulation and unless the context clearly requires otherwise:~~] (1) "Breeding swine" shall mean male and female porcines which are sexually intact (i.e., not altered), six (6) months of age and older.

(2) "Feeder pigs" [~~(feeding swine)~~] shall mean porcines of the male (altered) or female sex between weaning and three (3) to four (4) months of age, [~~approximately~~] which are produced for the purpose of being fed for slaughter.

(3) "Complete herd testing" shall mean a test of all breeding swine within a herd six (6) months of age or older for brucellosis and pseudorabies.

(4) "Pseudorabies monitored feeder pig herd" shall mean a swine breeding herd that has been sampled and was negative to an official pseudorabies test during the last twelve (12) months at the following rate:

10 head - test all
11-35 head - test 10
36 or more - test 30 percent or 30, whichever is less.
Tested breeding swine are to be selected at random from all age groups, including herd boars; all groups are to be proportionately represented. A pseudorabies-monitored feeder-pig herd can also be a swine-breeding herd that is not known to be infected in a Stage III, Stage IV, or Stage V state or area. [~~herd in which percentage testing (representative sampling) has been accomplished on the total number of breeding sows in the total herd," and in accord with the following formula:~~

~~(a) In herds of ten (10) sows or less all sows must be tested;~~

~~(b) In herds of eleven (11) to thirty-five (35) sows ten (10) sows are required to be tested;~~

~~(c) In herds of thirty-six (36) sows or more thirty (30) percent or thirty (30) sows must be tested, whichever is less.~~]

(5) "Validated brucellosis free herd" shall mean a herd of swine that has qualified for and has been issued a validated brucellosis free herd certificate signed by the State Animal Health Official and the Area Veterinarian in Charge (AVIC). The validated brucellosis free herd status is valid for twelve (12) months, unless evidence of brucellosis is found in the herd.

(6) "Qualified pseudorabies negative herd" shall mean a herd has attained qualified pseudorabies negative herd status [~~is attained~~] by subjecting all swine over six (6) months of age to an official pseudorabies serological test and test results are [~~obtaining a~~] negative [~~result~~] on all animals. [~~All~~] Additional requirements are listed in 9 CFR (Code of Federal Regulations) Chapter 1 Part 85 [~~(1-1-87 Edition) page 224~~].

(7) "Certified feeder pig producer (CFPP) card" shall mean a document issued to eligible Kentucky swine producers meeting requirements outlined in Section 2 of this administrative regulation for purposes of marketing feeder pigs.

(8) "Pseudorabies surveillance (PS) card" shall mean a document issued to a Kentucky swine producer when the breeding herd has met the herd monitoring test requirements of subsection (4) of this section or when a herd has achieved qualified pseudorabies negative status.

Section 2. CFPP Card Requirements. (1) Kentucky swine producers shall submit an application to the Division of Animal Health requesting a CFPP card.

(2) Upon receipt of the application, the Division of Animal Health will qualify the herds eligibility for a CFPP card by verifying one (1) of the following:

(a) When the herd is a qualified and validated herd; or

(b) When pseudorabies monitor testing or when an official random sample testing of breeding animals has been conducted in the herd within the last twelve (12) months. Subsequent to this testing, the herd owner may be required to document compliance with change of ownership and entry requirements for all animals added to the breeding herd; or

(c) When the herd owner can document compliance with change of ownership and entry requirements for all animals added to the breeding herd.

(3) Herds not meeting change of ownership or entry requirements shall be quarantined and may be required to test for pseudorabies and brucellosis prior to being issued a CFPP card. The test requirements shall be established by the state veterinarian.

(4) A CFPP and a PS card expires one (1) year from date of issue and may be renewed pending documentation as to compliance with change of ownership and entry requirement for all animals added to the breeding herd.

[~~Section 2. Testing Requirements for Breeding Swine in Herds which Produce Feeder Pigs. Effective January 1, 1988, all feeder pigs sold in Kentucky must originate from herds in which testing of the breeding swine has been done for pseudorabies and negative serological results can be demonstrated according to one of the following testing schedules:~~

~~(1) Complete herd testing as defined in Section 1(3) of this regulation;~~

~~(2) Pseudorabies monitoring testing as defined in Section 1(4) of this regulation.~~]

Section 3. Eligibility for Sale or Entry of Feeder Pigs in Kentucky. (1) General requirements. Feeder pigs shall be accompanied by a Certificate of Veterinary Inspection documenting pigs official identification, entry permit number, and pseudorabies eradication state-federal-industry program standards classification, except where noted.

(2) Kentucky origin feeder pigs. Kentucky origin feeder pigs sold in Kentucky shall comply with one (1) of the following:

(a) Originate directly from a herd in which the owner holds a valid CFPP or PS card.

(b) Individually tested and found serologically negative for pseudorabies within thirty (30) days prior to sale.

(c) Originate directly from a qualified and validated herd.

(3) Out-of-state origin feeder pigs. Out-of-state origin feeder pigs imported or sold in Kentucky shall comply with the following:

(a) Feeder pigs originating from states or areas classified as Stage III, IV or V of the pseudorabies eradication state-federal-industry program standards shall comply with one (1) of the following:

1. Originate directly from a herd in which the owner holds an official card or document issued by a state or federal agency verifying the pigs state or area pseudorabies stage classification and premises of origin.

2. Individually tested and found serologically negative for pseudorabies within thirty (30) days prior to sale.

3. Originate directly from a qualified pseudorabies negative and validated brucellosis free herd.

(b) Feeder pigs originating from a state or area classified as less than Stage III of the pseudorabies eradication state-federal-industry program standards shall be officially identified and shall be shipped directly to a Kentucky premises and quarantined for feeding and shall move only to slaughter and shall meet one (1) of the following:

1. Originate directly from a herd in which the owner holds an official card or document issued by a state or federal agency verifying the pigs state or area pseudorabies stage classification and premises of origin.

2. Originate directly from a qualified pseudorabies negative and validated brucellosis free herd.

(4) Livestock markets.

(a) Feeder pigs shall meet the sale requirements noted above respective to their state of origin.

(b) When presenting feeder pigs to a livestock market in Kentucky the herd owner (seller) shall present a valid CFPP or PS card or shall document an official premises tattoo. Feeder pigs shall be individually identified to farm of origin by an official ear tag or by an official premises tattoo. An official premises tattoo shall be applied prior to the feeder pig leaving the farm of origin.

(c) Eligible feeder pigs moving directly from a premises where farrowed to a Kentucky state-federal approved market to handle all classes of swine, are exempt from the requirement of a Certificate of Veterinary Inspection. [~~Exemptions. Specific exemptions from the requirements of Section 2 of this regulation shall be:~~

~~(1) Feeder pigs which originate from a qualified pseudorabies negative herd. When moving, the feeder pigs must be accompanied by a pseudorabies surveillance card as outlined in Section 4 of this regulation.~~

~~(2) Feeder pigs may be individually tested (and identified) for pseudorabies and found serologically negative within thirty (30) days prior to sale or entry.~~

~~Section 4. Procedures. The following procedures shall be used to effect compliance with this regulation:~~

~~(1) A pseudorabies surveillance card (PS card) will be issued by~~

~~the state veterinarian to owners of swine herds who market feeder pigs when negative serologies are demonstrated from blood samples obtained by licensed, accredited veterinarians from specific percentages of their breeding swine. The minimum percentage allowed for receiving a PS card will be the monitoring formula (see Section 1(4) of this regulation). Complete herd testing (Section 1(3) of this regulation) will be initiated simultaneously with this regulation for statewide swine validated brucellosis free status. The blood samples taken in this federally funded program will also be utilized for pseudorabies serology to qualify herd owners for issuance of their pseudorabies surveillance cards.~~

~~(2) The specific steps to be taken to accomplish the issuance of the pseudorabies surveillance card and the manner in which the PS cards shall be used in marketing feeder pigs are as follows:~~

~~(a) The herd owner will contact his veterinarian and request testing of his breeding swine. The owner shall direct the veterinarian as to the number of his breeding swine desired to be tested as follows:~~

~~1. When the herd owner selects pseudorabies monitoring testing (Section 1(4) of this regulation), payment for the veterinarian's farm call and the charges for obtaining the blood samples are the owner's responsibility.~~

~~2. When the herd owner selects complete herd testing (all breeding swine) (Section 1(3) of this regulation), federal fee basis funds and state funds will, upon availability, pay the veterinarian for the farm call and the sample collections from the animals.~~

~~(b) The veterinarian will then submit the samples and the necessary documentation on submission forms supplied by the state veterinarian and signed by the veterinarian and the herd owner. The number of animals bled and the total number of breeding swine (boars and sows) on the premise will be clearly stated on the sample submission forms as well as the individual animal identification numbers of all swine bled. The samples will be sent (serum only) to a state diagnostic laboratory for brucellosis and pseudorabies testing.~~

~~(c) The test results will be mailed to the state veterinarian's office by the diagnostic laboratory.~~

~~(d) Simultaneous with the mailing of the serum samples to the diagnostic laboratory, the veterinarian and the herd owner shall complete the pseudorabies surveillance card request form (these will be issued to participating practicing veterinarians on request) and mail same, with both signatures, to the state veterinarian's office.~~

~~(e) The pseudorabies surveillance cards will be issued directly from the state veterinarian's office to the herd owner when all requirements have been met.~~

~~(f) The PS cards will be used by herd owners to market feeder pigs within Kentucky and to move feeder pigs into other states requiring surveillance testing or monitoring for pseudorabies. At livestock markets in Kentucky, individual groups of feeder pigs will be identified by metal ear tags when herd owners (sellers) present their PS cards.~~

~~(g) The PS cards will expire one (1) year from the date the swine are bled.~~]

Section 4. [~~5.~~] Other Movements. (1) Licensed livestock dealers may purchase feeder pigs for resale provided the [~~that~~] original pseudorabies CFPP or PS card number or acceptable document for feeder pigs originating from out of state is retained, [~~surveillance~~] and when individual feeder pig identification can be maintained. At no time shall feeder pigs purchased in accordance with this section be kept on premises with pigs from a herd of origin with a pseudorabies eradication state-federal-industry program standards classification less than Stage III. When feeder pigs are commingled with pigs of a lower classification all pigs shall be classified with the lowest classification for pigs of that group. [~~s without pseudorabies surveillance.~~]

(2) Feeder pigs purchased [~~pursuant to this section~~] shall be marketed no sooner than twenty-eight (28) days after the original purchase, as prescribed in 302 KAR 20:070. Dealers shall present invoices with the original valid CFPP or PS [~~pseudorabies surveillance~~] card numbers or other acceptable official valid documents or means of identification when presenting [~~their~~] feeder pigs to markets.

(3) Feeder pigs from a qualified pseudorabies negative herd or pseudorabies monitored feeder pig herd may be moved without individual identification from the originating Kentucky farm to another Kentucky farm for purposes of feeding for slaughter, providing all feeder pigs on the recipient farm are from the same originating herd, all other requirements of 302 KAR 20:210 are met, and with specific approval of the Kentucky State Veterinarian.

Section 5. [~~6.~~] Quarantine. [~~(1)~~] Any [~~breeding~~] swine which has given a positive reaction to an official test for the detection of pseudorabies and is so classified by an official epidemiologist shall cause the herd and premises to [~~acts as a titer to a pseudorabies screening test shall~~] be quarantined [~~until released~~] by the state veterinarian. [~~The farm premise and herd from which the infected swine originated shall be quarantined.~~] All quarantined swine [~~which has been quarantined~~] may move directly to slaughter, to a state-federal [~~an~~] approved stockyard to handle slaughter swine only [~~livestock market~~] and then to an approved slaughter facility or may remain on the quarantined premises only when herd has enrolled in an official herd clean-up plan. Reference 302 KAR 20:220. The quarantine shall be released when the requirements of 302 KAR 20:220 have been implemented and completed. [~~A quarantined herd or quarantined premise may be released from quarantine by the state veterinarian when:~~

~~(a) The herd has been depopulated for at least thirty (30) days and the premises cleaned and disinfected in a manner approved by the state veterinarian. If the premises are repopulated all replacement swine must be negative to a screening test for pseudorabies at entry and the entire herd shall be tested for pseudorabies thirty (30) to sixty (60) days after the herd is on the premise.~~

~~(b) There have been two (2) negative tests for all swine in the herd over six (6) months of age. The first test must be at least thirty (30) days after the removal of all reactors. The second test must be at least sixty (60) days from the removal of the last reactor from the herd or premise.~~

~~(2) All retesting of suspects and testing of quarantined animals shall be at the owner's expense.~~]

Section 6. Stockyard Requirements for Handling Known Infected, Exposed, Pseudorabies Swine. When classified pseudorabies infected and exposed swine are presented for sale at a state-federal [~~7. The person operating a~~] stockyard approved to handle slaughter swine only the market owner or operator [~~or assembly facility~~] shall provide separate pens for isolating pseudorabies infected and exposed swine. Said pens are to be permanently identified as quarantined and spelled as such on the gate. [~~The~~] Pens shall be constructed so as to facilitate easy cleaning and disinfecting after each use. [~~The~~] Pens must have concrete floors and complete walls so as to have no contact with adjacent animals. Any watering troughs or feed equipment in the quarantine pens will be located so no other livestock in the market can access them at any time. All infected swine shall be secure in said quarantine pen(s) and sold last and identified on all invoices as pseudorabies infected or exposed swine. Pseudorabies infected or exposed swine shall not be sold through a state-federal stockyard approved to handle all classes of swine. [~~animals.~~]

ED LOGSDON, Chairman

APPROVED BY AGENCY: January 4, 1995

FILED WITH LRC: January 5, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, February 22, 1995 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing

by February 17, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Dr. C. L. Notter, State Veterinarian

(1) Type and number of entities affected: All swine owners 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 were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no increased costs.

2. Second and subsequent years: There will be no increased costs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs are the same as existing regulation.

2. Continuing costs or savings: The costs will generally be the same each year.

3. Additional factors increasing or decreasing costs: There will be no additional reporting and paperwork requirements.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: Minimal effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(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: This regulation amends section of the regulation and adds additional requirements for other sections pertaining to the health of animals in Kentucky. These amendments are necessary for the health and well-being of animals in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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. This regulation treats all persons who are breeding swine the same.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(Proposed Amendment)

302 KAR 20:220. Pseudorabies: eradication and control.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.110, 257.120, 257.030, 257.480

NECESSITY AND FUNCTION: To provide procedures for enabling the Board of Agriculture to approve a pseudorabies herd cleanup plan and to eradicate pseudorabies from a porcine herd or animal upon a determination of infection or exposure to pseudorabies. These procedures are necessary in order to achieve pseudorabies control and eradication.

Section 1. Definitions. (1) "Breeding swine" means male or female porcines which are sexually intact, six (6) months of age or older, which are specifically used or intended to be used for reproduction.

(2) "Circle testing" means serological sampling of swine required by an official pseudorabies epidemiologist in herds that are within one and one-half (1.5) miles of a known infected herd.

(3) "Depopulation" means a procedure where the premises is cleared of all swine at a specified time.

(a) "Mandatory depopulation" means the required removal of all swine from a premises for which no official herd plan was developed or followed or the herd plan used is not effective in the elimination of pseudorabies.

(b) "Official depopulation" means a herd plan for a herd with an infection rate of more than ten (10) percent recommended by an official epidemiologist where the herd owner agrees to clear the premises of all swine in a manner approved by the state veterinarian and where indemnity is paid on all breeding swine in the herd.

(c) "Voluntary depopulation" means a herd plan for a herd with an infection rate of less than ten (10) percent chosen by the owner where the premises is cleared of all swine and where indemnity is paid only for seropositive breeding swine.

(4) "Exposed swine" means any swine that has been in known contact with an animal infected with pseudorabies. This includes all swine in a known infected herd.

(5) "Herd" shall mean all porcine animals maintained for any purpose on common grounds under common ownership or supervision, including animals which may be geographically segregated and have interchange or movement of animals without regard to health status.

(6) "Indemnity" means monies paid to the owner by the state-federal agencies in addition to the salvage value of the swine.

(7) "Known infected herd" means any herd in which swine have been determined to be infected with pseudorabies by an official pseudorabies epidemiologist or state veterinarian.

(8) "Official herd cleanup plan" means a plan developed by an official pseudorabies epidemiologist in consultation with the herd owner and his or her veterinary practitioner when applicable and approved by the state veterinarian for the purpose of eliminating pseudorabies from the herd. This plan may include test and slaughter, depopulation, offspring segregation with or without vaccination or a

combination of any approved procedure.

(9) "Official pseudorabies epidemiologist" means a state or federal employed veterinarian designated by the state veterinarian and the federal veterinarian in charge, to investigate, diagnose, and make recommendations concerning suspected pseudorabies in swine.

(10) "Official pseudorabies test" means any serological test approved by the state veterinarian for the diagnosis of pseudorabies and is licensed or approved by the United States Department of Agriculture.

(11) "Official random sample test" means a group sampling of swine utilizing serological tests which provide a ninety-five (95) percent probability of detecting pseudorabies in a segregated group of swine when at least ten (10) percent of the animals tested are seropositive for pseudorabies.

(12) "Positive animal" means an animal which has given a positive reaction to an official test for the detection of pseudorabies and is so classified by an official epidemiologist or where the pseudorabies virus has been found in the body of an animal or in the body discharge of an animal.

(13) "Pseudorabies" means a communicable, contagious and infectious disease caused by a herpes virus affecting livestock and other animals.

(14) "Pseudorabies monitored feeder pig herd" means a swine breeding herd that has been sampled and was negative to an official pseudorabies serologic test during the last twelve (12) months at the following rate:

10 head - test all

11-35 head - test 10

36 or more - test 30 percent or 30, whichever is less.

Tested breeding swine are to be selected at random from all age groups, including herd boars; all groups are to be proportionately represented. A pseudorabies-monitored feeder-pig herd can also be a swine-breeding herd that is not known to be infected in a Stage III, Stage IV, or Stage V state or area. [~~in which boars and sows have been sampled and tested negative for pseudorabies during the last twelve (12) months according to the requirements of 302 KAR 20:210.~~]

(15) "Pseudorabies vaccine" means a pseudorabies vaccine licensed by the United States Department of Agriculture.

(16) "Qualified pseudorabies negative herd" means a swine herd that is free of pseudorabies and maintains a pseudorabies free status by periodic testing of breeding swine.

(17) "Permitted swine slaughter feedlot" [~~Quarantine feedlot~~"] means a premises where swine of unknown health status are fed for slaughter under procedures approved by the state veterinarian.

(18) "Salvage value" means the carcass worth of an animal.

(19) "Test and slaughter" means a herd plan where positive animals are removed from the herd to slaughter within thirty (30) days of classification and additional tests are performed on the herd.

Section 2. Procedures. (1) The owner of a known infected herd shall apply to the state veterinarian for approval of an official herd cleanup plan within thirty (30) days of notification that his herd is classified as a known infected herd.

(2) The official herd cleanup plan shall provide as follows:

(a) Within ninety (90) days from the date of notification of classification as a known infected herd, the owner shall implement an approved herd cleanup plan.

(b) The owner of the herd shall cooperate with the department in conducting the necessary testing, classification and supervision of the herd.

(c) Animals within the herd shall be removed to slaughter or depopulated under the supervision of the state veterinarian and as provided in the official herd cleanup plan.

(d) Pseudorabies vaccine shall be used only with approval of the state veterinarian.

(3) When official depopulation is the approved herd cleanup plan, the plan shall require the premises to be cleared of breeding swine within two (2) months from the date of approval and cleared of all swine within eight (8) months of the plan approval date.

(4) The official herd cleanup plan shall provide for the completion of all requirements set out in the cleanup plan within twenty-four (24) months from the approval date of the plan. However, the state veterinarian may approve additional time to complete the official cleanup plans not to exceed ninety (90) days for completion of all requirements set out in the plan.

(5) The herd cleanup plan may be changed or amended when approved by the official pseudorabies epidemiologist and the state veterinarian.

(6) When the owner of a pseudorabies infected herd does not develop an official herd cleanup plan or when the state veterinarian determines that the official herd cleanup plan has not or will not effectively eliminate pseudorabies from a swine herd, and that approval or continuation of the official herd cleanup plan is unlikely to effectively eliminate pseudorabies from the herd, the board or its authorized agents shall order depopulation as provided by KRS 257.110. The following procedures shall apply:

(a) Notification to the owner of the order of depopulation shall be delivered to the owner or mailed to the owner's business address by certified mail. This notification shall include test results and other appropriate documents supporting the depopulation order.

(b) The owner shall have fifteen (15) days from receipt of notification of the depopulation order to appeal said order by written request to the state veterinarian that he or she disagrees with said order. If no appeal is received within this time, an order of depopulation shall be issued.

(c) The owner may submit written arguments or may schedule a conference with the state pseudorabies epidemiologist and the state veterinarian within fifteen (15) days of the written request appealing said order.

(d) The owner shall be notified by certified mail within seven (7) days after receipt of written arguments or conference as to the state veterinarian's final ruling on the appeal.

(e) When mandatory depopulation is ordered, all breeding swine shall be removed from premises for slaughter within two (2) months and all swine shall be removed from premises within eight (8) months of owner's receipt of depopulation order.

(f) The premises shall meet quarantine release as required in Section 7 of this administrative regulation.

Section 3. Pseudorabies Program Testing. (1) Within thirty (30) days of a request for testing by the department, the owner of swine shall submit their swine for required testing and provide the department with necessary facilities and assistance required for conducting testing.

(2) Pseudorabies testing shall be in addition to the testing requirements set out in 302 KAR 20:210, [~~Section 2,~~] and may include random sample test or complete herd test as determined by the state veterinarian.

(3) An official random sample test shall include all animals in a segregated unit or a minimum of thirty (30) animals, whichever is less.

(4) Expenses incurred in collection of blood samples in infected herds, circle testing, slaughter traces and epidemiological tracings may be paid or reimbursed, if funds are available, in amount specified and approved by the state veterinarian.

(5) Expenses incurred in serological testing may be paid by state-federal funds when samples are submitted to a state-federal laboratory designated by the state veterinarian.

(6) Contract for fee basis. The state veterinarian may provide for reimbursement for payment of the expenses authorized in this regulation by a fee basis contract or agreement with a veterinary practitioner accredited and licensed in Kentucky.

Section 4. Movement of Qualified and Monitored Swine. (1)

Testing shall be the responsibility of the seller. All breeding swine in Kentucky offered for sale to a Kentucky producer shall be negative to an official test within thirty (30) days prior to [of] the date of change of ownership, or the swine must originate directly from a qualified pseudorabies negative herd.

(2) Feeder pigs from a qualified pseudorabies negative herd, or herds with a valid Certified Feeder Pig Producer Card (CFPP) or herds with a valid Pseudorabies Surveillance Card (PS) [pseudorabies monitored feeder pig herd] may be moved without individual identification from the originating Kentucky farm to another Kentucky farm for purposes of feeding for slaughter providing all feeder pigs on the recipient farm are from the same originating herd when all other requirements of 302 KAR 20:210 are met and with specific approval of the Kentucky State Veterinarian.

(3) Swine originating from a state which qualifies for Stage IV or V under the national program standards may enter Kentucky without a test unless a test prior to entry for exhibition or sale is required by the state veterinarian.

Section 5. Permitted [Quarantine] Swine Slaughter Feedlots. (1) Permitted [Quarantine] swine slaughter feedlots shall be permitted under the authority and direction of the state veterinarian. Permitted swine slaughter [Quarantine] feedlots shall comply with the following requirements [to prevent the spread of disease from the premises].

(a) Owner shall have a permit which is issued by the state veterinarian and renewed annually.

(b) All owners are required to have a Kentucky livestock dealer's license.

(c) Known pseudorabies positive or pseudorabies exposed swine shall not enter feedlot premises.

(d) [Quarantine feed lots] Shall not be permitted within a two (2) mile radius of a qualified pseudorabies negative herd or pseudorabies monitored feeder pig herd.

(e) All swine owners within a two (2) mile radius of a permitted swine slaughter [quarantine] feedlots shall be notified prior to the issuance of a permitted swine slaughter [quarantined] feedlot permit.

(f) All swine leaving permitted [these] premises shall be sold for slaughter through a state-federal market approved to handle slaughter swine only or directly to an approved state-federal slaughter establishment.

(g) A swine breeding operation shall not be maintained on the same premises or on other farms under the same management without all swine being under quarantine.

(h) Records of sales and purchases shall be kept as directed by the state veterinarian.

(i) All swine entering a permitted swine slaughter feedlot [quarantine feeding] premises shall be identified with an official slaughter ear tag.

(j) All swine must weigh 150 pounds or more to be eligible for entry to a permitted swine slaughter [quarantine feeding] premises.

(k) Boars and bred females shall not enter or be maintained in a permitted [quarantined] swine slaughter feedlot.

(l) Only swine from a Kentucky farm of origin shall be eligible for entry into a permitted swine slaughter feedlot.

(m) Permit must be presented when the permit holder is buying and selling swine at the market.

(n) An application for a permitted swine slaughter feedlot shall not be denied under the authority of the state veterinarian without first going before the Board of Agriculture.

Section 6. Indemnity. (1) State indemnity funds, if available, shall be paid only for the following classes of swine that are sent directly to slaughter in the following amounts:

(a) Twenty-five (25) dollars per head for all seropositive breeding swine when test and slaughter, voluntary depopulation or a herd plan other than official depopulation or mandatory depopulation is the herd cleanup plan.

(b) Fifty (50) dollars per head on all breeding swine where official depopulation is the official herd cleanup plan.

(2) In order to be eligible for indemnity, any swine on which indemnity is requested must have been in Kentucky for six (6) months prior to the time of the first test determining pseudorabies infection within a herd.

(3) In order to be eligible for state indemnity funds pursuant to this regulation, a written depopulation agreement shall be signed by the owner seeking state indemnity. Authorization for depopulation and for the payment of indemnity shall be approved by the state veterinarian and the amount of indemnity is to be stated prior to the signing of the agreement.

(4) The refusal of the state veterinarian to approve payment of state indemnity for any reason set out in KRS 257.120(4) shall not restrict or otherwise limit the state veterinarian's authority to order slaughter or depopulation of infected or exposed porcine animals.

Section 7. Quarantine Release. (1) Known infected herds and premises shall be released from quarantine when:

(a) The herd has been depopulated for at least thirty (30) days and the premises cleaned and disinfected. If the premises is repopulated, the herd shall have a negative test thirty (30) to sixty (60) days after repopulation.

(b) When test and slaughter was the official herd cleanup plan, the herd shall have two (2) negative tests. The first test shall be no less than thirty (30) days after the last positive animal has been sold to slaughter. The second test shall be more than sixty (60) days after the last positive animal is sold for slaughter. The second test shall include all breeding swine and other swine on the premises shall be random sampled.

(2) Other quarantined herds shall be released after a negative test as directed by the official pseudorabies epidemiologist and quarantine release approved by the state veterinarian.

ED LOGSDON, Chairman

APPROVED BY AGENCY: January 4, 1995

FILED WITH LRC: January 5, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, February 22, 1995 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact person: Donna Greenwell Dutton

(1) Type and number of entities affected: All swine owners 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 were received.

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be no increased reporting and paperwork requirements.

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: There will be no additional reporting and paperwork requirements.

(b) Reporting and paperwork requirements:

(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: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(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 changes requirements for quarantine feedlots.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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. This regulation treats all swine owners in Kentucky the same.

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 January 12, 1995 [~~December 14, 1994~~], are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Kentucky Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.1	Occupational Exposure to Bloodborne Pathogens
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.9	Dental Services
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14.4	Legal Services Program
14.6	Inmate Grievance Procedures
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties
15.3	Meritorious Good Time
15-05-01	Restoration of Forfeited Good Time
15.6	Adjustment Procedures and Programs
15.7	Inmate Account Restriction
16.1	Inmate Visits
16.2	Inmate Correspondence
16.3	Telephone Calls
16.4	Inmate Packages
17-01-01	Inmate Personal Property
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates
18.1	Classification of the Inmate
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 (Deleted 1/12/95)]~~
18.10 Involuntary Medication Policy (Added 1/12/95)
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
18.16 Preparole Progress Reports (Amended 1/12/95) (Renumbered from 18-10-01)
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
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: January 12, 1995
FILED WITH LRC: January 12, 1995 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 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.

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 6:110. Roederer 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 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 January 12, 1995 [~~October 15, 1993~~], are incorporated by reference and shall be referred to as Roederer Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

RFC 01-06-01	Inmate Access to and Communication with RCC Staff (Amended 1/12/95)
RFC 01-08-01	Public Information and News Media Access
RFC 01-09-01	Staff Participation in Professional Organization and Conferences; Provisions for Leave and Reimbursement for Expenses (Amended 1/12/95)
RFC 01-10-01	RFC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies
RFC 02-01-01	Fiscal Management: Organization
RFC 02-01-02	Fiscal Management: Accounting Procedures (Amended 1/12/95)
RFC 02-01-03	Fiscal Management: Agency Funds (Amended 1/12/95)
RFC 02-01-04	Fiscal Management: Insurance
RFC 02-02-01	Fiscal Management: Budget (Amended 1/12/95)
RFC 02-02-02	Inmate Control of Personal Funds
RFC 02-02-03	Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
RFC 02-02-05	Inmate Canteen Services (Amended 1/12/95)
RFC 02-03-01	Fiscal Management: Audits (Amended 1/12/95)
RFC 02-04-01	Purchase Orders
RFC 02-04-02	Processing of Invoices (Amended 1/12/95)
RFC 02-06-01	Property Inventory (Amended 1/12/95)
RFC 04-01-01	Employee Training and Development
RFC 04-01-02	First Aid and CPR Training (Amended 1/12/95) (Renumbered from 13-06-02)
RFC 06-01-01	Offender Records (Amended 1/12/95)
RFC 06-03-01	Records Release of Information [(~~Amended 10/15/93~~)]
RFC 06-03-02	Storage of Expunged Records [(~~Amended 10/15/93~~)]
RFC 06-03-04	Access to Psychological and Psychiatric Reports
RFC 06-04-01	Court Trips (Amended 1/12/95)
RFC 06-04-02	Receipt of Order of Appearance
RFC 08-01-01	Fire Prevention (Amended 1/12/95)
RFC 08-08-01	Control and Use of Flammable, Toxic, and Caustic Materials (Amended 1/12/95) [~~Hazardous Communication Program~~]
RFC 09-04-03	Duties and Responsibilities of the Fire Safety Officer (Amended 1/12/95)
RFC 09-06-01	Search Policy/Disposition of Contraband (Amended 1/12/95)
RFC 10-01-02	Temporary Holding Cell Guidelines [(~~Amended 10/15/93~~)]
RFC 11-01-01	Food Services: General Guidelines
RFC 11-02-01	Food Service: Security
RFC 11-03-01	Dining Room Guidelines (Amended 1/12/95) [(~~Amended 10/15/93~~)]
RFC 11-04-01	Food Service: Meals
RFC 11-04-02	Food Service: Menu, Nutrition and Special Diets
RFC 11-05-02	Medical Screening of Food Handlers
RFC 11-06-01	Food Service: Inspections and Sanitation
RFC 11-07-01	Food Service: Purchasing, Storage and Farm

Products
RFC 12-01-01 Sanitation, Living Conditions Standards, Clothing Issues [~~(Amended 10/15/93)~~]
RFC 12-01-02 Bed Areas (Amended 1/12/95) [~~(Amended 10/15/93)~~]
RFC 12-01-03 General Guidelines for Living Units [~~(Added 10/15/93)~~]
RFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry
RFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule
RFC 12-03-02 Barber Shop Services and Equipment Control
RFC 12-04-01 Institutional Inspections [~~(Amended 10/15/93)~~]
RFC 12-05-02 Use of Noncombustible Receptacle
RFC 12-06-01 Insect and Vermin Control [~~(Amended 10/15/93)~~]
RFC 13-01-01 Organization of Health Services
RFC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 1/12/95)
RFC 13-03-01 Dental Procedures and [~~Policy~~]Sick Call (Amended 1/12/95)
RFC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical (Amended 1/12/95)
RFC 13-05-02 Licensure and Training Standards for Medical Department
RFC 13-06-01 Suicide Prevention and Intervention Program (Amended 1/12/95)
[~~RFC 13-06-02 First Aid and CPR Training Program (Deleted 1/12/95)~~]
RFC 13-06-03 Emergency Medical and Dental Care Services (Amended 1/12/95)
RFC 13-06-04 First Aid/CPR Training Program
RFC 13-07-01 Health Records (Amended 1/12/95)
RFC 13-07-03 Use of Pharmaceutical Products (Amended 1/12/95)
RFC 13-09-01 Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death
RFC 13-10-01 Health Education/Special Health Programs
RFC 13-11-01 Informed Consent
RFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
RFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center
RFC 13-13-01 Identification of Special Needs Inmates
RFC 13-15-01 Medical Restraints
RFC 13-16-01 Specialized Health Services
RFC 13-17-01 Vision Care and Optometry Services
RFC 13-18-01 Infection Control
RFC 14-01-01 Inmate Rights and Responsibilities [~~(Amended 10/15/93)~~]
RFC 16-01-01 Inmate Visiting
RFC 16-02-01 Telephone Communications
RFC 16-03-01 Mail Regulations
RFC 17-01-01 Assessment/Orientation Procedure for Intrasystem Transfers [~~(Amended 10/15/93)~~]
RFC 17-03-01 Inmate Personal Property and Property Control
RFC 17-05-02 Housing Unit Assignment Assessment/ Classification Center
RFC 17-05-03 Notifying Inmate's Families of Admission and Procedures for Mail and Visiting (Amended 1/12/95)
RFC 17-05-04 Assessment Center Operations Rules and Regulations [~~(Amended 10/15/93)~~]
RFC 17-05-05 Assessment Center Operations and Reception Programs
RFC 18-01-01 Institutional Classification Committee
RFC 19-01-01 Job Assignments (Amended 1/12/95)
[~~RFC 19-02-01 Government Service Details (Deleted 1/12/95)~~]
RFC 20-01-01 Academic Education Program (Amended 1/12/95) [~~(Amended 10/15/93)~~]
RFC 21-01-01 Library Services (Amended 1/12/95)
RFC 22-01-01 Recreation and Inmate Activities (Amended 1/12/95)
RFC 22-03-01 Inmate Clubs and Organizations (Amended 1/12/95)
RFC 23-01-01 Religious Services (Amended 1/12/95)
RFC 24-01-01 Social Services and Counseling Program (Amended 1/12/95)
RFC 25-04-02 Parole Eligibility Dates
RFC 25-05-01 Inmate Discharge Procedure (Amended 1/12/95)

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: January 12, 1995
FILED WITH LRC: January 12, 1995 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 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.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 177 employees of the Roederer Correctional Complex, 657 inmates, and all 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 6:140. Bell County Forestry Camp.

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 of the American Correctional Association. This administrative regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised January 12, 1995 [~~September 12, 1994~~] are incorporated by reference and shall be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

BCFC 01-02-01	Organization and Assignment of Responsibility [~~(Amended 9/12/94)~~]
BCFC 01-05-01	Monitoring of Operations, Policies and Procedures [~~(Amended 9/12/94)~~]
BCFC 01-08-01	Public Information and News Media Access [~~(Amended 9/12/94)~~]
BCFC 01-11-01	Institutional Duty Officer [~~(Amended 9/12/94~~]
BCFC 01-13-01	Annual Planning Document [~~(Added 9/12/94)~~]
BCFC 02-01-02	Fiscal Management: Accounting Procedures
BCFC 02-01-03	Fiscal Management: Agency Funds
BCFC 02-01-04	Fiscal Management: Insurance
BCFC 02-01-05	Fiscal Management: Budget
BCFC 02-01-06	Fiscal Management: Audit
BCFC 02-02-01	Inmate Accounts
BCFC 02-02-02	Inmate Control of Personal Funds
BCFC 02-02-03	Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
BCFC 02-03-01	Purchase Orders
BCFC 02-04-01	Processing of Invoices
BCFC 02-05-01	BCFC Materials Receiving Procedure
BCFC 02-06-01	Property Inventory
BCFC 04-01-01	Employee Training and Development
BCFC 05-01-01	Information System [~~(Amended 9/12/94)~~]
BCFC 06-01-01	Offender Records [~~(Amended 9/12/94)~~]
BCFC 06-02-01	Storage of Expunged Records [~~(Amended 9/12/94)~~]
BCFC 06-03-01	Court Trips [~~(Amended 9/12/94)~~]
BCFC 06-03-02	Receipt of Order of Appearance [~~(Amended 9/12/94)~~]
BCFC 07-04-01	Smoking Control
BCFC 07-05-01	Permit Required Confined Space [~~(Added 9/12/94)~~]
BCFC 07-06-01	Control of Hazardous Energy (Lockout or Tagout) [~~(Added 9/12/94)~~]
BCFC 08-02-01	Fire Prevention
BCFC 08-03-01	Fire Procedures
BCFC 08-03-02	Fire Extinguishers and Their Use
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances
BCFC 08-09-02	OSHA Hazard Communication Program
BCFC 08-10-01	Bell County Forestry Camp Emergency Response Team
BCFC 09-06-01	Search Policy/Disposition of Contraband
BCFC 09-14-01	Bell County Forestry Camp - Restricted Area
BCFC 10-01-01	Special Management Inmates
BCFC 11-01-01	Food Services: General Guidelines [~~(Amended 9/12/94)~~]
BCFC 11-02-01	Food Service Security [~~(Amended 9/12/94)~~]
BCFC 11-03-01	Dining Room Guidelines [~~(Amended 9/12/94)~~]
BCFC 11-04-01	Food Service: Meals [~~(Amended 9/12/94)~~]
BCFC 11-04-02	Food Service: Menu, Nutrition and Special Diets [~~(Amended 9/12/94)~~]
BCFC 11-05-02	Health Requirements of Food Handlers [~~(Amended 9/12/94)~~]
BCFC 11-06-01	Food Service: Inspection and Sanitation [~~(Amended 9/12/94)~~]
BCFC 11-07-01	Food Service: Purchasing, Storage and Farm Products [~~(Amended 9/12/94)~~]
BCFC 12-01-01	Sanitation, Living Conditions Standards, and Clothing Issues
BCFC 12-01-02	Bed Areas, Assignments/Conditions Standards
BCFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry
BCFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule
BCFC 12-03-02	Barbershop Services and Equipment Control
BCFC 12-04-01	Institutional Inspections
BCFC 12-05-01	Fire Safety and Use of Noncombustible Receptacles
BCFC 12-06-01	Pest Control
BCFC 13-01-01	Organization of Health Services (Amended 1/12/95)
BCFC 13-02-01	[~~Health Maintenance Services:~~] Sick Call and Physician's Weekly Clinic (Amended 1/12/95) [~~Pill Call~~]
BCFC 13-03-01	Routine and Emergency Dental Appointments (Amended 1/12/95) [~~Policy/Sick Call~~]
BCFC 13-04-01	Inmate Medical Screenings and Health Evaluations (Amended 1/12/95)
BCFC 13-05-01	Medical Emergencies and Medical or Psychiatric Transfers (Amended 1/12/95) [~~Licensure and Training Standards~~]
BCFC 13-06-01	Physician's Referrals (Amended 1/12/95) [~~Suicide Prevention and Intervention Program~~
~~BCFC 13-06-02~~	~~First Aid/CPR Training Program (Deleted 12/12/95)~~
~~BCFC 13-06-03~~	~~Emergency Medical/Dental Care Services (Deleted 1/12/95)~~]
BCFC 13-07-01	Health Records (Amended 1/12/95)
BCFC 13-08-01	Routine and Emergency Eye Examinations (Amended 1/12/95) [~~Special Diets~~]
BCFC 13-09-01	Family Notification: Serious Illness, Injury, Major Surgery or Death (Amended 1/12/95) [~~of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death~~]
BCFC 13-10-01	Health Education: [~~/~~] Special Health Care Needs (Amended 1/12/95) [~~Programs~~]
BCFC 13-11-01	Informed Consent (Amended 1/12/95)
BCFC 13-12-01	[~~Mental Health/Provision of~~] Psychiatric and Psy-

	chological Services (Amended 1/12/95) [by KCPC]
[BCFC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC) (Deleted 1/12/95)]
BCFC 13-13-01	Chronic and Convalescent Care (Amended 1/12/95) [Identification of Special Needs Inmates]
BCFC 13-14-01	Use of Pharmaceutical Products (Amended 1/12/95)
BCFC 13-15-01	Parenteral Administration of Medications and Use of Psychotropic Drugs (Amended 1/12/95) [Medical Restraints]
BCFC 13-16-01	Elective [Specialized Health] Services (Amended 1/12/95)
[BCFC 13-17-01	Vision Care/Optometry Services (Deleted 1/12/95)]
BCFC 13-18-01	Management of Serious and Infectious Diseases (Amended 1/12/95) [Infection Control]
BCFC 13-19-01	Bloodborne Pathogens Exposure Control Plan (Amended 1/12/95)
BCFC 14-01-01	Inmate Rights and Responsibilities
BCFC 14-02-01	Legal Services Program
BCFC 14-03-01	Inmate Grievance Procedure
BCFC 15-01-01	Due Process/Disciplinary Procedures
BCFC 16-01-01	Inmate Visiting
BCFC 16-02-01	Telephone Communications
BCFC 16-03-01	Mail Regulations
BCFC 16-03-02	Inmate Packages
BCFC 17-01-01	BCFC Inmate Receiving and Orientation Process
BCFC 17-03-01	Inmate Personal Property
BCFC 17-04-01	BCFC Inmate Property Control
BCFC 17-05-01	Inmate Canteen
BCFC 18-01-01	Institutional Classification Committee [(Amended 9/12/94)]
BCFC 19-01-01	Work [Job and Vocational Program] Assignments (Amended 1/12/95)
BCFC 19-02-01	Government Service Detail (Amended 1/12/95)
BCFC 20-01-01	Academic School
BCFC 20-02-01	Educational Program Planning
BCFC 20-03-01	Academic Curriculum
BCFC 21-01-01	Library Services
BCFC 22-01-01	Recreation and Inmate Activities [(Amended 9/12/94)]
BCFC 22-02-01	Inmate Clubs and Organizations [(Amended 9/12/94)]
BCFC 22-03-01	Privilege Trips
BCFC 23-01-01	Religious Service [(Amended 9/12/94)]
BCFC 24-01-01	Social Services and Counseling Program [(Amended 9/12/94)]
BCFC 24-01-02	Casework Services
BCFC 25-01-01	Prerelease Program [(Amended 9/12/94)]
BCFC 25-02-01	Community Center Program [(Amended 9/12/94)]
BCFC 25-02-02	Inmate Furloughs [(Amended 9/12/94)]
BCFC 25-04-01	Inmate Discharge Procedure [(Amended 9/12/94)]
BCFC 26-01-01	Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: January 12, 1995

FILED WITH LRC: January 12, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 23, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Jack Damron

(1) Type and number of entities affected: 39 employees of the correctional institutions, 200 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 5:030. Superintendents' responsibilities.

RELATES TO: KRS 156.160, 189.540

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320

NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate administrative regulations relating to the safety of public school children, the transportation of [such] children to and from school, and the operation of school buses. This administrative regulation provides the district superintendent with standards [the regulations] necessary

to assist him in administering the district's pupil transportation programs and to provide the maximum consistency throughout the state.

Section 1. Each school district superintendent shall be responsible for the general supervision of the district's pupil transportation program. The superintendent may designate another employee or other employees of the board to assist in carrying out this responsibility. [~~For the purpose of these regulations, the word "superintendent" shall mean the superintendent or his designate.~~]

Section 2. The superintendent shall require that a safety inspection be made on each school bus owned and operated by the board or contracted to the board at least once each month that the district's schools are in session. This inspection shall be made by a state approved inspector. If, upon inspection, a school bus is found to be in unsafe operating condition, the superintendent shall withhold the bus from operation until the required repairs are made. The superintendent shall be responsible for keeping the records of the bus safety inspections on file, and shall be responsible for certifying to the Division of Pupil Transportation at least once each month that each school bus used during that month has received the proper safety inspection.

Section 3. The superintendent shall be responsible for preparing the school bus route maps, school bus inventories, and other reports required by the Division of Pupil Transportation for the purpose of making the pupil transportation cost calculation for the Fund to Support Education Excellence in Kentucky.

Section 4. The superintendent shall be responsible for making reports on a monthly basis to the Division of Pupil Transportation on all school bus accidents that happened to the district's buses during the month.

Section 5. The superintendent shall be responsible for providing the necessary and required school bus driver training before a school bus driver shall enter into the duties of transporting pupils to and from school or events related to such schools. This training shall at least include the school bus driver course prescribed by the State Board for Elementary and Secondary Education, in accordance with 702 KAR 5:080, Sections 8 and 9 and shall be conducted by a state approved instructor. Evidence that the driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 6. The superintendent shall be responsible for providing the required in-service school bus driver training which each school bus driver shall complete annually for approval renewal, in accordance with 702 KAR 5:080, Section 9. The in-service training shall include at least eight (8) hours of required instruction conducted by an approved instructor. Evidence that each driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 7. District school bus inspectors shall complete an annual four (4) hour update conducted by a state approved school bus inspector and instructor.

Section 8. The training required to be designated as a state approved inspector is provided in the "Pupil Transportation Management Manual", as revised January 1992, which is incorporated by reference and which is available Monday through Friday, 8 a.m. to 4:30 p.m., from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Section 9. Effective January 1, 1995, each superintendent shall implement a controlled substance and alcohol use and testing program in accordance with KDE - 1530, September, 1994, which is adopted and incorporated by reference. This document may be obtained from the Division of Pupil Transportation, 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.

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: January 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 28, 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 February 23, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Mike Roscoe

(1) Type and number of entities affected: Kentucky Department of Education - Division of Pupil Transportation; 176 school districts; 11,506 drivers possessing commercial drivers licenses who are employed by the 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: Accurate bookkeeping and test results will need to be filed on each driver tested.

2. Second and subsequent years: Accurate bookkeeping and test results will need to be filed on each driver tested.

(3) Effects on 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: Annual summary reports from 176 school districts will need to be collected.

(4) Assessment of anticipated effect on state and local revenues:

Mandatory drug testing will result in an increase in local school district revenue expenditures.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: School district 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 alternatives were rejected: This testing is federally mandated.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: Should increase public safety.

(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: Public health and safety can be at risk with an impaired school bus driver.

(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: This alcohol and controlled substance testing has been federally mandated by the United States Congress without financial assistance to the states.

(11) TIERING: Is tiering applied? No. Tiering was not applicable, as the regulation applies equally to all 176 local school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 5:040. District board's responsibilities.

RELATES TO: KRS [~~156.031,~~] 156.160, 189.540

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160 [~~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; and KRS 156.010~~] and 189.540 require the State Board for Elementary and Secondary Education to promulgate administrative regulations relating to the safety of public school children, the transportation of [~~such~~] children to and from school, and the operation of school buses. This administrative regulation provides standards for [~~assists~~] district boards of education [~~in meeting their necessary obligations~~] in the operation of the district's school buses.

Section 1. The district board shall be responsible for the safe operation of the district's pupil transportation system.

Section 2. The board shall provide the driver of each board-owned school bus and special type vehicle with a written contract each school year in which the terms of employment are clearly defined.

Section 3. The board shall provide the owner of any school bus or special type vehicle that is contracted to the board for the transportation of the district's pupils to and from school with a written contract each school year in which the responsibilities of the contractor are clearly defined.

Section 4. The board shall require the owner of any school bus or special type vehicle contracted to the board to provide a performance bond each school year in the amount that the board deems necessary.

Section 5. The board shall make provision for the mechanical maintenance of the district's school buses and shall maintain these buses in safe operating condition.

Section 6. In route planning and purchasing or contracting for school buses, the board shall work toward providing the pupil transportation vehicles necessary to keep the number of pupils required to be transported by any one (1) vehicle at one (1) time within reasonable proximity of the seating capability of the vehicle, and within the limits established by Sections 13 through 16 of 702 KAR 5:080.

Section 7. The board shall be responsible for the removal of all the district identification from all places where it appears on a board-owned school bus before title to the school bus is transferred to another party. All contracts issued by the board to a school bus contractor shall contain a clause requiring the school bus contractor to remove all district identification lettering from the school bus when it is no longer under contract to the board.

Section 8. Before the board transfers title to a school bus to another party other than a Kentucky school district, the board shall be responsible for making the stop signal arm and the red flashing warning lights inoperable by disconnection or removal.

Section 9. The board shall be responsible for the development of a plan whereby all pupils that ride the school buses shall receive instruction in school bus pupil safety each school year. The board shall provide for all students at least four (4) emergency evacuation drills on a school bus each year. Two (2) evacuations shall be conducted each semester with the first evacuation each semester being conducted within the first week following the beginning of the semester. All evacuations shall be conducted with guidelines approved by the Kentucky Department of Education, Division of Pupil Transportation. Documentation of emergency evacuation performance shall be kept on file in the local superintendent's office. Emergency evacuation drills shall be supplemented by educational films, safety demonstrations or related information as developed by the Kentucky Department of Education.

Section 10. Any radio, tape, or communication system that the board shall permit to be installed on the school bus shall be under the control of the bus driver. The board shall not permit a radio, tape, or communication system to be operated on the school bus that is not under the direct control of the bus driver.

Section 11. The board shall designate the physician or physicians that shall perform the physical examination required for all school bus drivers. The board shall keep a current physical examination record or physical fitness certificate on file in the board secretary's office for each school bus driver.

Section 12. Effective January 1, 1995, each district board shall implement a controlled substance and alcohol use and testing program in accordance with KDE - 1530, September, 1994, which is adopted and incorporated by reference. This document may be obtained from the Division of Pupil Transportation, 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.

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: January 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 28, 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 February 23, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Mike Roscoe

(1) Type and number of entities affected: Kentucky Department of Education - Division of Pupil Transportation; 176 school districts; 11,506 drivers possessing commercial drivers licenses who are employed by the 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: Accurate bookkeeping and test results will need to be filed on each driver tested.

2. Second and subsequent years: Accurate bookkeeping and test results will need to be filed on each driver tested.

(3) Effects on 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: Annual summary reports from 176 school districts will need to be collected.

(4) Assessment of anticipated effect on state and local revenues: Mandatory drug testing will result in an increase in local school district revenue expenditures.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: School district 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 alternatives were rejected: This testing is federally mandated.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: Should increase public safety.

(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: Public health and safety can be at risk with an impaired school bus driver.

(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: This alcohol and controlled substance testing has been federally mandated by the United States Congress without financial assistance to the states.

(11) TIERING: Is tiering applied? No. Tiering was not applicable, as the regulation applies equally to all 176 local school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 5:080. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS 156.160, 189.540

STATUTORY AUTHORITY: KRS 156.160, 189.540

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the state board to adopt administrative regulations to govern the design and operation of school buses. This administrative regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. (1) A local board of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and events related to the] schools.

(2) The medical examination shall include tests for:

(a) Hearing and vision disorders;

(b) Emotional instability; and

(c) Serious medical conditions including:

1. Diabetes;

2. Epilepsy;

3. Heart disease; and

4. Other chronic or communicable diseases if indicated in the opinion of the examining physician.

(3) The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations.

(4) A medical examination of a school bus driver shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent.

(5) The forms required by subsection (4) of this section, TC 94-35, July 1990, and Supplement to TC 94-35, are incorporated by reference and may be obtained from the Division of Pupil Transportation, 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.

Section 2. (1)(a) A criminal records and driving history check shall

be performed by a local district on new school bus drivers both:

1. Prior to initial employment; or

2. After a break in service (excluding summers).

(b) Employment shall be contingent upon the requirements of paragraph (a) of this subsection.

(c) A school bus driver shall immediately report to the local superintendent or his designee a:

1. Revocation of his driver's license;

2. Conviction for DUI; or

3. Conviction for reckless driving.

(2)(a) Controlled substance and alcohol use and testing in accordance with KDE - 1530, September, 1994, shall be a condition of employment for:

1. School bus drivers;

2. Substitute drivers, coaches, teachers, and volunteers who drive school buses;

3. School bus mechanics; and

4. Other safety-sensitive jobs requiring a CDL license.

(b) The controlled substance and alcohol use and testing program shall include the following tests:

1. Preemployment testing;

2. Postaccident testing;

3. Random testing; and

4. Reasonable suspicion testing.

(c) Prospective employees who test positive for controlled substances, or register 0.02 or above, on the evidential breath test (EBT), shall not be considered for employment to drive a school bus or the performance of safety-sensitive services related to pupil transportation.

(d) A school bus driver, substitute driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties having a confirmed positive test for controlled substances shall be relieved of those duties immediately.

(e) A school bus driver, substitute driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties who tests above 0.02 percent on the confirmation alcohol test immediately before, during, or immediately following the performance of these duties shall be relieved of these duties immediately. [~~Drug tests shall be conducted in accordance with the Kentucky Department of Education, Division of Pupil Transportation drug testing procedures, KDE-1530, and shall be a condition of initial employment for Kentucky:~~

~~1. School bus drivers;~~

~~2. School bus mechanics; and~~

~~3. Other local school district personnel who drive a school bus.~~

~~(b) The requirements of paragraph (a) of this subsection shall also be required of a school bus driver or school bus mechanic who is involved in a vehicle accident resulting in bodily injury or property damage over $1,000, except an accident in which the district's vehicle is struck while legally parked.~~]

(f) [~~(c)~~] The drug testing procedures found in KDE-1530, September, 1994 [~~July 1992~~], are incorporated herein by reference, a copy of which may be inspected, copied or obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

[~~(3)(a) Employees required by subsection (2)(b) of this section to undergo a drug test shall take the drug alcohol test at the clinic selected by the district immediately following his return to the bus compound, if that return is during normal working hours.~~

~~(b) If the employee returns to the bus compound after normal working hours or is unable to return to the bus compound following the accident, the employee shall take the drug alcohol test at the clinic assigned to that district the morning of the next day.~~

~~(c) In the event the employee is confined to a hospital for treatment of injuries arising out of the accident and is unable to report to the clinic assigned to that district the morning of the next day, the employee shall take the drug alcohol test at the treating hospital.~~

~~(4)(a) If an employee is taking prescription medication(s) under the care of a physician, the bottle, vial or container issued by the pharmacist shall be brought in to the clinic administering the drug alcohol test at the time of the test or within twenty four (24) hours of the test.~~

~~(b) The employee and medication(s) shall be reviewed individually and an evaluation shall be made by the clinic and the superintendent of the local school district, or his designee, regarding medication(s) with potential negative effects on safety performance.~~

~~(c) Upon completion of an evaluation, the employee may be referred by the district to the prescribing physician for the purpose of determining the possibility of:~~

~~1. Changing to an alternative prescription without potential negative effects on safety performance;~~

~~2. Being placed on medical leave; or~~

~~3. Being directed to follow other appropriate action as deemed necessary by the superintendent of the local school districts.~~

~~(5) An employee's failure to comply with the district's request to have the drug alcohol test administered in accordance with this policy shall result in immediate termination.~~

~~(6) If the required drug test results in a confirmed positive test after a vehicle accident, the employee may request a blood plasma or blood serum test to contest the positive urine test.~~]

(g) [~~(7)~~] A person shall not be employed as a school bus driver if convicted of driving a motor vehicle under the influence of alcohol or any illegal drug within the last five (5) years. A person shall not drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other bodily parts, due to injury or disease and that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. A driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) A person shall not drive a school bus unless he or she has:

(a) Visual acuity of at least 20/40 (Snellan) in each eye either without glasses or by correction with glasses;

(b) Form field vision of not less than a total of 140 degrees; and

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. A person shall not drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. Effective April 1, 1992, school bus drivers shall be twenty-one (21) years of age or older.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky. Beginning April 1, 1992, Kentucky school bus drivers shall possess a commercial driver's license, with the passenger endorsement for a school bus, which is valid in Kentucky.

(2)(a) Prior to acceptance into the driver training program, a driver

applicant shall be required to demonstrate driving skills judged by a certified driver training instructor to meet acceptable performance standards as outlined in the Division of Pupil Transportation curriculum.

(b) The driver applicant's score sheet shall become a part of the driver's record.

(c) A driver shall demonstrate the following skill levels:

1. Vehicle knowledge;

2. Driver ability to perform steering, shifting, maneuvering, braking, use of mirrors, and negotiate each of the following:

a. Ninety (90) degree left hand turns;

b. Ninety (90) degree right hand turns;

c. Straight ahead;

d. Irregular surface maneuverability at speeds;

e. Backing ability using mirrors only; and

f. Demonstration of spatial awareness.

Section 8. (1) Minimum training requirements to become a Kentucky school bus driver shall consist of the training course developed by the Kentucky Department of Education. The training course shall consist of the following instructional units and minimum instructional times:

(a) Laws and regulations - one (1) hour;

(b) Driving fundamentals - one (1) hour;

(c) Care and maintenance - one (1) hour;

(d) Critical situations - one (1) hour;

(e) Accidents and emergency procedures - one (1) hour;

(f) Pupil management - one (1) hour;

(g) First aid - one (1) hour;

(h) Special education transportation - five-tenths (.5) hour;

(i) Extracurricular trips - five-tenths (.5) hour; and

(j) Vehicle operations - three (3) hours.

(k) Vehicle control at speed - one (1) hour; and

(l) Bus route identification, driver review and instruction - two (2) hours.

(2) Upon successful completion of the core curriculum the school bus driver applicant shall complete within thirty (30) days the following:

(a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving; and

(b) Driver review II, evaluation and instruction - two (2) hours not less than twenty (20) days nor more than thirty (30) days of driving.

Section 9. (1) Certified drivers shall complete annually an eight (8) hour in-service update relevant to the curriculum prior to the beginning of the school year.

(2) Discontinuance of driver employment and subsequent reemployment shall require drivers to become requalified by a training update within a twelve (12) month period following his or her certification termination date.

(3) A driver who does not complete the training update and recertification as required by subsection (2) of this section shall be required to complete the beginning training program.

Section 10. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 11. In case of an emergency that would make it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 12. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 13. The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 14. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 15. The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 16. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or his designate.

Section 17. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission from the district superintendent.

Section 18. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported.

Section 19. The driver shall not permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 20. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 21. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 22. The driver shall activate the flashing amber signal lights a sufficient distance from a bus stop to warn motorists of the intended stop. Once the bus comes to a complete stop, the driver shall activate the stop arm and red flashing signal lights.

Section 23. For safety reasons, the driver shall not permit fueling of the bus while pupils are on board the bus.

Section 24. (1) If a pupil's conduct on the bus makes it unsafe for the bus to continue on its route, it shall be the duty of the driver to:

(a) Make a determination as to the potential danger to other students on the bus; and

(b) Take action against the student either by:

1. Requesting that the student stop engaging in the prohibited conduct;

2. Ordering the student to leave the bus;

3. Ejecting the pupil from the bus or sending for assistance if the student fails to comply with the driver's order or request.

(2) Ejecting a pupil from the bus shall be done only in the most extreme circumstances.

(3) If a student has been ejected from a bus as the result of conduct specified in subsection (1) of this section, the driver shall notify the following parties of the action taken as soon as possible:

(a) The principal of the school where the pupil attends; or
(b) [~~The district superintendent; and~~
~~(c)~~] The student's parent or legal guardian.

Section 25. (1) The school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level.

(a) The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track.

(b) After making the stop, the driver shall open the service door and driver side window and carefully look in each direction and listen for approaching trains before proceeding.

(c) When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks.

(2)(a) In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks.

(b) Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 26 The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 27. The driver shall make a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 28. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels. The bus shall not be operated upon any highway at speeds in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 29. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 30. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 31. The driver shall not use tobacco products while operating the school bus, nor permit pupils to use tobacco products when on the school bus.

Section 32. The driver shall signal pupils who must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 33. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this administrative regulation. Drivers found under the influence of alcohol or any illegal drugs while on duty or with remaining driving responsibilities that same day shall be dismissed from employment.

Section 34. The driver of a school bus shall be on the bus at all times students are loading or unloading.

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: January 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 28, 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 February 23, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Mike Roscoe

(1) Type and number of entities affected: Kentucky Department of Education - Division of Pupil Transportation; 176 school districts; 11,506 drivers possessing commercial drivers licenses who are employed by the 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: Accurate bookkeeping and test results will need to be filed on each driver tested.

2. Second and subsequent years: Accurate bookkeeping and test results will need to be filed on each driver tested.

(3) Effects on 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: Annual summary reports from 176 school districts will need to be collected.

(4) Assessment of anticipated effect on state and local revenues: Mandatory drug testing will result in an increase in local school district revenue expenditures.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: School district 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 alternatives were rejected: This testing is federally mandated.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: Should increase public safety.

(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: Public health and safety can be at risk with an impaired school bus driver.

(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: This alcohol and controlled substance testing has been federally mandated by the United States Congress without financial assistance to the states.

(11) TIERING: Is tiering applied? No. Tiering was not applicable, as the regulation applies equally to all 176 local school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Bureau of Learning Results Services
(Proposed Amendment)

703 KAR 3:060. Procedures for determining rewards and sanctions.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY AND FUNCTION: KRS 158.6455 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and for certified staff who are not assigned to a particular A1 school in a local school district but who are certified staff assigned to the district central office or an A2-A6 school. Successful schools shall be defined in terms of student achievement of the goals set forth in KRS 158.6455, and these goals were adopted by the State Board for Elementary and Secondary Education on December 19, 1991, pursuant to KRS 158.6451. Finally, successful schools shall be defined with reference to the statewide assessment program set forth in KRS 158.6453.

Section 1. Definitions. (1) "School" means an A1 school as defined in 703 KAR 4:080. [~~the administrative unit of grades for which a school-based council may be established by 1996 pursuant to KRS 160.345.~~]

(2) "School district" means the administrative unit of schools under the jurisdiction of a board of education pursuant to KRS 160.160.

(3) "Accountability index" means the statistic which is the combination [~~average~~] of the cognitive and noncognitive indices for a school or school district pursuant to 703 KAR 4:010.

(4) "Baseline" means the accountability index score which describes the school or school district's percentage of successful students at the beginning of each biennium.

(5) "Threshold" means the accountability index score which describes the amount of growth required for a school or school district for the biennium.

(6) "Year two (2) accountability index" means the accountability index a school or school district obtains in the second year of the biennium.

(7) "Maximum reward amount" means the percentage of salary set by the State Board for Elementary and Secondary Education. [~~General Assembly pursuant to KRS 158.6455.~~] "Maximum reward amount" also may be called "Reward level 51 amount."

(8) "Minimum reward amount" is half of "maximum reward amount." "Minimum reward amount" also may be called "Reward level 1 amount."

(9) "Declines by five (5) percent or more" means obtains an average accountability index for the biennium of five (5) or more points below its baseline [~~for~~] that is established at the beginning of the biennium, is based on performance during the previous biennium, and obtains a year two (2) accountability index below its threshold goal for the biennium.

(10) "Declines by less than five (5) percent" means obtains an average accountability index for the biennium of less than five (5) points below its baseline for that biennium and obtains a year two (2) accountability index below the threshold goal for the biennium.

(11) "Maintains the previous percentage of successful students" means obtains an average accountability index for the biennium not less than its baseline nor equal to or greater than its threshold for that biennium and obtains a year two (2) accountability index below its threshold goal for the biennium, and obtains a year two (2) accountability index below the threshold goal for the biennium.

Section 2. When a school does not have an accountability grade (grades four (4), eight (8) or twelve (12)), that school shall be combined with the school having an accountability grade its students would subsequently attend.

Section 3. When a school has more than one (1) accountability grade, the school's accountability index shall be the weighted average of the accountability indices for each accountability grade in the school.

Section 4. A school district's accountability index shall be the weighted average of its schools' accountability indices.

Section 5. Certified staff in a school or school district shall earn the minimum reward amount when the school or school district's average accountability index for the biennium exceeds its threshold by one (1) point and when at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher.

Section 6. Certified staff in a school or school district shall earn the maximum reward amount when the school or school district's average accountability index for the biennium exceeds its threshold by one (1) point plus the difference between the threshold and the baseline and when at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher.

Section 7. Fifty-one (51) reward levels are established as follows:

Reward Level	Example	Reward Criteria	Amount
One	38	One point above threshold	50% of maximum
Two	38.14	One point above threshold plus 2% of differences between threshold and baseline	51% of maximum
Three	38.28	One point above threshold plus 4% of the difference between threshold and baseline	52% of maximum

Four	38.42	One point above threshold plus 6% of the difference between threshold and baseline	53% of maximum
↓	↓	↓	↓
Fifty-one	45	One point above threshold plus 100% of the difference between threshold and baseline goal	100% of maximum

Section 8. Sanctions shall be applied to schools and school districts pursuant to KRS 158.6455(3)-(7) and the definitions provided in Section 1(9), (10), and (11) of this administrative regulation.

Section 9. Reward Amounts. The maximum reward amount shall be ten (10) percent of the average (mean) salary of the certified personnel in the five (5) highest paying public school districts in Kentucky. This average shall be weighted by the number of certified personnel in each of these five (5) districts. The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed 1.75% of the total amount of total funds paid to certificated personnel within Kentucky's public schools. If the reward levels described in this section will result in the allocation of funds that exceed this amount, the reward for each school or school district shall be reduced proportionately.

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: January 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 28, 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 February 23, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Neal Kingston

(1) Type and number of entities affected: 176 local school districts and approximately 1,380 local public schools.

(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: No additional requirements.
2. Second and subsequent years: No additional requirements.

(3) Effects on 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: Approximately $26,108,000 will be expended from the school rewards escrow account.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were widely reviewed and considered by the board. This alternative was consistent with statute and legislative intent.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas 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 applicable, as the regulation applies equally to all 176 local school districts and 1,380 local public schools.

CABINET FOR WORKPLACE DEVELOPMENT
Department of Vocational Rehabilitation
(Proposed Amendment)

781 KAR 1:010. Department of Vocational Rehabilitation appeal procedures.

RELATES TO: KRS 151B.190, 34 CFR Part 361, 29 USC 722

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

NECESSITY AND FUNCTION: 29 USC 722(d) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation [~~and independent living~~] services; KRS 151B.200 accepts and agrees to comply with federal vocational rehabilitation Acts; and KRS 151B.195 sets forth rulemaking authority with respect to the state vocational rehabilitation agency. This administrative regulation establishes the necessary appeals procedures.

Section 1. Definitions. (1) "Eligible individual" or "client" means an applicant for vocational rehabiliation services who the department determines is an individual with a disability who requires vocational

rehabilitation services to prepare for, enter, engage in, or retain gainful employment. [~~individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361, which is adopted without change.~~]

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

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

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

(5) "Impartial hearing officer" means an individual:

(a) Who is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education;

(b) Who is not a member of the Vocational Rehabilitation Advisory Council;

(c) Who has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;

(d) Who has knowledge of the delivery of vocational rehabilitation services, the federal and state laws and administrative regulations governing the provision of vocational rehabilitation services;

(e) Who has training with respect to the performance of official duties; and

(f) Who has no personal or financial interest that would be in conflict with the objectivity of the individual.

Section 2. Right of Appeal and Information. (1) An applicant or eligible individual [~~client~~] who is dissatisfied with any action concerning the furnishing or denial of vocational rehabilitation services shall have the right to appeal that action. All applicants or eligible individuals [~~clients~~] shall be informed of entitlements available under this administrative regulation, including the names and addresses of department [~~such~~] individuals with whom an appeal shall be filed. The request for appeal shall be made in writing or alternative format.

(2) Unless the applicant or eligible individual, or an authorized representative of the individual, so requests, pending a final determination of a requested hearing or other final resolution, the department shall not institute a suspension, reduction, or termination of services being provided under the individualized written rehabilitation program unless the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the eligible individual or applicant.

Section 3. Client Assistance Program. The department [~~of Vocational Rehabilitation~~] shall advise all applicants and eligible individuals [~~clients~~] of the existence of the Client Assistance Program, the services provided by the program, and how to contact the program representatives.

Section 4. [~~Notification of Appeal Rights Regarding Eligibility. The Department of Vocational Rehabilitation shall provide each applicant or client with written notification of any agency decision concerning eligibility or ineligibility for services pursuant to federal guidelines.~~

~~Section 5. Notification of Appeal Rights Regarding an Individualized Written Rehabilitation Program. Each client with an Individualized Written Rehabilitation Program (IWRP), shall receive notification of the means for appealing any IWRP decisions through an administrative review or impartial hearing.~~

~~Section 6.~~] Choice of Appeal Procedures and Time Frames. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence, of agency action or inaction, an applicant or client may appeal.

(2) [~~The request for review or hearing shall be made in writing.~~

~~(3)~~] Applicants or eligible individuals [~~clients~~] may choose either [~~initially request~~] an administrative review conducted by an agency staff member not involved in the agency action, or a more formal hearing conducted by [~~before~~] an impartial hearing officer [~~as a means to resolve issues of dissatisfaction~~].

(3) If an administrative review is chosen and the applicant or eligible individual is dissatisfied with the resolution, a hearing may be requested within thirty (30) days after the receipt of the administrative review decision. The hearing shall be held within forty-five (45) days of receipt of the hearing request. Reasonable time extensions may be made for good cause by the commissioner or hearing officer.

[~~(4) The administrative review or expedited administrative review shall not delay an impartial hearing and its time frames, unless both the agency and the applicant or client agree to the delay.~~

~~(5) When both parties have agreed to delay time frames established by federal regulation, the applicant or client, if still dissatisfied, may request an impartial hearing no later than forty five (45) days after receiving written notice of the administrative review decision or the expedited administrative review decision.~~

~~(6) An applicant or client who is dissatisfied with any determination made by agency staff concerning the furnishing or denial of services may request a review of that determination before an impartial hearing officer by writing the Commissioner, Department of Vocational Rehabilitation.~~]

Section 5. [~~7.~~] Procedures for an Administrative Review. The following procedures shall be followed in an administrative review:

(1) The regional administrator shall designate a branch manager from a district not involved in the action in question to conduct the administrative review. The director of Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) shall designate the review officer who has not been involved in the action or inaction being appealed for reviews involving CDPCRC.

(2) The administrative review shall be held within fifteen (15) working days of receipt of the request.

(3) When practicable, the review shall be at a time and place convenient to the applicant or eligible individual [~~client~~] requesting the review, and the individual shall be notified in writing as to the time and place of the review and the right to be represented at the review by counsel or a designated advocate.

(4) A report of the findings of the review shall be sent to the applicant or eligible [~~involved~~] individual within ten (10) [~~fifteen (15)~~] working days from the completion date of the review.

Section 6. Procedures for Impartial Hearings. (1) The hearing officer shall be selected by the individual with a disability from the pool of approved and trained hearing officers maintained by the department.

(2) The department shall send a list of hearing officers to the applicant or eligible individual within five (5) working days from receipt of the hearing request.

(3) The applicant or eligible individual shall notify the department of the selected hearing officer within five (5) working days of receipt of the list.

(4) The notification from the applicant or eligible individual shall include an issue statement for the hearing and shall identify any accommodations required for the hearing (e.g., accessible formats for print materials or a sign language interpreter).

(5) The designated hearing officer may be disqualified by the department representative for a reasonable cause such as, personal knowledge or involvement with the case or the individual or a financial interest which would compromise the objectivity of the decision.

(6) If the commissioner determines that reasonable cause supports disqualification, the individual shall be contacted to select another hearing officer.

(7) At the time the selected hearing officer agrees to conduct the hearing, the hearing officer becomes responsible for communication with each party concerning the hearing. At any time the applicant or eligible individual obtains legal counsel, communication with counsel constitutes notice to the individual.

(8) The hearing officer shall send written notification of the scheduled hearing to the applicant or eligible individual and the department representative which shall include:

(a) A statement of the date, time, place of the hearing;

(b) The names, official titles, mailing addresses, and phone numbers of all parties to the hearing, including the department representative and counsel for the individual, if any;

(c) A statement of the issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

(d) A statement advising the individual of the right to legal counsel;

(e) A statement of the parties' right to inspect any documentary or tangible evidence to be used at the hearing or any relevant records in the possession of the department; and

(f) A statement advising that if any party fails to attend or participate as required at any stage of the hearing process, a default judgment and recommended order against that party's interest may be entered.

(9) The hearing officer may convene and conduct a prehearing conference with reasonable notice. The purpose of the prehearing conference is to clarify the issues for the hearing, explore settlement possibilities, rule on any pending motions, or on other matters that will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order prior to the hearing incorporating all matters determined at the prehearing conference.

(10) At least five (5) calendar days prior to the hearing:

(a) All documents which will be presented as evidence shall be disclosed between the parties; and

(b) A list of witnesses to be called to testify during the hearing shall be submitted to the hearing officer by each party with a copy submitted to the other party.

(11) Depositions are not routinely available. The hearing officer may approve a request from either party to take the deposition of an unavailable witness. Videotape depositions may be approved by the hearing officer for introduction as evidence in lieu of a witness' appearance during the hearing if both parties agree.

(12) The hearing officer shall not communicate off the record with any party to the hearing or other person who has a direct or indirect interest in the outcome of the hearing concerning any substantive issue while the proceeding is pending. Ex parte communication concerning procedural or scheduling questions may be permissible to expedite the proceeding.

Section 7. Conduct of the Hearing. (1) The hearing officer shall preside over the conduct of the hearing and shall make all decisions and rule on all matters concerning the conduct of the hearing and shall require an orderly and proper decorum at the hearing.

(2) The applicant or eligible individual shall designate whether the hearing will be open or closed.

(3) The rules of civil procedure do not apply.

(4) The department shall present its case first, examine witnesses and submit documentation subject to cross examination. The applicant or eligible individual shall then present, examine witnesses and submit documentation subject to cross examination.

(5) Each party shall provide three (3) copies of any exhibit to be introduced into evidence.

(6) The hearing officer shall exclude any evidence that has not been disclosed to the opposing party at least five (5) days before the hearing. Parties may agree to enter undisclosed evidence which does not present an unfair surprise. The hearing officer may enter rebuttal evidence in the record.

(7) Judicial notice shall be taken of governing laws, regulations, and the department's state plan. Policy statements or interpretive memoranda not formally promulgated as regulations shall be produced to the opposing party prior to the hearing if introduced as evidence.

(8) The tape recording of all testimony, motions, and objection in the hearing shall constitute the formal record of the hearing unless extraordinary circumstances justify preparation of a transcript at the request of the hearing officer or the individual or department representative. The preparation of any transcript shall be at department expense.

Section 8. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the commissioner the written recommended order within thirty (30) days from the completion of the hearing unless both parties agree to a reasonable time extension.

(2) The recommended order shall be based exclusively on the evidence on the record, making findings of fact and recommendations.

(3) Within twenty (20) days of the mailing of the decision, the commissioner shall notify the applicant or eligible individual of the intent to review the recommended order in whole or in part.

(4) The decision of the commissioner to review any impartial hearing officer's decision shall be based on the following standards:

(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion or otherwise unreasonable.

(b) Whether the hearing officer's decision was supported by facts in the record and applicable federal and state laws and regulations.

(5) If the commissioner elects to review the decision, the applicant or eligible individual shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.

(6) The commissioner's review shall be limited to the findings with which the commissioner took issue and shall be a paper review of the record of evidence, the hearing officer's written recommended order, and any additional relevant written documentation submitted by the applicant or eligible individual.

(7) The commissioner shall not overturn or modify a decision of an impartial hearing officer, or part of a decision, that supports the position of the applicant or eligible individual unless the commissioner concludes, on the basis of clear and convincing evidence, that the decision of the independent hearing officer is clearly erroneous on the basis of being contrary to federal or state law or administrative regulation.

(8) A final decision shall be made in writing by the commissioner within thirty (30) days of the commissioner's decision to review the recommended order of the hearing officer. The commissioner may grant a reasonable time extension in order for the applicant or eligible individual to submit additional evidence relevant to the final decision.

(9) The commissioner's final decision shall state the findings and the grounds for the decision.

(10) The commissioner shall not delegate responsibility to make a final decision to any administrator or employee of the department.

(11) The decision of the commissioner shall be the final state agency action.

(12) The commissioner shall provide a copy of the final decision to both parties.

~~[Section 8. Expedited Administrative Review. When there is an agency initiated change resulting in a discontinuation of a service set forth in an IWRP, the following procedures shall be observed:~~

~~(1) The client shall be notified in writing at least ten (10) working days before the effective date of the proposed change; and~~

~~(2) The client's request for a review shall be made before the effective date of the proposed change. Should the client request an expedited administrative review, services shall continue until the review determination is received in writing, but in any case, no longer~~

~~than thirty (30) days from the effective date of the proposed change.~~

~~Section 9. Hearing. Should an applicant or client be dissatisfied with any determinations made by the agency staff concerning the furnishing or denial of services or the findings and decision of an administrative review, the affected applicant or client may request a hearing by writing the Commissioner, Department of Vocational Rehabilitation. The following procedures shall be followed:~~

~~(1) An impartial hearing officer who has a background and experience in, and knowledge of, the delivery of vocational rehabilitation services; who has not taken part in the action under consideration; who is not an employee of the Department of Vocational Rehabilitation; and who has no personal or financial investment in the outcome of the hearing shall conduct a formal hearing.~~

~~(2) The hearing shall be held within forty five (45) days after receipt of the initial request for appeal. Reasonable time extensions may be made for good cause shown by a party or at the request of both parties.~~

~~(3) When practicable, the hearing shall be held at a time and place convenient to the applicant or client requesting the hearing; and the applicant or client shall be notified by the hearing officer in writing as to the time and place of the hearing and the right to be represented at the hearing by counsel or by a designated advocate.~~

~~(4) Agency staff involved in the action in dispute shall be present at the hearing. The applicant or client or a designated representative and the agency representative shall have the opportunity for cross-examination; to present evidence, information and witnesses; to examine all documents submitted by the Department of Vocational Rehabilitation and to examine all documents submitted by the applicant or client or a representative.~~

~~(5) The decision of the impartial hearing officer shall set forth the issues, relevant facts brought forth at the hearing, the pertinent provisions in the state plan and the Rehabilitation Act on which the decision is based and the reasoning that led to the decision.~~

~~(6) The verbatim transcript of the testimony presented during the hearing, together with all exhibits filed in the proceedings, shall constitute the exclusive record for the decision.~~

~~(7) The individual or designated representative and the Commissioner, Department of Vocational Rehabilitation shall be sent the decision within thirty (30) days from the completion of the hearing, unless both parties agree to a reasonable time extension to allow the hearing officer to review the transcript before finalizing the decision.~~

~~(8) If the commissioner elects not to review the impartial hearing officer's decision, that decision becomes the final state agency action.~~

~~(9) If the commissioner elects to review the impartial hearing officer's decision, within twenty (20) days of the mailing of the decision to the individual, the client or applicant shall be informed in writing of the intent to review the decision in whole or in part.~~

~~(10) The decision of the commissioner to review any impartial hearing officer's decision shall be based on the following standards:~~

~~(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion, or otherwise unreasonable.~~

~~(b) Whether the hearing officer's decision was supported by substantial evidence, i.e., consistent with facts and applicable federal and state laws and administrative regulations.~~

~~(c) Whether, in reaching the decision, the impartial hearing officer gave appropriate and adequate interpretation to such factors as:~~

~~1. The federal regulations and policies as they apply to the specific issue(s) in question;~~

~~2. State laws and administrative regulations as they relate to the issue(s) in question;~~

~~3. The state plan as it applies to the specific issue(s) in question;~~

~~4. The state procedures manual as it may apply to the specific issue(s) in question;~~

~~5. Key portions of conflicting testimony;~~

~~6. State agency options in the delivery of services where such options are permissible by the federal regulations; and~~

~~7. Restrictions in federal regulations with regard to such supportive services as maintenance and transportation.~~

~~(11) If the commissioner elects to review the decision of the impartial hearing officer, the applicant or client shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.~~

~~(12) The commissioner's review shall be limited to the findings with which the commissioner took issue and shall be a paper review of the transcript of testimony and exhibits presented at the hearing, the hearing officer's written decision, and any additional relevant written documentation submitted by the applicant or client or a representative.~~

~~(13) A final decision stating the findings and grounds for the decision shall be made in writing by the commissioner within thirty (30) days of the commissioner's decision to review the decision of the impartial hearing officer. The applicant or client may request a delay in order to submit additional evidence bearing on the final decision if the commissioner agrees to a reasonable time extension.~~

~~(14) When a final decision is made, a copy of that decision shall be provided to the applicant or client or a representative.~~

~~(15) The commissioner shall not delegate responsibility to make any such final decision to any other officer or employee of the Department of Vocational Rehabilitation.~~

~~(16) The decision of the commissioner shall be the final state agency action.]~~

Section 9. [~~10.~~] Legal Counsel. The department [~~of Vocational Rehabilitation~~] shall not provide legal counsel or reimburse the costs of legal counsel for an applicant or eligible individual [~~client~~] who appeals an action concerning the furnishing or denial of services.

SAM SERRAGLIO, Commissioner

APPROVED BY AGENCY: December 9, 1994

FILED WITH LRC: January 4, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 1995 at 10 a.m. Eastern Time in the DVR Training Room, 61-62 Fountain Place, Wilkinson Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency by February 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: George Parsons, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521.

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Parsons

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

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic 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: Will be contingent upon number of appeals received but these reporting and paperwork requirements currently exist.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds under the federal Rehabilitation Act of 1973, as amended, will be used for implementation and enforcement.

(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: Counsel has advised that the material is designated by KRS Chapter 13A and federal law and regulation as regulatory in nature with specific requirements imposed by the Rehabilitation Act Amendments of 1992.

(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 detrimental effect on those issues will ensue.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps, or duplicates this regulation which enumerates procedures for hearings to be conducted for applicants and individuals eligible for vocational rehabilitation services from the department as prescribed by the Rehabilitation Act Amendments of 1992.

(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 is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973.

(11) TIERING: Is tiering applied? No. The federal law requires that all applicants and eligible individuals for vocational rehabilitation services be afforded an opportunity for appeal and hearing. This regulation identifies the procedures for those appeals and hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. This administrative regulation establishes procedures for client appeals as required in federal mandate.

3. Minimum or uniform standards contained in federal mandate. State agencies are required to adopt policies and procedures necessary to assure clients an administrative avenue for resolving disputes.

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

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

WORKFORCE DEVELOPMENT CABINET
Department for the Blind
(Proposed Amendment)

782 KAR 1:040. Appeal procedures for applicants and clients.

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

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

NECESSITY AND FUNCTION: KRS 163.470(6) requires the Department for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. Under its State Plan for Vocational Rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended, the department is required to establish procedures so that any applicant for or client of vocational rehabilitation services who is dissatisfied with determinations made by staff of the department concerning the furnishing or denial of services may request a timely review of those determinations.

Section 1. Definitions. (1) "Eligible individual" or "client" means an applicant for vocational rehabilitation services who the department determines is an individual with a disability who requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

(2) "Applicant" means an individual who submits an application for vocational rehabilitation services.

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

(4) "Commissioner" means the Commissioner of the Department for the Blind.

(5) "Impartial hearing officer" means an individual:

(a) Who is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education;

(b) Who is not a member of the Department for the Blind Advisory Council;

(c) Who has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;

(d) Who has knowledge of the delivery of vocational rehabilitation services, the federal and state laws and administrative regulations governing the provision of vocational rehabilitation services;

(e) Who has training with respect to the performance of official duties; and

(f) Who has no personal or financial interest that would be in

conflict with the objectivity of the individual.

Section 2. Right of Appeal and Information. (1) An applicant or eligible applicant [~~client~~] who is [~~may be~~] dissatisfied with any action by the department concerning the furnishing or denial of services shall have the right to appeal that action. [~~, and~~] All applicants or eligible individuals [~~clients~~] shall be informed of entitlements available under this section, including the names and addresses of department [~~such~~] individuals with whom an appeal may be filed. The request for appeal shall be made in writing or alternative format.

(2) Unless the eligible individual, or an authorized representative of the individual, so requests, pending a final determination of a requested hearing or other final resolution, the department shall not institute a suspension, reduction, or termination of services being provided under the individualized written rehabilitation program unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the eligible individual.

(3) [~~(2)~~] The department shall advise all applicants and eligible individuals [~~clients~~] of the existence of the Client Assistance Program of the Workforce Development [~~Education and Humanities~~] Cabinet, the services provided by the program, and how to contact the program.

[~~(3) Each applicant shall be provided with written notification of any decision by the department concerning that person's eligibility or ineligibility for services, the basis for and the effective date of that decision, and the specific means of appealing that decision through an administrative review or impartial hearing.~~

~~(4) Each client shall be provided with an individualized written rehabilitation program, including the specific means for appealing any decisions through an administrative review or impartial hearing.~~

~~(5) An applicant or client who may be dissatisfied with any determination made by a counselor or other staff of the department concerning the furnishing or denial of services may request a review of that determination before an impartial hearing officer by contacting the executive director of the department. Since the impartial hearing is a formal process, requiring adherence to exacting procedures and somewhat lengthy time frames, applicants and clients are encouraged to first consider the informal and more timely administrative review as a means to resolve issues of dissatisfaction. The decision to first use the administrative review or the impartial hearing is a choice solely with the applicant or client, but with one (1) condition: the administrative review may not delay the impartial hearing and its time frames unless both the department and the applicant or client agree to the delay. Since the choice may depend on a number of factors and may be confusing, the applicant or client shall be encouraged to consult with the Client Assistant Program to fully consider the appeal options available and their consequences.~~]

(4) [~~(6)~~] The department shall not provide legal counsel or reimburse the costs of legal counsel for an applicant or eligible individual [~~client~~] who appeals an action concerning the furnishing or denial of services.

Section 3. [~~2.~~] Choice of Appeal Procedures and Time Frames. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence, of agency action or inaction, an applicant or client may appeal.

(2) Applicants or eligible individuals may choose either an administrative review conducted by an agency staff member not involved in the agency action, or a more formal hearing conducted by an impartial hearing officer.

(3) If an administrative review is chosen and the applicant or eligible individual is dissatisfied with the resolution, a hearing may be requested within thirty (30) days after the receipt of administrative review decision. The hearing shall be held within forty-five (45) days of receipt of the hearing request. Reasonable time extensions may be made for good cause by the commissioner or hearing officer.

Section 4. Administrative Review. (1) If an applicant or eligible individual [~~client~~] is dissatisfied with an action regarding the furnishing or denial of services, the individual may request an administrative review by contacting the Director of Client Services of the department.

(2) The following procedures shall be followed in an administrative review:

(a) The Director of Client Services or designee of the Director of Client Services shall conduct the administrative review;

(b) The administrative review shall be held within fifteen (15) working days of receipt of the request;

(c) The review shall be held at a time and place convenient to the individual requesting the review, and the individual shall be notified in writing as to the time and place of the review and the right to be represented at the review by counsel or designated advocate; and

(d) A report of the findings of the review shall be sent to the individual within ten (10) [~~fifteen (15)~~] working days from the completion date of the review and shall indicate an administrative review decision to be binding for all staff of the department.

Section 5. [~~3.~~] Procedures for Impartial Hearings. (1) The hearing officer shall be selected by the applicant or eligible individual from the pool of approved and trained hearing officers maintained by the department.

(2) The department shall send a list of hearing officers to the applicant or eligible individual within five (5) working days from receipt of the hearing request.

(3) The applicant or eligible individual shall notify the department of the selected hearing officer within five (5) working days of receipt of the list.

(4) The notification from the applicant or eligible individual shall include any issue statement for the hearing and shall identify any accommodations required for the hearing (e.g., accessible formats for print materials or a sign language interpreter).

(5) The designated hearing officer may be disqualified by the department representative for a reasonable cause such as, personal knowledge or involvement with the case or the individual or a financial interest which would compromise the objectivity of the decision.

(6) If the commissioner determines that reasonable cause supports disqualification, the individual shall be contacted to select another hearing officer.

(7) At the time the selected hearing officer agrees to conduct the hearing, the hearing officer becomes responsible for communication with each party concerning the hearing. At any time the applicant or eligible individual obtains legal counsel, communication with counsel constitutes notice to the individual.

(8) The hearing officer shall send written notification of the scheduled hearing to the applicant or eligible individual and the department representative which shall include:

(a) A statement of the date, time, place of the hearing;

(b) The names, official titles, mailing addresses, and phone numbers of all parties to the hearing, including the department representative and counsel for the individual if any;

(c) A statement of the issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

(d) A statement advising the individual of the right to legal counsel;

(e) A statement of the parties' right to inspect any documentary or tangible evidence to be used at the hearing or any relevant records in the possession of the department; and

(f) A statement advising that if any party fails to attend or participate as required at any stage of the hearing process, a default judgment and recommended order against that party's interest may be entered.

(9) The hearing officer may convene and conduct a prehearing conference upon request by either party or on his own with reasonable notice. The purpose of the prehearing conference is to clarify the issues for the hearing, explore settlement possibilities, rule on any pending motions, or on other matters that will promote the orderly and

prompt conduct of the hearing. The hearing officer shall issue a prehearing order prior to the hearing incorporating all matters determined at the prehearing conference.

(10) At least five (5) calendar days prior to the hearing:

(a) All documents which will be presented as evidence shall be disclosed between the parties; and

(b) A list of witnesses to be called to testify during the hearing shall be submitted to the hearing officer by each party with a copy submitted to the other party.

(11) Depositions are not routinely available. The hearing officer may approve a request from either party to take the deposition of an unavailable witness. Videotape depositions may be approved by the hearing officer for introduction as evidence in lieu of a witness' appearance during the hearing if both parties agree.

(12) The hearing officer shall not communicate off the record with any party to the hearing or other person who has a direct or indirect interest in the outcome of the hearing concerning any substantive issue while the proceeding is pending. Ex parte communication concerning procedural or scheduling questions may be permissible to expedite the proceeding. [~~Expedited Administrative Review. When the department initiates a change which discontinues a service set forth in an individualized written rehabilitation program, the following procedures shall be observed:~~

~~(1) The department shall notify the client of the decision and the basis for that decision at least ten (10) working days prior to the effective date of the change through a procedure which is verifiable (for example, certified mail with receipt requested), unless circumstances beyond the control of the department make the ten (10) day notice impossible;~~

~~(2) The notification shall advise the client that services may be continued while the client is afforded an opportunity to exercise appeal rights for an "expedited" administrative review;~~

~~(3) The notification shall advise if the client wishes any disputed service to continue during an expedited review, request for an expedited administrative review must be received by the Director of Client Services prior to the effective date of change; and~~

~~(4) The notification shall advise the client that, upon receipt of a request for an expedited administrative review, the expedited administrative review will be completed and decision rendered in not more than thirty (30) calendar days from the effective date of the change.~~]

Section 6. [~~4.~~] Conduct of the Hearing. (1) The hearing officer shall preside over the conduct of the hearing and shall make all decisions and rule on all matters concerning the conduct of the hearing and shall require an orderly and proper decorum at the hearing.

(2) The applicant or eligible individual shall designate whether the hearing will be open or closed.

(3) The rules of civil procedure do not apply.

(4) The department shall present its case first, examine witnesses and submit documentation subject to cross examination. The applicant or eligible individual shall then present her or his case, examine witnesses and submit documentation subject to cross examination.

(5) Each party shall provide three (3) copies of any exhibit to be introduced into evidence.

(6) The hearing officer shall exclude any evidence that has not been disclosed to the opposing party at least five (5) days before the hearing. Parties may agree to enter undisclosed evidence which does not present an unfair surprise. The hearing officer may enter rebuttal evidence in the record.

(7) Judicial notice shall be taken of governing laws, regulations, and the department's state plan. Policy statements or interpretive memoranda nor formally promulgated as regulations shall be produced to the opposing party prior to the hearing if introduced as evidence.

(8) The tape recording of all testimony, motions, and objection in the hearing shall constitute the formal record of the hearing unless extraordinary circumstances justify preparation of a transcript at the request of the hearing officer or the individual or department representative. The preparation of any transcript shall be at department expense. [~~Impartial Hearing. (1) If an applicant or client is dissatisfied with any determination made by a counselor or other staff of the department concerning the furnishing or denial of services or the findings and decision of an administrative review, the affected individual may request an impartial hearing by writing the executive director of the department who shall provide an impartial hearing according to the procedures of this section.~~

~~(2) The executive director shall appoint from a roster of available hearing officers to the department an impartial hearing officer who has a background and experience in, and knowledge of, the delivery of vocational rehabilitation services and who has not taken part in the action under consideration and who is not an employee of the department to conduct a formal hearing.~~

~~(3) The hearing shall be held within forty five (45) days after receipt of the initial request for appeal except reasonable time extensions may be made for good cause shown by a party or at the request of both parties.~~

~~(4) The hearing shall be held at a time and place convenient to the individual requesting the hearing, and the individual shall be notified in writing as to the time and place of the hearing and the right to be represented at the hearing by counsel, friend, parent or guardian, or other appropriate advocate.~~

~~(5) Employees of the department involved in the action of dispute shall be present at the hearing and the individual or designated representative shall have the opportunity for cross examination, to present evidence, information and witnesses, and to examine all documents submitted by the department.~~

~~(6) The decision of the impartial hearing officer shall set forth the issues, relevant facts brought out at the hearing, any relevant provisions in and the law on which the decision is based and the reasoning that led to the decision.~~

~~(7) The verbatim transcript of the testimony presented during the hearing, together with all exhibits filed in the proceedings, shall constitute the exclusive record for the decision.~~

~~(8) The individual or designated representative and the executive director shall be sent the decision within thirty (30) days from the completion of the hearing unless both parties agree to a reasonable time extension to allow the hearing officer to review the transcript before finalizing the decision.~~

~~(9) Within twenty (20) days of the mailing of the decision to the individual the executive director shall inform the individual in writing of his/her intention to accept or review such decision in whole or part.~~

~~(10) The decision of the executive director to review any impartial hearing officer's decision shall be based on the following standards:~~

~~(a) Is the hearing officer's decision arbitrary, capricious, an abuse of discretion, or otherwise unreasonable?~~

~~(b) Is the hearing officer's decision supported by substantial evidence, i.e., consistent with facts and applicable federal and state policy?~~

~~(c) In reaching the decision, has the impartial hearing officer given appropriate and adequate interpretation to:~~

~~1. The federal statute regulations, and policies as they apply to the specific issue(s) in question;~~

~~2. State law and regulations as they relate to the issue(s) in question;~~

~~3. The state plan as it applies to the specific issue(s) in question;~~

~~4. The procedures manual of the department as it applies to the specific issue(s) in question;~~

~~5. Key portions of conflicting testimony;~~

~~6. Options of the department in the delivery of services where such options are permissible by the federal statute;~~

~~7. Restrictions in the federal statute with regard to such supportive~~

~~services as maintenance and transportation; or~~

~~8. State law and regulations as they relate to the issue(s) in question?~~

~~(11) If the executive director decides to review the decision of the impartial hearing officer, the individual shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.~~

~~(12) The executive director's review shall be limited to the findings with which the executive director took issue and shall be a paper review of the transcript of testimony and exhibits presented at the hearing, the hearing officer's written decision, and any additional relevant written documentation submitted by the individual.~~

~~(13) A final decision stating the findings and grounds for the decision shall be made in writing by the executive director within thirty (30) days of the executive director's decision to review the decision of the impartial hearing officer unless the individual requests a delay in order to submit additional evidence bearing on the final decision and both the individual and executive director agree to a reasonable time extension for the final decision.~~

~~(14) When a final decision is made, a copy of such decision shall be provided to the individual or his/her representative.~~

~~(15) The executive director shall not delegate responsibility to make any such final decision to any other officer or employee of the Kentucky Department for the Blind; and~~

~~(16) The decision of the executive director shall be the final action of the department, and there shall be no further recourse that the individual can pursue administratively other than seeking judicial review of that decision in the courts.~~]

Section 7. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the commissioner the written recommended order within thirty (30) days from the completion of the hearing unless both parties agree to a reasonable time extension.

(2) The recommended order shall be based exclusively on the evidence on the record, making findings of fact and recommendations.

(3) Within twenty (20) days of the mailing of the decision, the commissioner shall notify the applicant or eligible individual of the intent to review the recommended order in whole or in part.

(4) The decision of the commissioner to review any impartial hearing officer's decision shall be based on the following standards:

(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion or otherwise unreasonable.

(b) Whether the hearing officer's decision was supported by facts in the record and applicable federal and state laws and regulations.

(5) If the commissioner elects to review the decision, the applicant or eligible individual shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.

(6) The commissioner's review shall be limited to the findings with which the commissioner took issue and shall be a paper review of the record evidence, the hearing officer's written recommended order, and any additional relevant written documentation submitted by the applicant or eligible individual.

(7) The commissioner shall not overturn or modify a decision of an impartial hearing officer, or part of a decision, that supports the position of the applicant or eligible individual unless the commissioner concludes, on the basis of clear and convincing evidence, that the decision of the independent hearing officer is clearly erroneous on the basis of being contrary to federal or state law or administrative regulation.

(8) A final decision shall be made in writing by the commissioner within thirty (30) days of the commissioner's decision to review the recommended order of the hearing officer. The commissioner may grant a reasonable time extension in order for the applicant or eligible individual to submit additional evidence relevant to the final decision.

(9) The commissioner's final decision shall state the findings and the grounds for the decision.

(10) The commissioner shall not delegate responsibility to make a final decision to any administrator or employee of the department.

(11) The decision of the commissioner shall be the final state agency action.

(12) The commissioner shall provide a copy of the final decision to both parties.

PRISCILLA ROGERS, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: January 10, 1995

FILED WITH LRC: January 13, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 1995 at 10 a.m. Eastern Time in the DVR Training Room, 61-62 Fountain Place, Wilkinson Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency by February 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 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: Sue Simon, Workforce Development Cabinet, 2nd Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-6606. The Department for the Blind does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Sue Simon

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

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic 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: Will be contingent upon number of appeals received but these reporting and paperwork requirements currently exist.

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

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Funds under the federal Rehabilitation Act of 1973, as amended, will be used for implementation and enforcement.

(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: Counsel has advised that the material is designated by KRS Chapter 13A and federal law and regulation as regulatory in nature with specific requirements imposed by the Rehabilitation Act Amendments of 1992.

(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 detrimental effect on those issues will ensue.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps, or duplicates this regulation which enumerates procedures for hearings to be conducted for applicants and individuals eligible for vocational rehabilitation services from the department as prescribed by the Rehabilitation Act Amendments of 1992.

(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 is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. The federal law requires that all applicants and eligible individuals for vocational rehabilitation services be afforded an opportunity for appeal and hearing. This regulation identifies the procedures for those appeals and hearings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 29 USC Section 722 and 34 CFR 361.48.

2. State compliance standards. This administrative regulation establishes procedures for client appeals as required in federal mandate.

3. Minimum or uniform standards contained in federal mandate. State agencies are required to adopt such policies and procedures as is necessary to assure clients an administrative avenue for resolving disputes.

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

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

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

806 KAR 17:070. Filing procedures for health insurance rates[~~; experience data on individual Medicare supplement policies~~].

RELATES TO: KRS 304.14-120, 304.14-130, 304.17-380, 304.17-400

STATUTORY AUTHORITY: KRS 304.2-110, 304.17-400

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides additional filing procedures for health insurance rates[~~, and provides standards for the annual filing of experience data on individual Medicare supplement policies~~].

Section 1. Definitions. [~~For purposes of this regulation, the following terms shall have the meanings herein provided:~~] (1) "Present value" means the amount of money needed as of the valuation date to produce, when accumulated at interest, a specified amount on a specific future date. The "present value of future benefits" and "present value of future premiums" are sums of such values which should take into account not only the interest assumption but the assumed persistency and mortality of the business.

(2) "Accumulated value" means the amount of which a sum of money would have increased as of the valuation date, if invested at a specific date in the past, subject to the investment earnings attributable to the policies.

(3) "Loss ratio" means the ratio of the sum of incurred losses and the change in policy reserves divided by the earned premiums.

(4) A "qualified actuary" is a member of the American Academy of Actuaries, a fellow or associate of the Society of Actuaries, the Institute of Actuaries, the Faculty of Actuaries, the Casualty Actuarial Society, or a fellow or member of the Conference of Actuaries in Public Practice.

Section 2. Classification of Policies. For the purposes of this administrative regulation, policies are classified by type of benefit, renewal clause and average annual premium.

(1) Types of benefits recognized are:

(a) Medical expense, including hospital indemnity policies, as well as hospital, surgical, major medical or any other policies providing insurance against the expenses resulting from accident or sickness;

(b) Medicare supplement policies; [~~and~~]

(c) Loss of income; and [~~all other.~~]

(d) All other policies which may be designated by the commissioner.

(2) Categories of renewal clause are as follows:

OR - Optionally renewable: renewal of individual policies is at the option of the insurance company.

CR - Conditionally renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health.

GR - Guaranteed renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

NC - Noncancellable: renewal cannot be declined nor can rates be revised by the insurance company.

(3) Recognized categories by average annual premium per policy are:

(a) Less than $100;

(b) At least $100 but less than $200;

(c) $200 or more.

[~~Section 3. Maintenance, Reporting and Evaluation of Experience~~

~~Data. (1) Insurers shall maintain records of earned premiums and incurred benefits for each calendar year for each policy form, including data for rider and endorsement forms which are used with the policy form, on the same basis, including all reserves, as required for the Accident and Health Policy Experience Exhibit. Separate data may be maintained for each rider or endorsement form to the extent appropriate. Experience under forms which provide substantially similar coverage may be combined. Excepting as provided below, the data shall be for all years of issue combined, for each calendar year of experience since the year the form was first issued, except that data for calendar years prior to the most recent five (5) years may be combined. In the case of individual Medicare supplement policies, and for any other form in which the effect of selection or the operation of a preexisting condition exclusion is a rating factor, records shall be maintained by duration, i.e., the experience of the policies issued in a specific calendar year shall be maintained from year to year in the same manner.~~

~~(2) In order to monitor the claims experience of all individual Medicare supplement policies, each insurer must file experience data annually on "experience reporting form" (Appendix A), which shall be labeled as such and be in such form as the commissioner may from time to time determine and prescribe. A separate form shall be used to report the experience of policies issued during each calendar year, except that data for calendar years prior to the most recent five (5) years may be combined.~~

~~(3) In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:~~

~~(a) Statistical credibility of premiums and benefits, e.g., low exposure, low loss frequency.~~

~~(b) Experienced and projected trends relative to the kind of coverage, e.g., inflation in medical expenses, economic cycles affecting disability income experience.~~

~~(c) The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations, if experience by duration is shown.~~

~~(d) The mix of business by risk classification.~~]

Section 3. [4.] Filing of Rates. Every policy, rider or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not directly or indirectly produce a change in the benefit level. Any subsequent addition to or change in rates applicable to such policy, rider or endorsement shall also be filed.

(1) The following items shall be included in individual health insurance rate filing submissions for rates on a new product:

(a) Policy form, application, endorsements, "face sheet and verification form" and filing fee.

(b) Rate sheet.

(c) Actuarial memorandum.

1. Brief description of the type of policy, benefits, renewability, general marketing method, and issue age limits.

2. Brief description of how rates were determined, including the general description and source of each assumption used. If assumptions are materially different from the company's experience on similar policies, the reasons for their choice should be explained. Margins, both implicit and explicit, should be estimated. For expenses, show those which are percent of premium, dollars per policy and/or dollars per unit of benefit, separately, by policy year.

3. Estimated average annual premium per policy.

4. Anticipated loss ratio, including a brief description of how it was calculated, and a projection of year-by-year expected loss ratios.

5. Anticipated loss ratio presumed reasonable according to Section 4 [5] of this administrative regulation.

6. If subparagraph 4 of this paragraph is less than subparagraph 5 of this paragraph, supporting documentation for the use of the proposed premium rates.

7. An actuarial report signed by a qualified actuary as to whether or not, to the best of the actuary's knowledge and judgment, the rate submission is in compliance with the applicable laws and administrative regulations of the state and the benefits are reasonable in relation to the premiums.

8. Comparison of the rates with those of any similar policies currently or recently issued by the company.

(d) A statement as to the status of the filing in the company's home state, and a statement as to any variations in rates and/or loss ratio assumptions required by or used in other states.

(2) The following items shall be included in individual health insurance rate filing submissions for rate increases on an existing product:

(a) New rate sheet, "face sheet and verification form" and filing fee.

(b) Actuarial memorandum.

1. Brief description of the type of policy, benefits, renewability, general marketing method, issue age limits, the first and last year the policy form was issued, and the anticipated loss ratio of its original rates.

2. Scope and reason for rate revision including a statement of whether the revision applies only to new business, only to in-force business, or to both, and outline of all past rate increases on this form.

3. Estimated average annual premium per policy, before and after rate increase. Comparison of proposed rate scale with current rate scale.

4. Past experience, in the format of the "experience reporting form," and any other available data the insurer may wish to provide. If policy reserves are other than net level reserves based on the rate assumptions underlying the existing rates, an estimate of the effect of using such reserves should be provided.

5. Brief description of how revised rates were determined, including the general description and source of each assumption used. For expenses, include percent of premium, dollars per policy, and/or dollars per unit of benefit as separate items, Also, the unamortized initial expenses to be recovered from future premiums should be shown.

6. The anticipated future loss ratio described in Section 4 [5](2)(a) of this administrative regulation and description of how it was calculated.

7. The anticipated loss ratio which combines cumulative and future experience described in Section 4 [5](2)(b) of this administrative regulation, and description of how it was calculated.

8. Anticipated loss ratio presumed reasonable according to Section 4 [5] of this administrative regulation.

9. If subparagraphs 6 or 7 of this paragraph is less than subparagraph 8 of this paragraph, supporting documentation for the use of such premium rates.

10. An actuarial report signed by a qualified actuary as to whether or not, to the best of the actuary's knowledge and judgment, the rate submission is in compliance with the applicable laws and administrative regulations of the state and the benefits are reasonable in relation to the premiums.

11. The number of policies in force in Kentucky and approximate annual premiums.

(c) A statement as to the status of the filing in the company's home state, and a statement as to any variations in rates and/or loss ratio assumptions required by or used in other states.

Section 4. [5.] Reasonableness of Benefits in Relation to Premiums. (1) New forms.

(a) With respect to a new form other than a Medicare supplement form under which the average annual premium (as defined below) is expected to be at least $200, benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio is at least as great as shown in the following table:

Type of Coverage	Renewal Clause			
	OR	CR	GR	NC
Medical Expense	60%	55%	55%	50%
Loss of Income and Other	60%	55%	50%	45%

(b) For a policy form, including riders and endorsements, under which the expected average annual premium per policy is $100 or more but less than $200, subtract five (5) percentage points from the numbers in the table above, or less than $100, subtract ten (10) percentage points.

(c) The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

(d) The loss ratio for a Medicare supplement policy shall be as provided in 806 KAR 17:060, regardless of renewal clause or average premium.

(2) Rate revisions. Excepting as provided below, with respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided both the following loss ratios meet the above standards for new forms.

(a) The anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage;

(b) The anticipated loss ratio derived by dividing "A" by "B" where:

1. "A" is the sum of the accumulated benefits, from the original effective date of the form or the effective date of this administrative regulation, whichever is later, to the effective date of the revision, and the present value of future benefits, and

2. "B" is the sum of the accumulated premiums from the original effective date of the form or the effective date of the administrative regulation, whichever is later, to the effective date of the revision, and the present value of future premiums, such present values to be taken over the entire period for which the revised rates are computed to provide coverage, and such accumulated benefits and premiums and premiums from the last date as of which an accounting has been made to the effective date of the revision.

(3) Anticipated loss ratios other than those indicated in subsection (1) or (2) of this section will require justification based on the special circumstances that may be applicable.

(a) Examples of coverages for which a lower loss ratio may receive special consideration are as follows:

1. Accident only;
2. Short term nonrenewable, e.g., airline trip, student accident;
3. Specified peril, e.g., common carrier;
4. Other special risks.

(b) Examples of other factors for which lower loss ratios may receive special consideration are as follows:

1. Marketing methods, giving due consideration to acquisition and administration costs and to premium mode;
2. Extraordinary expenses;
3. High risk of claim fluctuation because of the low loss frequency or the catastrophic, or experimental nature of the coverage;
4. Product features such as long elimination periods, high deductibles and high maximum limits;
5. The industrial or debit method of distribution;
6. Forms issued prior to the effective date of these guidelines.

(c) Companies are urged to review their experience periodically and to file rate revisions, as appropriate, in a timely manner to avoid the necessity of later filing of unacceptable large rate increases. Companies will be requested to implement rate increases of more than thirty (30) percent over two (2) or more years.

(d) Examples of factors for which higher loss ratios may be required:

1. Forms on which all initial expenses have been amortized.
2. Forms on which rates have been increased to at least double their original level.

Section 5. [~~6.~~] Miscellaneous Considerations. (1) Additional data which may be included in support of rate filings includes, but is not limited to, substitution of actual claim run-offs for claim reserves and liabilities, in order to avoid the problems of short-term developments, accident-year loss ratios supporting trends, the operation of any experience funds or stabilization reserves, adjustment of premiums to an annual mode basis.

(2) All additional data must be reconciled, as appropriate, to the required data, and any missing data explained.

Section 6. [~~7.~~] Severability. If any provision of this administrative regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this administrative regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

[~~COMMONWEALTH OF KENTUCKY~~
~~DEPARTMENT OF INSURANCE~~
~~FRANKFORT, KENTUCKY 40601~~

~~APPENDIX A~~
~~ACCIDENT AND HEALTH POLICY EXPERIENCE REPORTING FORM~~

~~COMPANY~~ _____
~~NAIC COMPANY CODE~~ _____
~~POLICY FORM~~ _____
~~POLICIES ISSUED DURING~~ _____
~~COMPANY OFFICER RESPONSIBLE FOR PREPARING THIS REPORT:~~
~~NAME~~ _____
~~TITLE~~ _____
~~ADDRESS~~ _____
~~PHONE~~ _____

~~Year (1)~~	~~Paid or Written Premium (2)~~	~~Increase In Premium Reserves (3)~~	~~Earned Premium (2)—(3) (4)~~	~~Dividends (5)~~	~~Paid Claims (6)~~	~~Increase In Policy Reserves (7)~~	~~Increase In Claim Reserves (8)~~	~~Incurred Claims (6)+(7) +(8) (9)~~	~~Loss Ratio (9) ÷ (4) (10)~~
~~CUMULATIVE~~									

~~Instructions:~~

~~1. Reporting form should be on eight and one-half (8 1/2) by eleven (11) stock.~~

~~2. Reserve bases should be given on a separate page, also on eight and one-half (8 1/2) by eleven (11) stock.~~

~~3. All figures in columns (2) (10) may be rounded to three (3) significant digits, with appropriate footnoting.~~

~~4. The first calendar year's experience on policies issued during that year should be entered on the first line of the form, with successive years' experience reported separately on the lines below.~~

~~5. Additional pages may be used where necessary.~~]

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 11, 1995
FILED WITH LRC: January 12, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1995, at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 17, 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on February 22, 1995, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032 Ext. 239.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: Carla H. Montgomery, Counsel

(1) Type and number of entities affected: Health insurance companies that offer Medicare supplements would be affected. The department does not have an accurate number of these entities but estimates that the number of companies is less than 100.

(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 insurance companies that issue medicare supplements will not be required to file the experience data on individual Medicare supplement policies. There will be less paperwork 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: There would be no direct costs or savings to the Department of Insurance.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Department of Insurance does not use this information, so there would be no impact.

(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: No revenue will be affected.

(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 implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative would be to keep requiring insurance companies that issue medicare supplement policies to file the experience data for these policies. However, this information is unnecessary for the department. The department does not currently use the data. To keep requiring this information that is required by the federal government is unnecessary and unproductive.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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? Tiering is not applied. The administrative regulation will affect all insurance companies that issue medicare supplement policies equally.

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

815 KAR 7:100. The Kentucky Building Code.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: Pursuant to KRS 198B.040(7), the Kentucky Board of Housing, Buildings and Construction promulgated and adopted a uniform state building code establishing standards for construction of buildings in the state and set forth in administrative regulation 815 KAR 7:090, which will be repealed by this administrative regulation. This administrative regulation incorporates by reference the 1994 Kentucky Building Code and sets forth printing errors not previously noted, as well as includes certain recent amendments approved by the board. This amendment is necessary to make certain technical changes in the code that are necessary for clarification, and amendments approved by the Board of Housing. ~~[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 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. 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. Amendments to Chapter 10 of the 1994 Kentucky Building Code. (1) Amend Section 1005.3 to read as follows: "1005.3 Protruding objects: A minimum headroom of 80 inches (2032 mm) shall be provided for any walking surface, including walks, halls, corridors, aisles and passageways. Structural elements, fixtures or furnishings shall not project from either side more than 4 inches (102 mm) over any walking surface between the heights of 27 (686 mm) and 80 inches (2032 mm) above the walking surface. A free-standing object mounted on a post(s) or pylon(s) shall not overhang that post(s) or pylon(s) more than 12 inches (305 mm) where the lowest point of the leading edge is more than 27 inches (686 mm) and less than 80 inches (2032 mm) above the walking surface. Door closers and stops shall not reduce headroom to less than 78 inches (1981 mm). See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(2) Delete the Exception from Section 1006.6 in its entirety because the section it references was previously deleted.

(3) Amend Section 1016.3 to read as follows: "1016.3 Maximum slope: The maximum slope of means of egress ramps shall be one unit vertical in eight units horizontal (1:8); except ramps required for persons with physical disabilities, see Chapter 11."

(4) Amend Section 1018.5 to read as follows: "1018.5 Adjacent areas: Each revolving door shall have a conforming side-hinged

swinging door in the same wall as, and within 10 feet (3048 mm) of, the revolving door. See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities. Exception: The adjacent swinging door is not required for street floor elevator lobbies if a stairway, escalator or door from other parts of the building does not discharge through the lobby and the lobby does not have any occupancy other than as a means of travel between the elevators and street."

(5) [~~(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. 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) Exception #2 under Section 1104.2 shall be amended to read: "2. The exceptions listed in Section 4.1.3(5) of ADAAG."

(4) 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) 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) 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) 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) 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) 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) 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. Amendments to Chapter 16 of the 1994 Kentucky Building Code. (1) Amend Section 1612.1.8 to read as follows: "1612.1.8 Site limitation for Seismic Performance Category E: A building assigned to Category E shall not be sited over a known fault that has previously caused a rupture of the ground surface immediately under the proposed building."

(2) 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. 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."

(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. 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)."

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

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: January 11, 1995

FILED WITH LRC: January 12, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, February 21, 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 February 16, 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, General Counsel

(1) Type and number of entities affected: Contractors, architects, engineers, design professionals.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No costs or savings involved because administrative regulation only establishes acceptability and sets standards.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No costs or savings involved as stated above.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None to users of KBC.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of printing KBC but this is recouped by the sale of the code books.

2. Continuing costs or savings: Cost of printing revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Plan review fees, pursuant to 815 KAR 7:013.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Kentucky Building Code is used and enforced statewide, however, there is no known economic impact on these particular code changes.

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative option available; Board of Housing adopts or amends material within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety concerns.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without amendments, the code would not conform to the latest safety standards listed and confusion over some provisions make design more difficult.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict of statute or policy.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was applied in that the mandatory requirements for buildings are different depending upon the occupancy type and number of persons occupying a building; building size and construction type.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? If yes, complete questions 2-4. Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the Kentucky Building Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased not decreased by this administrative regulation.

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

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the 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. This amendment was approved by the Plumbing Code Committee and the Board of Housing to allow smaller size water distribution piping due to the reduced water usage of current fixtures and faucets (Section 9 of this administrative regulation). [~~because the Division of Plumbing, having received notice of documented instances of failure with these fittings, recommended that this material be removed from the code.~~]

Section 1. Definition of Terms. (1) "ASSE" means American Society of Sanitary Engineers and copies of specifications identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(2) "ASTM" means American Society for Testing Materials and copies of specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) "Critical level (CL)" means the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the

department and other governing authorities. Toxic materials shall be kept out of the potable water system.

(a) The pipe conveying and the surfaces in contact with potable water shall be constructed of nontoxic materials.

(b) Chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the systems.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material which will affect either the taste, odor, color, or potability of the water supply when the tank is placed in, or returned to, service. All interior tank coatings shall be from the list approved by the authority having jurisdiction.

(2) Potable water only shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from nonpotable liquids, solids, or gases being introduced into the potable water supply through cross connections or other piping connections to the system.

(4) Cross connections shall be prohibited except as approved by the authority having jurisdiction, and suitable protective devices shall be installed.

(5) Cross connections between a private water supply and a public water supply shall not be made.

(6) If cross connection control devices are properly installed, they create a closed water system. A properly sized thermal expansion tank shall be installed in the cold water supply located near the water heater.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow includes both back pressure and back siphonage.

(a) Air gap. Provides the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be twice the effective opening of a potable water outlet, unless the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, in which case the minimum required air gap shall be three (3) times the effective opening of the outlet. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES

Fixture	Minimum Air Gap	
	When not affected by near wall (inches)	When affected by near wall (inches)
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps when spaced from inside edge of spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap when spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) Reduced pressure principle back pressure backflow preventer. Reduced pressure principle back pressure backflow preventers provide the best mechanical protection against backflow available, and may be considered equivalent to an air gap in most situations.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions only. These devices are manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions only.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions only. If applicable, all atmospheric type vacuum breakers shall be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure when the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS
FOR ATMOSPHERIC TYPE VACUUM BREAKERS

Fixture or Equipment	Method of Installation
Aspirators, ejectors, and and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
	On models without built-in vacuum breakers:
Dental units	On models without built-in vacuum

	breakers: CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable only to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location, preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine if they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records shall be kept on all inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. Potable water openings, outlets, and connections, except those serving residential units, shall be protected against backflow in accordance with paragraphs, (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.

2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and floor level rim whenever possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

APPLICATION CHART

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE SPECIFICATIONS
Reduced Pressure Principle Backflow Preventer For high hazard cross connections.	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewage Treatment Lawn Sprinklers	A.S.S.E. No. 1013 A.W.W.A. C506 FCCCHR of USC CSA B.64.4 Sizes 3/4 " - 10"
(A) Double Check Valve Assembly For low hazard cross connections.	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure where there is a low potential health hazard or nuisance. Continuous pressure.	Main Supply Lines Food Cookers Tanks and Vats Commercial Pools N O	A.S.S.E. No. 1015 A.W.W.A. C506 FCCCHR of USC CSA B.64.5 Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing	Cross connections where there is a low potential health hazard and moderate flow requirements.	Post ground hydrants. N T O X I C	A.S.S.E. No. 1024 Sizes 3/4" & 1"
(A) Backflow Preventer with Intermediate Atmospheric Vent	Two independent check valves with intermediate vacuum breaker and	Cross connections subject to back pressure or back siphonage where	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential	A.S.S.E. No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"

For moderate hazard cross connections in small pipe sizes.	relief valve.	there is a moderate health hazard. Continuous pressure.		
		Pump outlet to prevent backflow to carbon dioxide gas and carbonated water into the water supply system to beverage machines.	Postmix Carbonated Beverage Machine	Special Approvals
(B) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker In small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage where there is a moderate to low health hazard.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	A.S.S.E. No. 1035 (N-LF9)
(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process Tanks Dishwashers Soap Dispensers Washing Machines	A.S.S.E. No. 1001 ANSI.A112.1.1 CSA B.64.1.1 FCCCHR of USC Sizes 1/4" - 3"
(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory Equipment Cooling Towers Comm. Laundry Mach. Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	A.S.S.E. No. 1020 CSA B.64.1.2 FCCCHR of USC Sizes 1/2" - 2"
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose Bibs Service Sinks Hydrants	A.S.S.E. No. 1011 CSA B.64.2 Size 3/4" Hose

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

	Degree of Hazard			Acceptable Protection				
					Backflow		Back siphonage	
Type of Connection	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic subst.		X		X	X	X		
B. Boilers								
1. With chemical								

additives	X			X	X		
2. Without chemical additives		X		X	X	X	
C. Gravity due to obvious site conditions subject to:							
1. Contamination by toxic substances	X			X	X		
2. Contamination by nontoxic subst.		X		X	X	X	
II. Water outlets and connections not subject to back pressure:							
A. Connection to sewer or sewage pump	X			X			
B. Outlet to receptacles containing toxic substances	X			X	X	X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X
D. Outlet into domestic water tanks			X	Each case treated separately			
E. Flush valve toilets	X			X	X	X	X
F. Flush valve urinals		X		X	X	X	X
G. Outlets with hose attachments subject to contamination from:							
1. Toxic substances	X			X	X	X	X
2. Nontoxic subst.		X		X	X	X	X
H. Outlets to recirculating cooling tower:							
1. With chemical additives	X			X	X		
2. Without chemical additives		X		X	X	X	

Section 3. Water Required. (1) A building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to A building shall not be less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures in the building.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they may be placed in the same trench if:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

(2) Piping which has been used for purposes other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, if the water is piped in an independent system.

(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. An outlet on the nonpotable water distribution system used for drinking or domestic purposes shall be permanently posted: DANGER - UNSAFE WATER. The branches, fittings or valves shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that shall be permanently affixed to the pipe, fittings, valves, etc. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valves shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage. These fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that shall prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. Potable water connections to boiler feed water systems in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. No more than three and one-half (3 1/2) [~~two and one-half (2 1/2)~~] inch fixture branches are supplied from any one-half (1/2) inch pipe. [~~(EXCEPTION: A combination of two (2) of the following fixtures may be connected utilizing the one-half (1/2) inch branch: a flush tank water closet, a lavatory or drinking fountain.)~~]

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture. A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices such as air chambers or approved mechanical shock absorbers shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If mechanical shock absorbers are installed, they shall be in an accessible place.

(b) If mechanical devices are used, the manufactures specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing produced and labeled as ASTM B-586-73, fusion welded copper tubing produced and labeled as ASTM B-447-72 and ASTM B-251, DWV welded brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade H produced and labeled as ASTM A-268-68, filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene (PE) plastic pipe produced and labeled as ASTM D-2239-69, cross-linked polyethylene (PEX), produced and labeled as ASTM F-876 for cold water only and ASTM F-877 for hot or cold water applications, copper tubing size PE produced and labeled as ASTM D-2737 for water service only if installed with compression couplings, Poly(vinyl chloride) (PVC) plastic pipe produced and labeled as ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe produced and labeled as ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 produced and labeled as ASTM D-2241-84, polybutylene (PB) plastic pipe produced and labeled as ASTM-D-3309-85b with brass or copper fittings. Plastic pipe and fittings shall bear the NSF seal of approval. Polybutylene pipe utilizing insert fittings of brass or copper shall use only copper clamping rings. Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall be produced and labeled as ASTM-D-3309-85b, and polybutylene plastic pipe produced and labeled as ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction. Polyethylene, PVC or CPVC shall not be used below ground under a house or building (refer also to 815 KAR 20:060 and 815 KAR 20:073).

Section 11. Temperature and Pressure Control Devices for Shower Installations. Temperature or pressure balance devices to prevent sudden unanticipated changes in water temperature shall be installed to serve all shower compartments and shower-bath combinations.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation is prohibited for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will

permit the unit to be shutoff without interfering with the cold water supply to other family units or portions of the building.

(4) In buildings other than dwellings, shutoff valves shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valved and lawn sprinkler openings shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or a group of fixtures shall be valved.

(6) A group of fixtures or a fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and only serving this equipment.

Section 13. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; if a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. The relief device may also discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing. Relief devices shall be installed on a pneumatic water system (see Section 17).

Section 15. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. The approval shall be obtained prior to.

Section 16. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" if the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent; and

(2) The heat exchanger is pretested by the manufacturer to 450 PSI; and

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and in no instance shall it be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

(1) Where a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES
FOR WATER SUPPLY TANKS

Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch Type M copper in its piping and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

Section 20. Fire Protection Systems. Fire protection systems using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the administrative regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile

home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

Section 22. Conservation of Water (refer to 815 KAR 20:070).

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 11, 1995
FILED WITH LRC: January 12, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, February 21, 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 February 16, 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: Licensed master and journeyman plumbers; users of the State Plumbing Code.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Some cost savings on installations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Division of Plumbing's revenue will not be affected by the enforcement of 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: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and the Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect except to make more quality materials available.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment will result if not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Different types of pipes are approved for different uses.

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

815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 13A.120, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation identifies the materials that may be used in the construction of house sewers, storm water piping as well as the methods of installation. This administrative regulation is being amended to allow the use of another type of pipe that is designed for storm water drainage (Section 8 of this administrative regulation). [~~lower the venting requirements on small residential sewage ejectors as outlined in Section 18 of this administrative regulation and to provide clarification on the requirements for surface water drainage and inspecting existing basement floor drains when they are part of the house sewer system being connected to a new sanitary sewer system.~~]

Section 1. Independent System. The drainage and plumbing system of new building and of new work installed in an existing building shall be separate and independent of other buildings except as outlined in this administrative regulation. A building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exception. If a building stands in the rear of other buildings or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer. This exception shall not apply to corner lots if a sewer connection is available from the street or alley or to a new or existing building which abuts a street or alley.

Section 3. Connection with Private Sewage Disposal System. If a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. Excavations made for the installation of a house sewer shall be open trench work, and the trenches shall be kept open until the piping has been inspected, tested and approved.

Section 5. Depth of Sewer at the Property Line. (1) If possible, the sewer at the property line shall be at a sufficient depth to properly serve a plumbing connection installed in the basement of a building.

(2) House sewers shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot. Sewers shall have at least an eighteen (18) inch cover. Sewer piping installed under property subject to vehicular traffic (e.g., driveways, parking lots and similar locations shall have at least a three (3) foot cover unless constructed of cast iron piping. If less than a three (3) foot cover is available, sewer piping shall be encased in a minimum of six (6) inches of concrete on all sides and the top. Sewers shall be backfilled by hand and tamped six (6) inches above the piping, or filled with six (6) inches grillage above the piping. All joints in cast iron and vitrified clay pipe shall be made in conformance with the State Plumbing Code.

Section 6. New House Sewer Connections. House sewers installed where a private sewerage system has been discarded may connect to the house drain, if the existing plumbing system meets the State Plumbing Code.

Section 7. Materials for House Sewers. House sewers or combined sewers, beginning two (2) feet outside the foundation wall of a building, shall be made of either extra heavy cast iron pipe, service weight cast iron, aluminum, vitrified clay, concrete, PVC or ABS plastic pipe schedules 40 and 80 and cellular core PVC produced and labeled as ASTM F-891, cellular core ABS produced and labeled as ASTM 628, truss pipe and extra heavy SDR 35 pipe and Type PS-46, Poly(Vinyl Chloride) (PVC) in sizes four (4) inches through fifteen (15) inches produced and labeled as ASTM F 789-82 or PVC ribbed pipe produced and labeled as ASTM 795.

Section 8. Material for Storm Sewers Inside Buildings. Material for storm sewers inside of buildings to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be cast iron pipe, aluminum or Schedule 40 ABS or PVC DWV pipe. Storm sewers in sizes of ten (10) inches and larger shall be either cast iron, aluminum, Schedule 40 ABS or PVC DWV pipe, SDR 35, vitrified clay or concrete conforming to appropriate commercial specifications with approved joints.

Section 9. Change of Direction. Change in direction of a sewer shall be made with long curves, one-eighth (1/8) bends or Y's.

Section 10. Size of House Sewers and Horizontal Branches. The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain. House sewers receiving branches shall be sized in the same manner as house drains (see 815 KAR 20:090).

Section 11. Size of Storm Systems. The required sizes of storm sewers shall be determined on the basis of the total drained areas in horizontal projection in accordance with the following table. A storm sewer shall not be laid parallel to or within two (2) feet of a bearing wall. The storm sewer shall be laid at a sufficient depth to protect it from freezing.

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3		1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	6,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. If a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area and the total fixture units, adding the product to the drained area and applying the sum of the preceding table for storm water sewers. A combined house drain or house sewer shall not be less than four (4) inches in diameter, and a combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM

Number of fixture units on sanitary system

Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14.3
481 to 720	75	62	42	35	24	18	15.4	13.2
721 to 1,080	54	42	33	29	20	15	13.6	12.1
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3
2,431 to 3,645	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1
Over 61,520	0	0	0	0	0	0	0	2.0

Number of fixture units on sanitary system

Drained roof area in square feet	325 to 486	487 to 732	733 to 1,098	1,099 to 1,644	1,645 to 2,466	2,467 to 3,702	3,703 to 5,556	Over 5,556
Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121 to 240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241 to 480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481 to 720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721 to 1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081 to 1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 to 2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4

2,431 to 3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646 to 5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461 to 8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191 to 12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286 to 18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421 to 27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631 to 40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946 to 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

Section 13. House Sewer in Undisturbed or Filled Ground. House sewers laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand or other approved grillage. House sewers laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other support that shall be approved by the department. Supports in filled ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock. House sewers constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top and sides of the piping.

Section 14. Storm Sewers in Undisturbed or Filled Ground. Storm sewers laid in undisturbed ground shall not require grillage. Storm sewers laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall be approved by the department. Supports in filled ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In public buildings in which the whole or part of the building drain and plumbing system lies below the level of the main sewer, sewage and waste shall be lifted by an approved artificial means and discharged into the house sewer.

Section 16. Drainage Below Sewer Level (Residential). In homes where the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump. The sump pit shall be constructed of either poured or precast concrete, approved fiberglass or polyethylene material with a tight fitting cover. The sump pit shall be provided with a two (2) inch vent which may also act as a waste and vent for a laundry tray. The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade. The sump pit shall be provided with a tight-fitting concrete cover. On the outside of the building this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee which shall connect into a four (4) inch P trap and then into the sanitary sewer. The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. All subsoil drains shall discharge into an air tight sump or receiving tank located to receive the sewage by gravity. The sewage shall be lifted and discharged into the house sewer by a pump, ejector or any equally efficient method. The sumps shall automatically discharge.

Section 18. Ejectors, Vented. Sewage ejectors serving residential installations shall be vented with a two (2) inch vent. Ejectors serving commercial or industrial installations shall be vented with a three (3) inch vent except when a three (3) inch vent stack is serving a fixture that empties into the ejector pit and is located within twenty-five (25) feet of the pit, the ejector may be revented with a two (2) inch vent back to the three (3) inch vent stack. In no instance shall the ejector vent be smaller than that recommended by the manufacturer of the pump.

Section 19. Ejector Power: Motors, Compressors, Etc. Motors, air compressors and air tanks shall be located where they are open for inspection and repair at all times. The air tanks shall be proportioned to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating. The end pressure in the tank shall not be less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. If subsoil catch basins are installed below the sewer level, an approved automatic ejectors shall be used. The ejector or any device raising subsoil water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas and Roofs. (1) Roofs, paved areas, courts, and courtyards shall be drained into one (1) of the following:

(a) A storm water system;

(b) A combined sewerage system;

(c) A surface drainage area unless prohibited by the local health department or sewer district.

(2) These areas shall not be drained into sewers intended for sewage only.

(3) Traps.

(a) If drains are connected to a combined sewerage system, they shall be trapped.

(b) If roof leaders, conductors, or gutter openings are located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required.

(c) Traps shall be set below the frost line or on the inside of the building.

(d) If the drains are not connected to a combined sewer, a trap shall not be required.

Section 22. Size of Rain Water Leader. An inside leader shall not be less size than the following:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,500	5
5,501 to 9,600	6

Section 23. Inside Conductors or Roof Leaders. If conductors and roof leaders are placed within the walls of a building, or in an interior court or ventilating pipe shaft, they shall be constructed of cast iron pipe, galvanized wrought iron, galvanized steel, copper, aluminum, schedule 40 ABS/PVC DMV pipe or reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red and silver thread). The vertical distance of PVC or ABS conductors shall not exceed forty-five (45) feet from the base to the penetration through the roof. Provisions shall be made for the expansion and contraction of plastic pipe.

Section 24. Outside Conductors. If outside sheet metal conductors or downspouts are connected to a house drain, they shall be connected by means of a cast iron pipe extending vertically at least one (1) foot above the grade line. Where the downspouts run along public driveways without sidewalks, they shall be placed in niches in the walls, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. If an existing sheet metal conductor pipe within the walls of a building becomes defective, the conductor shall be replaced by one which conforms to this administrative regulation.

Section 26. Vent Connections with Conductors Prohibited. A conductor pipe shall not be used as a soil, waste or vent pipe. A soil, waste, or vent pipe shall not be used as a conductor.

Section 27. Overflow Pipes. Overflow pipes from cisterns, supply tanks, expansion tanks, or drip pans shall connect only indirectly with any house sewer, house drain, soil or waste pipe.

Section 28. Subsoil Drains, Below Sewer Level. Subsoil drains shall discharge into a sump or receiving tank and shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building it serves.

Section 29. Approvals of New Sewer Connections to Existing Buildings. In areas where the local health department or sanitary sewage system board, plant, district or treatment plant owner prohibits the discharge of basement floor drains or other apparatus into the sanitary sewer system, existing basement floor drains and sump pump apparatuses shall comply with the new construction requirements of this code and be inspected prior to the approval of connections for a new sewer line.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: January 11, 1995

FILED WITH LRC: January 12, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, February 21, 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 February 16, 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: Licensed master and journeyman plumbers; users of the State Plumbing Code.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No effect on cost of living or employment with the implementation of this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business with the implementation of this amendment.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Division of Plumbing's revenue will not be affected by the enforcement of 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: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and the Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect except to make more quality materials available.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment will result if not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: No known conflict.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Different types of pipes are approved for different uses.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:041. Food Stamp Employment and Training Program.

RELATES TO: KRS 194.050, 7 CFR 273.7

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer a Food Stamp Employment and Training (ET) Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp ET Program.

Section 1. Definitions. (1) "Conciliation" means a fifteen (15) day period that is used to determine why noncompliance with ET requirements occurred.

(2) "Exempt" means an individual who is excused by the agency from participation in the employment and training program.

(3) "Primary wage earner (PWE)" means the household member providing the most earned income in the prior two (2) months.

(4) "Voluntary quit" means the self-termination of employment by a household member on a voluntary basis.

Section 2. Work Registration. (1) Except those meeting exempt criteria in subsection (4) of this section, all household members shall be required to register for work:

(a) At the initial application for food stamps; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by:

(a) The member required to register; or

(b) The person making application for the household.

(3) Unless otherwise exempt, persons who are excluded household members of the food stamp case, shall be required to register for work during periods of disqualification. These individuals are:

(a) Ineligible aliens;

(b) Individuals disqualified for refusing to provide or apply for a Social Security number; and

(c) Individuals disqualified for intentional program violation.

(4) The following shall be exempt from work registration requirements:

(a) A person younger than sixteen (16) years of age or a person sixty (60) years of age or older;

(b) A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time basis;

(c) A person with a physical or mental disability; [~~who is physically or mentally disabled;~~]

(d) A household member subject to and complying with any work requirement in the AFDC Program;

(e) A parent or other household member who is responsible for the care of:

1. A dependent child under age six (6); or

2. An incapacitated person;

(f) A person who receives unemployment compensation or a person who has applied for, but has not yet begun to receive, unemployment compensation if that person was required to register for work with the Department for Employment Services as part of the unemployment compensation application process;

(g) A regular participant in a substance abuse or alcohol treatment and rehabilitation program;

(h) A person who is employed or self-employed and:

1. Working a minimum of thirty (30) hours weekly; or

2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

(i) A migrant or seasonal farm worker who:

1. Meets the criteria in paragraph (h) of this subsection; and

2. Is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

(j) A student enrolled at least half time in any recognized school, training program, or institution of higher education, provided that those meeting student status have met the eligibility conditions in 904 KAR 3:025, Section 3.

(5) A household member who loses exemption status due to a change in circumstances that are subject to the reporting requirements of the Food Stamp Program shall work register:

(a) When the change is reported, if the change is:

1. A change in the source of income or in the amount of gross monthly income totaling more than twenty-five (25) dollars, unless the amount change is in an Aid to Families with Dependent Children (AFDC) grant;

2. Any change in household composition, including the addition or loss of a household member;

3. A change in residence and the resulting change in shelter costs;

4. The acquisition of a nonexempt licensed vehicle or loss of a vehicle exemption for a physically disabled household member;

5. A change in total resources that reach or exceed the allowable maximum; or

(b) At the household's next recertification if the change in circumstance involves a change not subject to reporting requirements in paragraph (a) of this subsection.

(6) All nonexempt household members shall be subject to the following work requirements:

(a) Keep the initial assessment interview;

(b) Provide requested verification by mail or in person;

(c) Participate in an ET program if assigned;

(d) Respond to any request for additional information regarding employment status or availability for work;

(e) Report to an employer if referred by the ET worker or designee provided that the potential employment is not unsuitable as designated in Section 7 of this administrative regulation; and

(f) Accept a bona fide offer of suitable employment at a wage not less than state or federal minimum wage.

(7) Household members who are exempt or those completing the work registration requirements may volunteer to participate in the ET program.

(8) The ET worker shall explain to the food stamp applicant:

(a) The work requirements for each nonexempt household member;

(b) The rights and responsibilities of the work registered household members; and

(c) The consequences of failing to comply.

(9) Each household member required to register shall be notified in writing of the requirements in subsection (6) of this section.

Section 3. Employment and Training Participation. (1) Work registrants who reside in a county which offers a Food Stamp Employment and Training Program shall be required to participate in the Food Stamp Employment and Training Program based on priority status.

(2) Priority status shall be determined if the work registrant:

1. Is under age thirty (30) and has no high school diploma or GED;

2. Is under age thirty (30) and has no employment in the last twelve (12) months; or

3. Is a veteran, regardless of age.

(3) ET participants shall:

(a) Be placed in education, skills training or job search activities;

(b) Be reimbursed for miscellaneous and dependent care expenses, if otherwise eligible, up to:

1. The child care maximum payments as specified in 904 KAR 2:017 not to exceed $200 per month per child under two (2) years of age or $175 per month per child for all other eligible dependent children for child care expenses incurred on or after September 1, 1994[~~, per dependent per month for incurred child care expenses~~]; and

2. Twenty-five (25) dollars a month for miscellaneous expenses incurred while participating in the ET Program.

(4) Those participants who do not meet the criteria in subsection (2) of this section shall not be selected to participate in an ET component unless they are adamant about participating.

Section 4. Components. All counties offering the Employment and Training Program shall offer the following services and activities:

(1) Educational components shall be:

(a) Literacy programs;

(b) Adult basic education (ABE);

(c) General equivalency diploma (GED); and
(d) Community college.
(2) Skills training components shall be:
(a) Vocational school;
(b) On-the-job training; and
(c) Kentucky Domestic Violence Association (KDVA).
(3) Job search components shall be:
(a) Job seeking skills training;
(b) Group job search; and
(c) Individual job search.

Section 5. Conciliation. (1) When an ET participant fails to comply with ET program requirements, a conciliation period is initiated.
(2) Conciliation is used to:
(a) Determine the reason for the noncompliance; and
(b) Allow the participant the opportunity to resolve the problem in order to continue participation.
(3) Conciliation lasts for fifteen (15) days and in that time the ET worker shall:
(a) Determine good cause for noncompliance; or
(b) Encourage the participant to resume ET activity; or
(c) Recommend disqualification for failure to comply with program requirements.
(4) If the participant resumes ET activity, no further action is required toward applying a sanction.
(5) If conciliation is unsuccessful and the participant does not provide good cause or refuses to comply, a disqualification is imposed.

Section 6. Determining Good Cause. (1) Good cause shall be determined in instances where the work registrant has failed to comply with:
(a) Work registration requirements as specified in Section 1 of this administrative regulation;
(b) Employment and training requirements as specified in Section 3 of this administrative regulation; or
(c) Voluntary quit requirements as specified in Section 9 of this administrative regulation.
(2) Good cause for failing to meet work registration and employment and training requirements shall include circumstances beyond the control of the registrant including:
(a) Illness;
(b) Illness of another household member requiring the presence of the registrant;
(c) A household emergency;
(d) Unavailability of transportation; and
(e) Inadequate child care for children who have reached age six (6) but are under age twelve (12).

Section 7. Sanctions in the ET Program. (1) Disqualifications are imposed as follows:
(a) If the nonprimary wage earner (non-PWE) fails to comply with ET, the individual is ineligible to receive food stamp benefits for two (2) months;
(b) If the primary wage earner (PWE) fails to comply with ET requirements, the entire household is ineligible to receive food stamp benefits for two (2) months.
(2) If a disqualification is imposed, the disqualified member shall make reapplication for food stamps or request that the member be added to an active food stamp case to initiate a cure for noncompliance.
(3) Ineligibility as outlined in subsections (1) and (2) of this section continues until the ineligible member:
(a) Leaves the household;
(b) Becomes exempt from work registration;
(c) Complies with the work registration requirements; or
(d) The two (2) month disqualification period expires, whichever occurs first.
(4) If an ineligible household member joins a new household and:
(a) Is the primary wage earner, the entire new household then becomes ineligible for the remainder of the disqualification period; or
(b) Is not the primary wage earner, only he remains ineligible for the remainder of the disqualification period.

Section 8. Unsuitable Employment. Employment shall be considered unsuitable by the agency if:
(1) The wage offered is less than the highest of the following:
(a) The applicable federal minimum wage;
(b) The applicable state minimum wage; or
(c) Eighty (80) percent of the federal minimum wage if neither the federal nor state minimum wage is applicable.
(2) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wage specified in subsection (1) of this section.
(3) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.
(4) The work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 USC 178 and 45 USC 152.
(5) In addition, employment is considered unsuitable if the household member involved can demonstrate or the worker otherwise becomes aware that:
(a) The degree of risk to health and safety is unreasonable;
(b) The member is physically or mentally unsuited to perform the employment. This must be documented by medical evidence or by reliable information from other sources;
(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience as demonstrated by the individual or if the worker otherwise becomes aware;
(d) Daily commuting time exceeds two (2) hours a day, not including transporting a child to and from a child care facility;
(e) The distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site; or
(f) The working hours or nature of the employment interferes with the member's religious observances, convictions or beliefs.

Section 9. Voluntary Quit. (1) A primary wage earner who voluntarily quits a job of twenty (20) hours or more a week without good cause sixty (60) days or less prior to the date of food stamp application shall not be eligible to participate in the program.
(2) The disqualification period for voluntary quit shall be:
(a) Ninety (90) days from the date of quit if the individual is an applicant; and
(b) Ninety (90) days beginning with the first of the month after all normal procedures for taking adverse action have been taken if the individual is in an active food stamp case.
(3) Good cause for leaving employment includes criteria in Section 5 of this administrative regulation and the following:
(a) Discrimination by the employer based on:
1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;
(b) Work demands or conditions that render continued employment unreasonable, as in working without being paid on time;
(c) Acceptance of employment by the head of household, or

enrollment of at least half time in any recognized school, training program or institution of higher education, that requires the head of household to leave employment;

(d) Acceptance of employment by any other household member or enrollment at least half time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the head of household to leave employment;

(e) Resignations of persons under age sixty (60) which are recognized by the employer as retirement;

(f) Employment which becomes unsuitable by not meeting criteria in Section 8 of this administrative regulation after the acceptance of the employment;

(g) Acceptance of a bona fide offer of employment of more than twenty (20) hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours which, because of circumstances beyond the control of the primary wage earner, subsequently either does not materialize or results in employment of less than twenty (20) hours a week or weekly earnings of less than the federal minimum wage multiplied by twenty (20) hours; and

(h) Leaving a job in connection with patterns of employment in which workers frequently move from one (1) employer to another as in migrant farm labor or construction work.

(4) Good cause for voluntary quit shall be verified if questionable.

Section 10. Curing Sanction for Voluntary Quit. (1) A household may begin participation in the Food Stamp Program following the voluntary quit disqualification period if it applies again and is determined eligible.

(2) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be allowed to resume participation if the member who caused the disqualification:

(a) Secures new employment which is comparable in salary or hours to the job which was quit; or

(b) Leaves the household.

(3) A work registrant who:

(a) Is required to participate in the:

1. Food Stamp Employment and Training Program; or

2. Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS) Program as specified in 904 KAR 2:006 and 904 KAR 2:370; and

(b) Fails to participate shall be ineligible to receive food stamp benefits for two (2) months unless:

1. Good cause exists;

2. The noncompliant individual was participating in a JOBS component which is more stringent than the components of the ET Program; or

3. The noncompliant JOBS participant is otherwise exempt from work registration in the ET Program.

(c) An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in paragraph (b)2 of this subsection shall be work registered in the ET Program unless otherwise exempt by subsection (2) of this section.

Section 11. Hearing Process. Work registrants shall have the same opportunity to request a hearing as specified in 904 KAR 3:070.

Section 12. Replacements for employment and training reimbursement checks that are lost or stolen shall be made by completing appropriate forms.

Section 13. Material Incorporated by Reference. (1) Forms necessary for participation in the Food Stamp Employment and Training Program are being incorporated effective January 1, 1994. These forms include:

(a) ET-101, revised 7/93;

(b) ET-102, revised 8/93;

(c) ET-102 Supplement A, revised 12/91;

(d) J/ET-108, revised 9/91;

(e) ET-111, revised 7/93;

(f) ET-112, revised 10/90;

(g) ET-114, revised 12/91;

(h) ET-116, revised 12/93.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: December 27, 1994

FILED WITH LRC: January 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by February 16, 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 K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: From the months of February 1994 through July 1994, a total of 102 employment and training child care payments were received by employment and training program participants. This averages out to 17 participants receiving child care payments per month. For the same time period, a total of 21,038 employment and training transportation payments were received by employment and training program participants. This averages out to 3,506 participants receiving transportation payments per month.

(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 comment received: No public hearing was requested as a result of the notice of intent being published.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the notice of intent being published.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional compliance, reporting or paperwork required.

2. Second and subsequent years: See #1.

(3) Effects on the promulgating administrative body: The effect that the age factor to the priority status criteria will have on the cabinet is of a fiscal nature in terms of benefits only.

(a) Direct and indirect costs or savings:

1. First year: This amendment should have a fiscal impact that will create a savings to the state in terms of reimbursements for child care and miscellaneous expenses. Due to the fact that half the current

individuals will be served in the program, fewer reimbursements will be made. The total savings are estimated at $239,000 per year. We estimate that the savings for child care will be $29,000 per year based on actual expenditures from February through July 1994 of $58,000. This amount multiplied by 2 gives a yearly amount of $116,000. Since this amendment proposes to reduce the number of individuals served in half, we divided the $116,000 to equal $58,000. ET reimbursements are figured on a 50-50 federal, state match. This equals $29,000 as the state share and the share of savings. We estimate the savings for miscellaneous expenses will be $210,000 per year. These figures are based on actual expenditures for June and July 1994 of $70,000 a month. That amount multiplied by 12 months equals $840,000. Since this amendment proposes to reduce the number of individuals served by half, we divided the $840,000 to equal $420,000. ET reimbursements are funded on a 50-50 federal, state match. The state share would be $210,000 thus saving the state that amount by reducing the number of participants in the program. The change in policy will also allow Department for Employment Services staff to provide more intense services to those participating in the ET program. This amendment should have no personnel impact in terms of increasing or decreasing staffing levels.

2. Continuing costs or savings: See #1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements than is currently required.

(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 50-50 state share is paid through general funds from the Department for Social Insurance.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received as there was no hearing requested as a result of the Notice of Intent being published.

(b) Kentucky: No public comments received as there was no hearing requested as a result of the Notice of Intent being published.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods. We are trying to reduce the number of ET participants to provide more intense services. Until we can evaluate how this change will affect the program, no other alternatives were developed.

(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 harmful effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No, federal statutes mandate that eligibility requirements for the Food Stamp Program be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 273.7

2. State compliance standards. Same as federal compliance.

3. Minimum or uniform standards contained in the federal mandate. The mandate requires state to operate an employment and training program to assist able bodied food stamp recipients in obtaining employment.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:009. Physicians' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to physicians' services for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy.

Section 1. Physicians' Services. (1) Covered services shall include those furnished by physicians through direct physician- patient contact in the office, the patient's home, a hospital, nursing facility or elsewhere.

(2) For purposes of the Medicaid Program, oral surgeons shall be treated in the same manner as physicians with regard to coverage for services within their scope of licensed practice, and the term "physician" shall be construed to include oral surgeons unless the context in which it is used is to the contrary.

(3) Covered physicians' services and service limitations are shown in the Physician Manual.

Section 2. Physicians Manual. The Physician Manual specifies the conditions for participation, services covered, and limitations for the physicians' services component of the Medicaid Program. The Physician Manual, revised October 15 [~~dated June 1~~], 1994, incorporated by reference in this administrative regulation may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. Additional Limitations. (1) A patient placed in "lock-in" status due to overutilization shall receive services only from his lock-in provider except in the case of emergency or referral.

(2) Laboratory procedures.

(a) Laboratory procedures performed in the physician's office shall be limited to those procedures listed on the agency's physician laboratory benefit schedule.

(b) The professional component of physician laboratory procedures performed by board certified pathologists in a hospital setting or an outpatient surgical clinic shall be covered if the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(3) The cost of preparations used in injections shall not be considered a covered benefit, except as specified in the Physician Manual.

(4) Telephone contacts with patients shall not be considered a covered benefit.

(5) Services performed or recipient contacts made exclusively by physician assistants, nurses, or other physician's employees shall not be covered under the physicians' services component.

MASTEN CHILDERS II, Commissioner, Secretary
APPROVED BY AGENCY: January 10, 1995
FILED WITH LRC: January 13, 1995 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 1995 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 16, 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

Agency Contact Person: Masten Childers II, Commissioner
(1) Type and number of entities affected: All physicians participating in the Medicaid Program. (We note that advanced registered nurse practitioners, nurse anesthetists, and other laboratory and x-ray providers will be affected indirectly because their payment upper limits are calculated as a percentage of the physicians' fixed upper limit per procedure.)
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: None
2. Second and subsequent years: None
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Reflected in companion regulation 907 KAR 1:010, Payments for physicians' services, filed at the same time as this administrative regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(4) Assessment of anticipated effect on state and local revenues: None
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.
(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: Will be implemented statewide.
(b) Kentucky: Economic impact reflected in companion regulation, 907 KAR 1:010, Payments for physicians' services.
(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(8) Assessment of expected benefits:
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
(b) State whether a detrimental effect on environment and public health would result if not implemented: None
(c) If detrimental effect would result, explain detrimental effect: None
(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(10) Any additional information or comments: None
(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.
2. State compliance standards. This administrative regulation does not set compliance standards.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:010. Payment for physicians' services.

RELATES TO: KRS 205.550
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50, 42 CFR 447 Subpart B, 42 USC 1396a-d, 1396s
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for establishing payments for physician services.

Section 1. Definition. (1) "Resource-based relative value scale (RBRVS) unit" is a value based on current procedural terminology (CPT) codes established by the American Medical Association assigned to the service which takes into consideration the physicians' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide

the service in an area relative to national average price.

(2) [For purposes of determination of payment,] "Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

Section 2. Reimbursement. (1) Payment for covered physicians' services [rendered to eligible medical assistance recipients on or after July 1, 1991] shall be based on the physicians' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet using a Kentucky Medicaid fee schedule developed from a resource-based relative value scale (RBRVS) based on the Harvard 1992 RBRVS Study. [at 100 percent of the median billed charge for outpatient services and seventy five (75) percent of the median billed charge for inpatient services using 1989 calendar year billed charges.] If there is no RBRVS based fee [median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable,] the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general rate setting methodology. [array of fixed upper limits for the type of service.] Fixed upper limits not determined in accordance with the principle shown in this subsection [of the regulation] (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

(2) RBRVS units shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit. The dollar conversion factors shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia	$25.15
All Other Services	$25.80

Section 3. Reimbursement Exceptions. (1) Except as otherwise specified in this section, [Effective with regard to services provided on or after October 1, 1988,] physicians shall be allowed to secure drugs for specified immunizations identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs were used to provide immunizations to Medicaid recipients.

(2) Except as otherwise specified in this section, [Effective with regard to services provided on or after October 1, 1988,] physicians shall be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services shall reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs had been obtained through that agency upon receipt of appropriate notice that the drugs were used to provide immunizations to Medicaid recipients.

(3) Effective October 1, 1994, physicians shall be provided drugs for specified immunizations through the pediatric vaccine distribution program to be administered by the Department for Health Services in accordance with the terms, standards, and criteria described in 42 USC 1396a(a)(62) and 1396s.

(4) Payments for specified obstetrical services provided on or after July 1, 1991, shall be at the [lower of the] actual billed charge up to a maximum of [or at] $900.

[(4) For inpatient delivery related anesthesia services provided on or after July 1, 1991, a physician shall be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees are:

Vaginal delivery	$200
Epidural single	315
Epidural continuous	335
Cesarean section	320]

(5) Payment for individuals eligible for coverage under Medicare, Part B is made in accordance with Sections 1 and 2 of this administrative regulation and subsections (1) through (4) and subsection (6) of this section within the individual's deductible and coinsurance liability.

(6) [For services provided on or after July 1, 1990,] Family practice physicians practicing in geographic areas with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed at the physicians' usual and customary actual billed charges up to 125 percent of the fixed upper limit per procedure established by the cabinet.

(7) For services provided on or after July 1, 1990, physician laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

(8) Procedures specified by Medicare and published annually in the Federal Register and which are commonly performed in the physician's office are subject to outpatient limits if provided at alternative sites and shall be paid adjusted rates to take into account the change in usual site of service.

Section 4. Implementation Date. The changes shown in this administrative regulation shall be applicable with regard to services provided on or after October 15, 1994.

MASTEN CHILDERS II, Commissioner, Secretary

APPROVED BY AGENCY: January 10, 1995

FILED WITH LRC: January 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 1995 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 16, 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

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All physicians participating in the Medicaid Program. (We also note that advanced registered nurse practitioners, nurse anesthetists, and other laboratory and x-ray providers will be affected indirectly because their payment upper limits are calculated as a percentage of the physicians' fixed upper limit per procedure.)

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $50,000,000 (savings).

2. Continuing costs or savings: $50,000,000 (savings).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Will be implemented statewide.

(b) Kentucky: Comments have not yet been received. However, we anticipate the following economic impact to occur: Physicians participating in the Medicaid Program will have reduced revenues of approximately $50 million annually from the Medicaid Program. The Medicaid Program will have decreased expenditures of approximately $50 million annually as a result of decreasing payments to physicians. The savings will result from a reduction in federal matching funds of approximately $34,817,329 annually and a savings of approximately $15,182,671 annually from state funds.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect would not result.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JANUARY 13, 1995

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:010. Procedure for prequalification of underwriters and bond counsel for state bond issues.

RELATES TO: KRS 45A.853
STATUTORY AUTHORITY: KRS 45A.853, 45A.879
NECESSITY AND FUNCTION: KRS 45A.853 provides that a firm shall not be considered for providing underwriting or bond counsel services to the Commonwealth unless the Office of Financial Management and Economic Analysis has prequalified the firm prior to the advertised notice of the request for proposals. KRS 45A.879 authorizes the Office of Financial Management and Economic Analysis to promulgate administrative regulations to carry out these requirements by January 1, 1995. This administrative regulation establishes the procedure for prequalifying underwriting and bond counsel firms.

Section 1. General Requirements for Prequalification of Underwriters and Bond Counsel. (1) The Office of Financial Management and Economic Analysis shall determine annually, in consultation with each bond issuing agency, the need for issuing requests for proposals for underwriting and bond counsel services for bond issuing agencies for the following fiscal year.

(2) Based on the determination of need by the Office of Financial Management and Economic Analysis, the office shall draft requests for qualifications for underwriting and bond counsel services for the bond issuing agencies which need those services.

(3) All requests for qualifications shall include at a minimum the following:

(a) A description of the bond issuing agency for which the request for qualifications is being issued;

(b) A requirement that the firm disclose any information which would impair the firm's ability to provide the level and type of services needed by the bond issuing agency;

(c) A requirement that the firm certify, pursuant to a sworn statement, that the firm has complied with campaign finance laws established pursuant to KRS 121.015 to 121.056, 121.150, 121.310, 121.320, 121.330 and 121A.050;

(d) A requirement that the firm certify that it has complied with and is not prohibited by the Executive Branch Code of Ethics, KRS 11A.001 to 11A.990, from entering into a contract with the Commonwealth of Kentucky;

(e) A requirement that the firm certify that it has complied with KRS 45A.485;

(f) A statement that the firm is not prohibited by KRS 45A.863 from entering into a contract with the Commonwealth of Kentucky;

(g) A statement that the Commonwealth shall not be liable for any costs associated with a firm's preparation and submission of a response to a request for qualifications; and

(h) A description of the process by which responses to the request for qualifications shall be evaluated by the Office of Financial Management and Economic Analysis.

Section 2. Request for Qualifications for Underwriter Services. (1) In addition to the requirements set forth in Section 1 of this administrative regulation, a request for qualifications for underwriter services may, depending on the nature of the underwriting services required, request the following information:

(a) A description of the history and organization of the firm and its municipal finance department;

(b) If applicable, a summary of the relevant financial advisory experience of the firm;

(c) The audited financial statements of the firm for the previous two (2) fiscal years;

(d) A list of the relevant underwriter experience of the firm on negotiated municipal bond transactions of issuers of similar type as that of the state bond issuing agencies;

(e) A list of experience and qualifications of the firm representatives who would work on issues of the bond issuing agency;

(f) If applicable, a list of the relevant comanaging underwriter experience of the firm on negotiated municipal bond transactions;

(g) If applicable, identification of the lead banker or contact person at the firm and description of his or her experience and qualifications;

(h) Identification of the person in the firm who would perform cash flow and debt structuring analyses and a description of his or her experience and qualifications; and

(i) Specific references for the firm and the lead or principal contact person.

(2) If a request for qualifications is for Kentucky comanaging underwriters, the request for qualifications may require the firm to state:

(a) The authority of the firm's office located in the Commonwealth to commit capital to an underwriting, independent of some other office of the firm, and the dollar limit, if any;

(b) The emphasis the firm's office(s) located in the Commonwealth places on selling the Commonwealth's bonds to retail buyers located in the Commonwealth;

(c) The underwriter in the office of the firm located in the Commonwealth and a description of his or her experience and qualifications; and

(d) Specific references for the firm and the underwriter in the office(s) located in the Commonwealth.

Section 3. Request for Qualifications for Bond Counsel Services. In addition to the requirements set forth in Section 1 of this administrative regulation, a request for qualifications for bond counsel services may request the following information:

(1) A description of the history and organization of the firm and its municipal finance and tax law department;

(2) A statement of the relevant bond counsel experience of the firm in applicable areas of finance as required by the bond issuing agency for which the request for qualifications is being issued;

(3) A statement of the experience and qualifications of the firm's personnel who would work on bond issues of the bond issuing agency;

(4) Proof that the firm is listed as a "municipal bond attorney" in the most recently published edition of "The Bond Buyer's Municipal Marketplace";

(5) A statement of professional liability insurance coverage showing the limits of the coverage;

(6) A certification as to whether the firm's principal place of business is located in Kentucky as defined by KRS 45A.873(3); and

(7) A statement of specific references for the firm and personnel of the firm who would work on the bond issues of the bond issuing agency.

Section 4. Advertisement and Mailing of Requests for Qualifications. (1) The Office of Financial Management and Economic Analysis shall advertise all requests for qualifications in a financial newspaper or financial publication with national circulation.

(2) Requests for qualifications shall be mailed to all firms which have been prequalified by the Office of Financial Management and Economic Analysis the prior year and to any firm which has request-

ed, in writing, a request for qualifications from the Office of Financial Management and Economic Analysis. It shall be the responsibility of each firm to keep all mailing information current.

(3) Interested firms shall file a written response to the request for qualifications prior to the deadline for filing a written response established in the request for qualifications. A firm which fails to meet the deadline shall be barred from the prequalification process for one (1) year.

Section 5. Certification of Prequalification. (1) Master lists of prequalified firms for providing underwriter and bond counsel services shall be certified and maintained by the Office of Financial Management and Economic Analysis.

(2) The prequalification process shall be conducted annually.

(3) Only underwriter or bond counsel firms which have been newly incorporated or which have opened a new office in the Commonwealth since the last prequalification shall be eligible to apply to the Office of Financial Management and Economic Analysis for prequalification, independent of the annual prequalification process.

CRIT LUALLEN, Secretary

APPROVED BY AGENCY: January 12, 1995

FILED WITH LRC: January 13, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1995 at 10 a.m. at the Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Room 261, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Office of Financial Management and Economic Analysis in writing by February 17, 1995, five days prior to the hearing, of their interest to attend the hearing. If no notification of intent to attend this hearing is received by that date, the hearing may be cancelled. The hearing shall be open to the public. Any person attending 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 a transcript is made, the cost for which shall be born by the requesting party. Written comments on the proposed administrative regulation shall be accepted in lieu of attendance at the public hearing and must be received by February 17, 1995, five days prior to the public hearing. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mary Lassiter, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and Number of Entities Affected: This regulation will affect all bond issuing agencies of the state which include:

- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)
- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- School Facilities Construction Commission (SFCC)
- State Property and Buildings Commission (SPBC)
- State Universities (8)
- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all underwriting firms and bond counsel firms which are interested in providing services to the bond issuing agencies of the state. There are approximately 30 underwriting firms and 15 bond counsel firms which have expressed interest over time in providing services to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all firms in the nation which provide these services.

2. Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place. The public hearing scheduled in the Notice of Intent to Promulgate the administrative regulation for October 28, 1994 was cancelled for failure to receive a request for a public hearing from at least 5 persons, an administrative body, or an association having at least 5 members and failure to receive an agreement from at least 5 persons, an administrative body, or an association with at least 5 members to be present at the public hearing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Firms interested in providing underwriting and bond counsel services to the Commonwealth and its agencies will be required to submit a statement of qualifications to the Office of Financial Management and Economic Analysis on an annual basis. The estimated cost of preparing and submitting such qualifications is $200 per firm per year. There should not be any effect upon competition.

2. Second and subsequent years: Annual costs should not change. The estimated cost of preparing and submitting such qualifications is $200 per firm per year. There should not be any effect upon competition.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The Office of Financial Management and Economic Analysis will be required to conduct the prequalification process on an annual basis. Additional annual costs of preparing and evaluating the requests for qualifications (RFQ) are estimated to be $9,440. This estimate reflects the staff time of 5 OFMEA personnel for 2 working weeks at an average salary of $46,500 per year plus the cost of advertising the RFQ. While these individuals are already salaried employees of the agency, this process will necessitate that they not perform other required duties to complete the prequalification process.

2. Continuing costs or savings: The Office of Financial Management and Economic Analysis will be required to conduct the prequalification process on an annual basis. Additional annual costs of preparing and evaluating the RFQ are estimated to be $9,440. This estimate reflects the staff time of 5 OFMEA personnel for 2 working weeks at an average salary of $46,500 per year plus the cost of advertising the RFQ. While these individuals are already salaried employees of the agency, this process will necessitate that they not perform other required duties to complete the prequalification process.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b. Reporting and paperwork requirements: The process implemented by the regulation will require some additional paperwork, but the most significant paper impact will be the storage of the volume of responses received on an annual basis to the RFQ.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation

in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, there has not yet been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed. OFMEA has been conducting requests for proposals for over 10 years and is very familiar with the process of evaluating the qualifications of firms proposing to provide underwriting and bond counsel services to the Commonwealth. The prequalification method of requesting qualifications in writing was deemed to be appropriate and prudent.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate this administrative regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects underwriting and bond counsel firms which are interested in providing underwriting and bond counsel services to bond issuing agencies of the Commonwealth of Kentucky.

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:020. Evaluation factors for bond counsel and underwriters.

RELATES TO: KRS 45A.853

STATUTORY AUTHORITY: KRS 45A.853, 45A.879

NECESSITY AND FUNCTION: KRS 45A.853 provides that the Office of Financial Management and Economic Analysis shall consult with the bond issuing agency to arrive at a request for proposals for bond counsel and underwriter for a bond issuance. KRS 45A.853 further provides that the relative weight of the evaluation factors shall be included in the request for proposals. This administrative regulation establishes some of the evaluation factors which shall be included in a request for proposals for bond counsel or underwriters.

Section 1. Evaluation Factors for Bond Counsel and Underwriters. The Office of Financial Management and Economic Analysis, after consulting with the bond issuing agency, shall develop a request for proposals for bond counsel or underwriter, as applicable, for the bond issuing agency or bond project. The request for proposals shall include the relative weight of the evaluation factors. The total points for all evaluation factors shall not exceed 100 points. The evaluation factors shall include, but not be limited to, the following:

(1) For requests for proposals for bond counsel services:

(a) Relevant experience of the firm.

(b) Experience and availability of the individual firm members proposed to work on the bond issuance.

(c) Proposed fee.

(2) For requests for proposals for underwriter services:

(a) Relevant experience of the firm.

(b) Experience and availability of individual firm members proposed to work on the bond issuance.

(c) Proposed fee or fee structure.

(d) Proposal of alternative and recommended financing structure(s).

(e) Proposal of a marketing plan for proposed transaction(s) and description of the municipal bond distribution capabilities of the firm, where applicable.

CRIT LUALLEN, Secretary

APPROVED BY AGENCY: January 12, 1995

FILED WITH LRC: January 13, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1995 at 10 a.m. at the Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Room 261, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Office of Financial Management and Economic Analysis in writing by February 17, 1995, five days prior to the hearing, of their interest to attend the hearing. If no notification of intent to attend this hearing is received by that date, the hearing may be cancelled. The hearing shall be open to the public. Any person attending 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 a transcript is made, the cost for which shall be born by the requesting party. Written comments on the proposed administrative regulation shall be accepted in lieu of attendance at the public hearing and must be received by February 17, 1995, five days prior to the public hearing. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mary Lassiter, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and number of entities affected: This regulation will affect all bond issuing agencies of the state which include:

- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)
- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- School Facilities Construction Commission (SFCC)
- State Property and Buildings Commission (SPBC)
- State Universities (8)
- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all underwriting firms and bond counsel firms which are interested in providing services to the bond issuing agencies of the state. There are approximately 30 underwriting firms and 15 bond counsel firms which have expressed interest over time in providing services to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all firms in the nation which provide these services.

2. Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place. The public hearing scheduled in the Notice of Intent to Promulgate the administrative regulation for October 28, 1994 was cancelled for failure to receive a request for a public hearing from at least 5 persons, an administrative body, or an association having at least 5 members and failure to receive an agreement from at least 5 persons, an administrative body, or an association with at least 5 members to be present at the public hearing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Firms interested in providing underwriting and bond counsel services to the Commonwealth and its agencies will be required to submit a response to requests for proposals which will include the evaluation factors in this regulation. The Office of Financial Management and Economic Analysis has been conducting this process for over 10 years. There is no additional cost to the offerors as a result of this administrative regulation. There should not be any effect upon competition.

2. Second and subsequent years: Annual costs should not change. There should not be any effect upon competition.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The Office of Financial Management and Economic Analysis has been conducting request for proposals processes for over 10 years. There will be no impact to costs or savings as a result of this regulation.

2. Continuing costs or savings: The Office of Financial Management and Economic Analysis has been conducting request for proposals processes for over 10 years. There will be no impact to costs or savings as a result of this regulation.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b. Reporting and paperwork requirements: The Office of Financial Management and Economic Analysis has been conducting Request for Proposals processes for over 10 years. There will be no impact to reporting and paperwork requirements as a result of this regulation.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, there has not yet been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed. OFMEA has been conducting requests for proposals for over 10 years and is very familiar with the process of evaluating the qualifications of firms proposing to provide underwriting and bond counsel services to the Commonwealth. Each request for proposals is somewhat different and may need to include evaluation factors in addition to those listed in the regulation.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate this administrative regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects underwriting and bond counsel firms which are interested in providing underwriting and bond counsel services to bond issuing agencies of the Commonwealth of Kentucky.

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:030. Calculating the preference for Kentucky bond counsel firms for state bond issues.

RELATES TO: KRS 45A.873

STATUTORY AUTHORITY: KRS 45A.873, 45A.879

NECESSITY AND FUNCTION: KRS 45A.873 requires that in the competition for the Commonwealth's bond counsel business awarded pursuant to KRS 45A.840 to 45A.879, a bond counsel firm with its principal place of business located in Kentucky shall receive a preference over a bond counsel firm with its principal place of business located outside Kentucky. KRS 45A.873 further provides the preference, if any, shall be equal to the preference that the out-of-state firm receives in its state of origin when that firm as an in-state firm competes against out-of-state firms for state bond counsel business. The Office of Financial Management and Economic Analysis is responsible for calculating this preference. This administrative regulation sets forth the manner in which the preference shall be calculated.

Section 1. Calculation of Preference for Kentucky Bond Counsel. (1) The Office of Financial Management and Economic Analysis shall on an annual basis, in conjunction with the prequalification process mandated by KRS 45A.853, issue a letter to the state government debt management office or similar governmental agency of every state from which bond counsel firms requesting to be prequalified have their principal place of business, requesting that the agency provide the Office of Financial Management and Economic Analysis with a copy of that state's statute, administrative regulation, or written policy, if any, regarding any preference given to in-state bond counsel firms in competition for state bond counsel business.

(2) The Office of Financial Management and Economic Analysis shall accept only written responses to the request for information

issued pursuant to subsection (1) of this section and shall only utilize written evidence of statutes, regulations or written policies to calculate the preference, if any, due a firm. If a written response is not received within a reasonable amount of time established by the Office of Financial Management and Economic Analysis, then the state's failure to respond shall be deemed as an indication that the state does not give any preference to in-state firms competing for state bond counsel business. The Office of Financial Management and Economic Analysis shall accept written evidence that statutes, regulations or written policies of other states regarding state bond counsel preference have been implemented or amended independent of the annual prequalification process if supplied or requested by such states.

(3) The Office of Financial Management and Economic Analysis shall compile a list of all states responding to the request for information and resulting responses. This list shall be provided to the committee reviewing responses to requests for qualifications submitted pursuant to 200 KAR 21:010. Any additions or deletions to the list created pursuant to receipt of additional information independent of the annual prequalification process shall be forwarded by the Office of Financial Management and Economic Analysis to all selection committees established pursuant to KRS 45A.843.

CRIT LUALLEN, Secretary

APPROVED BY AGENCY: January 12, 1995

FILED WITH LRC: January 13, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1995 at 10 a.m. at the Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Room 261, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Office of Financial Management and Economic Analysis in writing by February 17, 1995, five days prior to the hearing, of their interest to attend the hearing. If no notification of intent to attend this hearing is received by that date, the hearing may be cancelled. The hearing shall be open to the public. Any person attending 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 a transcript is made, the cost for which shall be born by the requesting party. Written comments on the proposed administrative regulation shall be accepted in lieu of attendance at the public hearing and must be received by February 17, 1995, five days prior to the public hearing. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mary Lassiter, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and number of entities affected: This regulation will affect all bond issuing agencies of the state which include:

- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)
- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- School Facilities Construction Commission (SFCC)
- State Property and Buildings Commission (SPBC)
- State Universities (8)
- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all bond counsel firms which are interested in providing services to the bond issuing agencies of the state. There are approximately 15 bond counsel firms which have expressed interest over time in providing services to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all firms in the nation which provide these services.

2. Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place. The public hearing scheduled in the Notice of Intent to Promulgate the administrative regulation for October 28, 1994 was cancelled for failure to receive a request for a public hearing from at least 5 persons, an administrative body, or an association having at least 5 members and failure to receive an agreement from at least 5 persons, an administrative body, or an association with at least 5 members to be present at the public hearing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no additional cost to the offerors as a result of this administrative regulation. There is an impact upon competition for state bond counsel business, however, this impact is prescribed by statute, KRS 45A.873.

2. Second and subsequent years: Annual costs should not change. There is an impact upon competition for state bond counsel business, however, this impact is prescribed by statute, KRS 45A.873.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The Office of Financial Management and Economic Analysis will be required to annually survey the states from which firms requesting to be prequalified have their principal place of business. There will be no impact to costs or savings as a result of this regulation.

2. Continuing costs or savings: The Office of Financial Management and Economic Analysis will be required to annually survey the states from which firms requesting to be prequalified have their principal place of business. There will be no impact to costs or savings as a result of this regulation.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b. Reporting and paperwork requirements: The Office of Financial Management and Economic Analysis will be required to annually survey the states from which firms requesting to be prequalified have their principal place of business. There will be minimal impact to reporting and paperwork requirements as a result of this regulation.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, there has not yet

been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternatives were rejected: OFMEA discussed requesting the offering bond counsel firms to provide verification of any statutes, regulations or policies in the firms' state of principal place of business which provides a preference for in-state firms in the competition for state bond counsel business. However, it was felt that this information will be used in the evaluation process, OFMEA should independently determine if such statutes, regulations or policies exist. In addition, OFMEA discussed using verbal confirmation of such policies from other states. It was determined that only written verification of statute, regulation or written policy should be accepted to reduce the arbitrary nature of the process.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate this administrative regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects bond counsel firms which are interested in providing bond counsel services to bond issuing agencies of the Commonwealth of Kentucky.

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:040. Selection of national comanaging underwriters.

RELATES TO: KRS 45A.850(4)

STATUTORY AUTHORITY: KRS 45A.850(4), 45A.879

NECESSITY AND FUNCTION: KRS 45A.850(4) provides that national comanaging underwriters for bond issues of state bond issuing agencies shall be selected pursuant to an administrative regulation promulgated by the Office of Financial Management and Economic Analysis. This administrative regulation establishes the procedure for selecting national comanaging underwriters for bond issues of state bond issuing agencies.

Section 1. Definition. For purposes of this administrative regulation the term "national comanaging underwriter" shall mean a financial institution whose headquarters are located outside the Commonwealth of Kentucky, which has offices in multiple states, and which assists in the structuring, underwriting and marketing of bonds issued by governmental agencies.

Section 2. Selection of National Comanaging Underwriters. (1) National comanaging underwriters for bond issuances of state bond issuing agencies, as defined in KRS 45A.840(3), shall be selected pursuant to the request for proposal process established by KRS 45A.853 and 45A.857 for the same bond issuing agency or bond project for which the request for proposals was issued for underwriters.

(2) After an underwriter has been selected for a bond issuing agency or bond project, a national comanaging underwriter may be selected based on the rankings of the selection committee. The national comanaging underwriter, if any, shall be the highest ranked firm, other than the underwriter selected, which has a municipal bonds sales office located in the Commonwealth.

(3) If the Executive Director of the Office of Financial Management and Economic Analysis recommends, pursuant to KRS 45A.850(4), that more than one (1) national comanaging underwriter should be utilized on a bond issuance, any additional national comanaging underwriters shall be selected in the order of the ranking as determined by the selection committee for the respective bond issuing agency or bond project.

CRIT LUALLEN, Secretary

APPROVED BY AGENCY: January 12, 1995

FILED WITH LRC: January 13, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1995 at 10 a.m. at the Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Room 261, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Office of Financial Management and Economic Analysis in writing by February 17, 1995, five days prior to the hearing, of their interest to attend the hearing. If no notification of intent to attend this hearing is received by that date, the hearing may be cancelled. The hearing shall be open to the public. Any person attending 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 a transcript is made, the cost for which shall be born by the requesting party. Written comments on the proposed administrative regulation shall be accepted in lieu of attendance at the public hearing and must be received by February 17, 1995, five days prior to the public hearing. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mary Lassiter, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and number of entities affected: This regulation will affect all bond issuing agencies of the state which issue bonds on a negotiated sale basis. These agencies include:

- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)
- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- State Property and Buildings Commission (SPBC)
- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all underwriting firms which are interested in providing comanaging underwriting services to the bond issuing agencies of the state. There are approximately 30 underwriting firms which have expressed interest over time in providing this service to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all firms in the nation which provide these services.

2. Direct and indirect costs or savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated

to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place. The public hearing scheduled in the Notice of Intent to Promulgate the administrative regulation for October 28, 1994 was cancelled for failure to receive a request for a public hearing from at least 5 persons, an administrative body, or an association having at least 5 members and failure to receive an agreement from at least 5 persons, an administrative body, or an association with at least 5 members to be present at the public hearing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place due to the emergency filing.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no additional cost to the offerors as a result of this administrative regulation. There is an impact upon competition for national comanaging underwriting business on state bond issues. To be eligible to serve as a national comanaging underwriter on issues of state bond issuing agencies, a firm must have its national headquarters outside of the state and must have municipal bond sales offices in multiple states. To be selected as the first national comanaging underwriter on a bond issue of a state bond issuing agency, the firm must also have municipal bond sales office(s) in Kentucky.

2. Second and subsequent years: There is no additional cost to the offerors as a result of this administrative regulation. There is an impact upon competition for national comanaging underwriting business on state bond issues. To be eligible to serve as a national comanaging underwriter on issues of state bond issuing agencies, a firm must have its national headquarters outside of the state and must have municipal bond sales offices in multiple states. To be selected as the first national comanaging underwriter on a bond issue of a state bond issuing agency, the firm must also have municipal bond sales office(s) in Kentucky.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There will be no impact to costs or savings as a result of this regulation.

2. Continuing costs or savings: There will be no impact to costs or savings as a result of this regulation.

3. Additional factors increasing or decreasing costs: None foreseen at this time.

b. Reporting and paperwork requirements: There will be minimal reporting and paperwork requirements as a result of this regulation.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, there has not yet been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternatives were rejected: OFMEA considered a separate request for proposals process for the selection of national comanaging underwriters. This alternative was determined to be redundant and costly, both to the offering firms and to the Commonwealth. In addition, OFMEA considered selecting the second highest ranking firm in the selection process for managing underwriter, regardless of whether the firm has municipal bond sales offices in the Commonwealth. The purpose of the national comanaging underwriter is to assist in the marketing and distribution of the bonds being sold at the lowest interest rates possible. Due to the effect of receiving both federal and state tax exemption on interest earned on bonds issued by agencies of the state, bond buyers in the state can and do offer lower interest yields than do buyers outside the state. Therefore, it is in the Commonwealth's best interest to first include as national comanaging underwriters only firms which also sell municipal bonds in Kentucky. Most bond issues issued by the Commonwealth and its agencies are not large enough to warrant having more than one national comanaging underwriter. Issues large enough to warrant more than one national comanaging underwriter require significant marketing efforts outside the Commonwealth. This explains why the requirement of having municipal bond sales office(s) in the Commonwealth is not required for firms being selected as the second, third, etc., national comanaging underwriter.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate this administrative regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects underwriting firms which are interested in providing national comanaging underwriting services to bond issuing agencies of the Commonwealth of Kentucky.

FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis

200 KAR 21:050. Establishment of rates to reimburse underwriters for counsel.

RELATES TO: KRS 45A.877

STATUTORY AUTHORITY: KRS 45A.877, 45A.879

NECESSITY AND FUNCTION: KRS 45A.877 requires the Office of Financial Management and Economic Analysis to establish and maintain a schedule of rates at which underwriters will be reimbursed for fees and expenses of the counsel they retain for a bond issuance of a state bond issuing agency. This administrative regulation establishes the rate schedule for underwriters' counsel.

Section 1. Rates to be Reimbursed for Counsel to Underwriters. When an underwriter is utilized on a bond issuance of a state bond

issuing agency, the amount of expenses to be paid to the underwriter for reimbursement of its cost of retaining legal counsel for legal services relating to the bond issuance shall be as follows:

(1) For bond issuances with principal amounts from zero to $10,000,000, the rate shall be equal to the fee paid to bond counsel on the same bond issuance.

(2) For bond issuances with principal amounts greater than $10,000,000 to $25,000,000, the rate shall be equal to seventy-five (75) percent of the fee paid to bond counsel on the same bond issuance.

(3) For bond issuances with principal amounts greater than $25,000,000 to $50,000,000, the rate shall be equal to sixty-five (65) percent of the fee paid to bond counsel on the same bond issuance.

(4) For bond issuances with principal amounts in excess of $50,000,000, the rate shall be equal to fifty-five (55) percent of the fee paid to bond counsel on the same bond issuance.

(5) Notwithstanding the provisions of subsections (1) through (4) of this section, the minimum rate at which an underwriter shall be reimbursed for its legal counsel for legal services related to the issuance of bonds of a state bond issuing agency shall be equal to ten (10) cents per $1,000 of principal amount of bonds issued, not to exceed the fee paid to bond counsel on the same bond issuance.

(6) All rates reimbursed pursuant to this administrative regulation shall be inclusive of all expenses.

CRIT LUALLEN, Secretary

APPROVED BY AGENCY: January 12, 1995

FILED WITH LRC: January 13, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1995 at 10 a.m. at the Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Room 261, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Office of Financial Management and Economic Analysis in writing by February 17, 1995, five days prior to the hearing, of their interest to attend the hearing. If no notification of intent to attend this hearing is received by that date, the hearing may be cancelled. The hearing shall be open to the public. Any person attending 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 a transcript is made, the cost for which shall be born by the requesting party. Written comments on the proposed administrative regulation shall be accepted in lieu of attendance at the public hearing and must be received by February 17, 1995, five days prior to the public hearing. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mary Lassiter, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Mary Lassiter

1. Type and number of entities affected: This regulation will affect all bond issuing agencies of the state which include:

- Kentucky Agricultural Finance Corporation (KAFC)
- Kentucky Higher Education Student Loan Corporation (KHESLC)
- Kentucky Housing Corporation (KHC)
- Kentucky Infrastructure Authority (KIA)
- Kentucky Local Correctional Facilities Construction Authority (KLCFCA)
- Kentucky River Authority (KRA)
- School Facilities Construction Commission (SFCC)
- State Property and Buildings Commission (SPBC)
- State Universities (8)
- Turnpike Authority of Kentucky (TAK)

The regulation will also affect all law firms which are interested in providing underwriter's counsel services to the underwriters selected to provide underwriting services to bond issuing agencies of the state. The Commonwealth does not maintain a list of firms which have expressed interest in performing this service. However, in general, most law firms which provide bond counsel services also provide underwriter's counsel services. There are approximately 15 bond counsel firms which have expressed interest over time in providing services to the Commonwealth and its agencies. However, the potential number of firms which could be impacted includes all law firms in the nation which provide bond counsel and underwriter's counsel services.

2. Direct and Indirect Costs or Savings on the:

a. Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place. The public hearing scheduled in the Notice of Intent to Promulgate the administrative regulation for October 28, 1994 was cancelled for failure to receive a request for a public hearing from at least 5 persons, an administrative body, or an association having at least 5 members and failure to receive an agreement from at least 5 persons, an administrative body, or an association with at least 5 members to be present at the public hearing.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There is not anticipated to be any direct or indirect cost or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented. The rates established by the regulation are representative of the rates at which the Commonwealth has been reimbursing underwriting firms for their legal counsel for legal services related to state bond issues over the past three years. A public hearing on this regulation has not yet taken place.

c. Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no additional cost to the offerors as a result of this administrative regulation. There is no impact on competition. The Commonwealth expressly plays no role in the selection of counsel to the underwriter(s).

2. Second and subsequent years: There is no additional cost to the offerors as a result of this administrative regulation. There is no impact on competition. The Commonwealth expressly plays no role in the selection of counsel to the underwriter(s).

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: No fiscal impact to OFMEA or to the state bond issuing agencies. The rates established are equal to, on average, the rates which have been paid over the past three years.

2. Continuing costs or savings: No fiscal impact to OFMEA or to the state bond issuing agencies. The rates established are equal to, on average, the rates which have been paid over the past three years.

3. Additional factors increasing or decreasing costs: The rates are established as a function of fees paid to bond counsel firms on the same bond issuances. The bond counsel fee is established on an issuer or bond project basis pursuant to a competitive process as established in KRS 45A.840 to KRS 45A.879. The fees paid over time will be a function of the supply and demand for legal services in the municipal bond attorney marketplace.

b. Reporting and paperwork requirements: There will be minimal impact to reporting and paperwork requirements as a result of this regulation.

4. Assessment of anticipated effect on state and local revenues: No impact is expected on state or local revenues.

5. Source of revenue to be used for implementation and enforce-

ment of administrative regulation: OFMEA will be required to absorb all additional costs of implementation of the administrative regulation in its operating budget. No budget increase has been requested to implement the provisions of this administrative regulation or House Bill 299 of the 1994 General Assembly.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No impact is expected. However, there has not yet been a public hearing on the regulation.

b. Kentucky: No impact is expected. However, there has not yet been a public hearing on the regulation.

7. Assessment of alternative methods; reasons why alternatives were rejected: KRS 45A.877 requires OFMEA to establish and maintain a schedule of rates at which underwriters will be reimbursed for fees and expenses of counsel they retain for a bond issuance. OFMEA evaluated several alternatives to the method put forth in the regulation. OFMEA attempted to determine the national average for fees paid to counsel to underwriters. However, there does not exist a database that OFMEA could find which includes this information. OFMEA considered establishing a sliding scale schedule of fees based upon total principal amount of bonds issued. This alternative was not used because it would be arbitrary and would not be flexible so as to change as the market for these services change. The rate schedule established was determined to be reasonable because: (1) 55 percent of the bond counsel fee paid on the same bond issuance represents the approximate average relationship of fees paid to underwriter's counsel relative to fees paid to bond counsel on all bond issues of the state and its agencies over the past three years; (2) The rate is not a fixed or flat fee but is a function of the bond counsel firm's fee which is established pursuant to a fee proposal in the request for proposals process for the selection of bond counsel. Therefore, the bond counsel fee should be reflective of the difficulty and scope of work and of the market for such services. (3) The sliding scale of rates and the minimum fee are established to prevent the underwriter from being reimbursed at a rate so low that it would not be able to hire a qualified firm as counsel. It has been the recent experience of OFMEA that some bond counsel firms propose fees less than $.10 per $1,000 bond. OFMEA does not feel that it would be fair to dictate that a percentage of that small fee be reimbursed to the underwriter for its counsel. (4) OFMEA was unable to determine any other rate schedule which was both flexible to reflect changes in the market for services and based upon reliable data of similar fees paid in the past.

8. Assessment of expected benefits:

a. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected on the public health and environmental welfare of the geographic area in which the regulation is being implemented nor on the Commonwealth.

b. State whether a detrimental effect on environment and public health would result if not implemented: No such impact would result.

c. If detrimental effect would result, explain detrimental effect: Not applicable.

9. Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of OFMEA, there are no statutes, administrative regulations or government policies which are in conflict, are overlapping, or duplicate this administrative regulation.

a. Necessity of proposed regulation if in conflict: Not applicable.

b. If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Yes. Tiering was applied to specify that the administrative regulation only affects law firms which are selected by underwriters to serve as their counsel when such underwriters are selected by the Commonwealth to provide underwriting services to bond issuing agencies of the Commonwealth of Kentucky.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

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

RELATES TO: KRS 18A.445(3)

STATUTORY AUTHORITY: KRS 18A.445(3)

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

Section 1. Financial Planning for Pilot Projects. Each agency proposing a pilot personnel project shall submit with its application a proposed budget for the pilot project using the budget format used for the 1994-96 biennial budget, and detailing proposed expenditures for each object code. The pilot agency budget proposal shall state the date of termination of the proposed pilot project if it is to be terminated prior to June 30, 1998. If a pilot agency does not have information sufficient to permit preparation of a budget proposal for a pilot personnel project, or if there are questions concerning the development of a budget, the pilot project application shall be completed with a note added to explain why a proposed budget was not submitted with the application. Agency budget officers, with advice and assistance from the Personnel Steering Committee, the Governor's Office for Policy and Management ("GOPM"), and the Office of the Comptroller, shall help pilot agencies develop their budget proposals, and in determining allocations of funds for pilot projects within organizational units that are not separate budget units.

Section 2. Funds Reserved for Pilot Project Expenditures. (1) Only actual savings realized in expenditure categories for personnel costs (object code 100), operating costs (object codes 200 and 300), and capital expenditures (object code 600), shall be reserved and be made available for expenditure in pilot personnel projects. Pilot programs that propose to achieve savings through reductions in or the elimination of expenditures for grants and other benefits (object code 400) will require justification acceptable to the personnel steering committee and any impact on services from the proposal in the short and long terms shall be documented and explained in detail. Any pilot project proposal recommending an increase or decrease in personnel shall be justified based on recurring savings that could be achieved from the action proposed by the pilot agency, and will have to be approved or disapproved by the Department of Personnel ("DOP") and GOPM before the pilot project proposal can be implemented. Pilot projects proposing savings through reducing or

eliminating expenditures for contracts for the lease-purchase of equipment or maintenance services shall be able to demonstrate that reduction or elimination of expenditures for those goods or services will not result in reducing levels or timeliness in delivery of services by the pilot agency or by another State or local government agency.

(2) Savings resulting from a pilot project may accrue to an agency other than the pilot agency. Those savings will be noted as having accrued, although the savings will not be available for expenditure by the pilot agency. Savings may not be accrued by increasing costs to other agencies. If federal funds are involved the affected pilot agency shall be responsible for assuring through contact with the federal grantor agency that savings accruing from the pilot project may be retained by the agency. Documentation that the savings can be retained by the pilot agency shall be provided to the Personnel Steering Committee.

(3) The actual amount of savings accruing to pilot agencies will be computed based on the difference between the agencies' approved and enacted budgets for fiscal year 1995, in comparison with their actual expenditures through the close of business on June 30, 1995, that can be documented as directly and proximately resulting from the pilot project. Any carry forward of funds into the pilot year, or any expenses incurred by a pilot project but not paid during the pilot year, shall be noted and explained in the agency's pilot project expenditure report.

Section 3. Reporting and Access to Savings. (1) Each pilot project agency shall file an expenditure report with the Governor's Office for Policy and Management and the Office of the Comptroller, by the 15th day of the month following the end of each fiscal quarter. The quarterly report for the fourth quarter of fiscal year 1995, will be used to report and request access to pilot personnel project savings. The initial report for this purpose will be due by July 15, 1995. The savings realized from pilot projects and available for expenditure by pilot agencies shall be determined from a review by the Finance and Administration Cabinet of the agencies' financial condition following the close of the Commonwealth's fiscal year.

(2) Pilot project agencies shall submit plans for spending savings accrued from pilot projects for review and approval by the Secretary of the Finance and Administration Cabinet and the Personnel Steering Committee. Agency proposals for a one (1) time capital expenditure shall identify the item proposed for purchase, give an estimate of its cost, and provide information about costs of maintenance and operation of the item. The share of savings to be used to pay employee salary incentives shall be distributed to pilot agency employees on a one (1) time basis. Federal and state income taxes and local occupational license taxes shall be withheld from the salary incentive payments at the tax rates required by law.

(3) No salary incentive payment to a participating employee shall exceed $2,500 in any fiscal year, and no salary incentive payment shall be made to any unclassified employee above the rank of division director. Only permanent full-time, permanent part-time and seasonal employees are eligible for salary incentive payments. Employees who transfer from a pilot agency to another state agency during a pilot project, or who transfer into a pilot agency shall receive pro rata distributions for the period during the fiscal year in which they participated in the pilot project. An employee who is separated from state employment by resignation or dismissal shall be ineligible to receive a salary incentive payment. Pilot projects which begin during a fiscal year will receive distribution based on the partial year's documented savings.

Section 4. Reservation and Expenditure of Funds. To insure availability for expenditure as provided in KRS 18A.445, when the actual amount of savings generated by each pilot agency has been determined, that amount of money shall be credited to a separate special pilot project holding account to be established in the state treasury in the name of each pilot agency. Money in the special pilot project holding accounts shall be kept separate from all other funds in the state treasury until they are needed for expenditure for the purposes set out in the pilot agencies' spending plans as approved by the Personnel Steering Committee and by the Secretary of the Finance and Administration Cabinet.

CRIT LUALLEN, Secretary
APPROVED BY AGENCY: January 9, 1995
FILED WITH LRC: January 10, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 28, 1995, at 10 a.m., at the Finance and Administration Cabinet Conference Room, Room 386, Capitol Annex Building, Frankfort, Kentucky. Persons interested in attending this hearing shall notify the agency representative designated below in writing by February 23, 1995, five days prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public, and 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 it is requested in writing with the cost of the transcript to be borne by the requesting party. If you do not wish to attend the public hearing you may still 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: Gail Prewitt, Executive Assistant, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601, (502) 564-4240.

REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt, Executive Assistant

1. Type and number of entities affected: This regulation will affect all agencies which submit proposals for personnel pilot programs.

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 direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

b. Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

c. Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Agencies submitting proposals for personnel pilot programs will be required to submit a proposed budget for the pilot project along with their applications. Pilot programs that propose to achieve savings through reductions in or the elimination of expenditures for grants will require documentation of any impact on services from the proposal. If federal funds are involved, the affected pilot agency will be required to provide to the Personnel Steering Committee documentation that savings accruing from the pilot project may be retained by the agency. Each pilot project agency will be required to file an expenditure report with the Governor's Office for Policy and Management and the Office of the Comptroller at the end of each fiscal quarter. Pilot project agencies will also be required to submit plans for spending savings accrued from pilot projects for review and approval by the Secretary of the

Finance and Administration Cabinet and the Personnel Steering Committee. The estimated cost of preparing all documentation is expected to be minimal. There should be no effect upon competition.

2. Second and subsequent years: Annual costs should not change. The estimated cost per year is expected to be minimal. There should be no effect upon competition.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: Costs to the promulgating administrative body are expected to be minimal.

2. Continuing costs or savings: The personnel pilot program is of limited duration. Costs are expected to be minimal.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: Additional paperwork will be required in order to determine actual savings realized, accrued, and available for expenditure by pilot project agencies and to establish separate holding accounts in the state treasury in the name of each pilot agency. The additional paperwork for the promulgating agency is expected to be minimal.

4. Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Agencies submitting proposals for pilot programs will be required to absorb the costs of implementation and enforcement of the administrative regulation in their operating budgets.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

b. Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed. This proposed regulation was drafted in accordance with KRS 18A.445(3).

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 on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.

b. State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the regulation was not implemented.

c. If detrimental effect would result, explain detrimental effect: Does not apply.

9. Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Secretary, there are no statutes, rules, administrative regulations or government policies which are in conflict, overlap, or duplicate the proposed administrative regulation.

a. Necessity of proposed regulation if in conflict: Does not apply.

b. If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

10. Any additional information or comments: None

11. TIERING: Is tiering applied? Tiering was not applied. This is a procedural regulation which applies to all agencies equally.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 3:028. Applying for disability hunting and fishing licenses.

RELATES TO: KRS 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.170

NECESSITY AND FUNCTION: To specify procedures for those exempt from purchasing sport hunting or fishing licenses because of disabilities to obtain an exemption certificate to carry in lieu of a license. This administrative regulation is necessary to provide a standardized way for law enforcement officers to verify the license-exempt status of persons encountered in the field.

Section 1. Persons exempt from purchasing sport hunting or fishing licenses under the provisions of KRS 150.170(7) or (8) shall:

(1) Obtain a card from the department verifying their exempt status before engaging in an act for which a license is required.

(2) Carry this card, along with other proof of identity, while hunting or fishing.

Section 2. To verify their exempt status:

(1) Kentucky residents declared totally and permanently disabled by the federal Social Security Administration shall submit to the department a letter of verification from their local federal Social Security office.

(2) Kentucky residents who are at least fifty (50) percent disabled as the result of a military service-connected disability shall submit to the department a letter of verification from their regional VA representative.

(3) Kentucky residents declared totally and permanently disabled by the Kentucky State Workers' Compensation Board shall:

(a) Obtain a Disability Workers Compensation Exemption form from the department.

(b) Complete the form and mail it to the address given on the form.

(4) The Disability Workers Compensation Exemption form is incorporated by reference. It may be obtained from, or examined at the Department of Fish and Wildlife Resources, Division of Fiscal Control, #1 Game Farm Road, Frankfort, Kentucky, (502) 564-4224, between 8 a.m. and 4:30 p.m. eastern time on days when state government offices are open.

(5) Kentucky residents declared totally and permanently disabled by another state's workers' compensation board shall provide the department a letter, on that state board's letterhead, confirming the percentage of the disability.

Section 3. Upon receipt of the verification stipulated in Section 2 of this administrative regulation, the department shall issue a card certifying the person is exempt from sport hunting or sport fishing license requirements.

(1) Certification by the Social Security Administration or a state worker's compensation board shall remain valid for three (3) years after issue.

(2) Certification by the Veterans Administration shall remain valid for the life of the applicant.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY THE AGENCY: December 2, 1994

FILED WITH LRC: January 3, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 27, 1995 at 11 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 February 22 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: Rebecca Games, 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: Rebecca Games

(1) Type and number of entities affected: Approximately 37,500 qualify for exemptions from hunting and fishing licenses.

(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 effect on cost 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 public comments received. This administrative regulation will have no impact on costs 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: Applicants for disability waivers must complete application forms as specified in this administrative regulation.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Ongoing indirect costs of handling applications and issuing waivers.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork costs for the agency.

(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: Game and fish fund.

(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 anticipated impact.

(b) Kentucky: No anticipated impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not requiring any form of verification of exempt status was rejected because it is impossible for a law enforcement officer to gauge exempt status in the field.

(8) Assessment of expected benefits: Primary benefits will accrue to disabled persons exempt from purchasing sport licenses.

(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: No conflicts have been identified.

(a) Necessity of proposed regulation if in conflict: not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not used because all who qualify for exemptions will be treated similarly.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health

302 KAR 20:185. Equine infectious anemia positive horses.

RELATES TO: KRS 257.020, 257.030, 257.040

STATUTORY AUTHORITY: KRS 257.030

NECESSITY AND FUNCTION: To specify requirements for handling equine infectious anemia test positive horses.

Section 1. All horses (equidae) reported positive to an Agar Gel Immunodiffusion (AGID) test or other USDA approved test for equine infectious anemia shall be officially, permanently identified using the numbers and letter 61A with a brand on the left neck region.

Section 2. All classified positive EIA horses equidae not slaughtered or euthanized shall be isolated and quarantined. Isolation shall include stabling in a stall that is screened to preclude entry and exit of mosquitoes, stable flies and horse flies during seasons of the year when such insects are prevalent. Positive EIA classified animals will also be kept at least 200 yards from all other horses.

Section 3. The movement of any quarantined positive EIA horses (equidae) shall be done only on permission by the state veterinarian or by an agent of the Board of Agriculture.

Section 4. All horses (equidae) on the premises where the EIA positive horse was identified and all horses classified as exposed to the EIA positive horse shall be quarantined pending a negative test for EIA.

Section 5. 302 KAR 20:190, Sero-positive mares, is hereby repealed.

ED LOGSDON, Chairman

APPROVED BY AGENCY: January 6, 1995

FILED WITH LRC: January 9, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, February 22, 1995 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on 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 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: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: All equine owners 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 were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no increased reporting and paperwork requirements.

2. Second and subsequent years: There are no increased reporting and paperwork requirements.

(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: There will be no additional reporting and paperwork requirements.

(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: Existing personnel will be used for enforcement.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No public comments were received.

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(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 specifies requirements for handling equine infectious anemia.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

(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. This regulation treats all equine owners in Kentucky the same.

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:015. Permanent licensure.

RELATES TO: KRS 238.515(3), 238.525(3)

STATUTORY AUTHORITY: KRS 238.515(2), (3), (9), 238.530(1), (2), 238.535(11), 238.555(1)

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to issue permanent licenses, set license fees, including renewal fees, and establish license years for all permanent licenses issued by the division. This administrative regulation establishes the above fees and procedures for permanent licensure.

Section 1. Application for Licensure. (1) Unless complete application was made for temporary licensure under 500 KAR 11:010, applicants for permanent licensure shall submit to the division a complete application on a form prescribed by the division at least sixty (60) days prior to engaging in the conduct to be licensed.

(2) Provided the applicant satisfactorily meets the requirements for licensure prescribed in KRS Chapter 238, the division shall issue a permanent license.

Section 2. Information Required on License. A permanent license issued by the Division of Charitable Gaming shall clearly state the:

(1) Name of the licensee;

(2) Address of the licensee;

(3) Date of issuance of the license;

(4) Expiration date of the license;

(5) Premises or location at which the charitable gaming will be conducted, if the license is for a charitable organization or a charitable gaming facility;

(6) Type of license issued; and

(7) Address of the Division of Charitable Gaming.

Section 3. Fees for Licensure. (1) The division shall collect fees for applications for permanent licensure and for renewal applications.

(2)(a) The annual license fees for each license issued shall be as follows:

Manufacturer - $500

Distributor - $250

Charitable gaming facility - $2,500

Charitable gaming organization with gross receipts not in excess of $100,000 - $100

Charitable gaming organization with gross receipts over $100,000, but not in excess of $250,000 - $200

Charitable gaming organization with gross receipts over $250,000 - $300.

(b) A processing fee of twenty-five (25) dollars shall accompany each application for licensure. The twenty-five (25) dollar processing fee shall be credited to any balance due on the license at the time it is issued.

(3) A permanent license shall not be issued until the annual license fee is paid in full.

(4) The permanent license shall be effective for one (1) year from the date of issuance.

Section 4. Renewals. (1) A licensee wishing to renew its license shall make application to the division on a renewal application form prescribed by the division no later than sixty (60) days prior to the expiration date on the renewal applicant's current license.

(2) Annual fees for renewal licenses shall be the same as those set forth in Section 3(2) of this administrative regulation.

(3) Failure to timely renew as directed in subsection (1) of this section may result in issuance of a renewal license after the expiration date of the applicant's current license. No activities authorized by any license may continue after the expiration date on the license, and the licensee shall cease such activities until receipt of the renewal license.

Section 5. Incorporation by Reference. (1) The following application forms and materials are incorporated by reference:

(a) Form CG-T-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky (8/94)".

(b) Form CG-T-2, "Application for License for Distributor of

Charitable Gaming Supplies and Equipment (8/94)".

(c) Form CG-T-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment (8/94)".

(d) Form CG-T-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky (8/94)".

(e) Form CG-T-Schedule A, "Application to Conduct Special Limited Charitable Game(s) (For Use With Form CG-T-1) (8/94)".

(f) Form CG-T-Schedule B, "Notice of Intent of Suborganization or Subordinate Organization of a Licensed Charitable Organization to Conduct Charitable Gaming (For Use With Form CG-T-1) (8/94)".

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690, 8 a.m. to 4:30 p.m., Monday through Friday.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: January 10, 1995

FILED WITH LRC: January 10, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1995, at 9 a.m. at 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit written or oral comments on this administrative regulation by February 17, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, Phone: (502) 564-5528, FAX: (502) 564-4840.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All applicants (manufacturers, distributors, charitable gaming facilities and charitable gaming organizations) seeking licensure with the division (estimate approximately 1000 initially during start-up phase).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Any applicant (manufacturer, distributor, charitable gaming facility and charitable gaming organization) will incur initial cost of doing business of licensure processing fee ($25) to be applied/credited towards permanent licensing fee. Permanent License fee structure is as follows:

Manufacturer - $500

Distributor - $250

Charitable gaming facility - $2,500

Charitable gaming organization with gross receipts not in excess of $100,000 - $100

Charitable gaming organization with gross receipts over $100,000, but not in excess of $250,000 - $200

Charitable gaming organization with gross receipts over $250,000 - $300

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Extensive application forms will be required of each licensee.

2. Second and subsequent years: Renewal applications will be required in subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the license applications and licenses will be the only significant costs incurred by the division.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the application forms themselves, it is anticipated that the division will establish various self-imposed reporting and paperwork requirements as to types and classes of applicants, locations (by county) of licensees, monies generated/received by categories of licensees, monies due from each licensee on receiving permanent license, and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: To the extent the processing fees and license fees charged do not cover the cost of implementation, funds from the Charitable Gaming Regulatory Account (KRS 238.570(2)) will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to Question #11.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) All applicants for licensure during start-up phase of division are charged the same processing fee of $25 despite the fact that permanent licensure fees will vary among groups/types of applicants.

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:025. Quarterly reports.

RELATES TO: KRS 238.550, 238.570(1)

STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550, 238.570(1)

NECESSITY AND FUNCTION: All licensed charitable organizations are required to remit one-half (1/2) of one (1) percent of gross receipts derived from charitable gaming. Quarterly reports are required of all licensed charitable organizations. This administrative regulation will establish the method and time of filing the quarterly

reports and remitting payment of the quarterly fees due.

Section 1. Quarterly Reporting Period Defined. With the exception of the initial start-up quarterly reporting period, which shall cover the time period from March 16, 1994, through September 30, 1994, and which shall be due on or before November 15, 1994, a quarterly report shall be filed by each licensed charitable organization no later than thirty (30) days following the close of each calendar year quarter.

Section 2. Quarterly Reports. (1) Quarterly reports shall be submitted on forms prescribed by the division and shall be signed by an authorized officer of the licensed charitable organization and, if prepared by an individual other than an authorized officer, by the preparer.

(2) If a suborganization of the licensed charitable organization has conducted charitable gaming during the reporting period, the suborganization's earnings and activities must be reported by the licensed charitable organization, but on a form separate from that of the parent organization.

Section 3. Fees Due. The fees imposed by KRS 238.570(1) on gross gaming receipts of licensed charitable organizations shall be remitted by check or money order made payable to "Kentucky State Treasurer" at the time the quarterly reports are due.

Section 4. Incorporation by Reference. (1) The following reporting forms are incorporated by reference:

(a) Form CG-T-QR, "Quarterly Activity Report (10/94)".

(b) Attachment A, "Charitable Gaming Accounting Summary (10/94)".

(c) Attachment B, "Report of All Prize Winners of $600 or More (12/94)".

(d) Attachment C, "Suborganization Activity Report (10/94)".

(2) These forms may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Room 101, Frankfort, Kentucky 40601-2690, 8 a.m. to 4:30 p.m., Monday through Friday.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: January 10, 1995

FILED WITH LRC: January 10, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1995, at 9 a.m. at 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit written or oral comments on this administrative regulation by February 17, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, Phone: (502) 564-5528, FAX: (502) 564-4840.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed charitable organizations (including suborganizations).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Implements statutory fee imposed on one-half of one percent of all gross gaming receipts of licensed organizations (including suborganizations).

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Quarterly reporting forms and attachments.

2. Second and subsequent years: See 2(c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the quarterly reporting forms and attachments will be the only significant cost incurred by the Division of Charitable Gaming.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the quarterly forms themselves, it is anticipated that the division will establish various self-imposed reporting and paperwork requirements as to monies (fees) generated/received by licensees (based on geographic location, types of organizations, types of gaming), and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)) will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to Question #11.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. KRS 238.570(1) did not provide for tiering.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 9:200. Registration and titling of rebuilt motor vehicles.

RELATES TO: KRS Chapter 186A

STATUTORY AUTHORITY: KRS 186.115, 186A.500 through 186A.550

NECESSITY AND FUNCTION: KRS 186A.530 requires the Transportation Cabinet to issue a certificate of title with a brand printed on the face of the title if the vehicle has been rebuilt or has a branded certificate of title from another jurisdiction. This administrative regulation sets forth the procedures the Transportation Cabinet shall follow in issuing the certificate of title and printing a brand on the face of the motor vehicle title. The administrative regulation further sets forth procedures to be followed when the owner of a motor vehicle which has been assembled from parts of wrecked or salvage motor vehicles presents the rebuilt motor vehicle for registration and titling.

Section 1. Vehicles from Other Jurisdictions. When the owner of a motor vehicle with a title from another jurisdiction applies for a Kentucky motor vehicle title, the county clerk receiving the application shall enter the following information relating to brands into the Automated Vehicle Information System:

(1) If the brand on a foreign motor vehicle title relates to prior damage to and repair of a motor vehicle the Kentucky title, when issued, shall bear the notation "rebuilt vehicle".

(2) If a vehicle title bears both a brand as described in subsection (1) of this section and a "water damaged" brand as set forth in KRS 186A.530(4), the Kentucky title shall bear the notation "rebuilt vehicle".

(3) If a vehicle certificate of title bears a brand relating to the previous use of the motor vehicle but not to damage to the motor vehicle, the Kentucky certificate of title shall not be branded.

Section 2. Branding of Title Issued for a Rebuilt Motor Vehicle. (1) If a salvage certificate of title has been issued pursuant to KRS 186A.520 because of both physical damage and water damage to the motor vehicle, a title issued pursuant to KRS 186A.530(2) shall bear the notation "rebuilt vehicle".

(2) If a vehicle with a salvage certificate of title issued pursuant to KRS 186A.520 is transferred within Kentucky or when a vehicle with similar title from another jurisdiction is transferred into Kentucky, the new certificate of title shall be another salvage certificate of title until the owner of the motor vehicle has successfully gone through the process set forth in Section 3 of this administrative regulation.

Section 3. Application for Title of Rebuilt Motor Vehicle. After a motor vehicle which has been assembled from parts of wrecked or salvaged vehicles and if the motor vehicle complies with all equipment and safety requirements of KRS Chapter 189, the owner may apply for registration or title of the motor vehicle. All applications for registration or title of a motor vehicle which has been assembled from parts from wrecked or salvaged motor vehicles shall be accompanied by the following:

(1) The form required by KRS 186A.060, Vehicle Transaction Record. This form shall contain an inspection certificate issued by a certified inspector in accordance with KRS 186A.115;

(2) A completed Form TC 96-215, Affidavit of Motor Vehicle Assembled from Wrecked or Salvaged Motor Vehicles, revised February, 1986. This form is incorporated by reference as a part of this administrative regulation;

(3) An address where the motor vehicle may be examined;

(4)(a) A properly assigned certificate of title; or

(b) If the vehicle owner does not have a certificate of title because the motor vehicle has not been through the titling process since the enactment of KRS Chapter 186A in 1983, a notarized affidavit fully explaining ownership of the vehicle which includes the following:

1. Length of time the vehicle was owned by the current owner, but it shall be a minimum of five (5) years;

2. Where and from whom the vehicle was purchased;

3. When and where the vehicle was last registered or licensed; and

4. Statement of no liens against the vehicle.

(5) A descriptive, notarized labor statement of repairs made and parts replaced;

(6) An original receipt for each part purchased. Multiple parts may be listed on each receipt. The receipt shall include:

(a) Seller's name;

(b) Seller's address;

(c) Seller's telephone number;

(d) Date of part purchase;

(e) Price of part purchased; and

(f)1.Serial number of each part;

2. Vehicle identification number of vehicle from which the part was taken; or

3. A written comprehensive explanation of the reason why the part does not have a serial number.

(7) If the motor vehicle is a motorcycle, a pencil tracing of both the motor identification number and frame identification number of the rebuilt motorcycle and the motorcycle from which parts were obtained.

(8)(a) The license plate from the motor vehicle even if the plate has expired; or

(b) A statement of why there is no longer a license plate for the rebuilt motor vehicle.

(9) A separate federal odometer disclosure statement if unavailable on either the Application for Title/Registration or the back of the certificate of title. The separate form may be TC 96-5, Odometer Disclosure Statement, revised March, 1989 or its equivalent. Form TC 96-5 is hereby incorporated by reference.

Section 4. Insurance Companies. (1) When an insured motor vehicle is paid for by an insurance company and the insurance company becomes the lawful owner of a stolen motor vehicle, the insurance company may make application in the name of the company for a regular title.

(2) If the motor vehicle is subsequently recovered and damage to the motor vehicle meets the requirements of a salvage vehicle as set forth in KRS 186A.335, the insurance company shall make an application for a salvage certificate of title.

(3) If an insurance company has a theft-recovered motor vehicle for which the company applied and was issued a salvage certificate of title, but the motor vehicle does not meet the requirements of a salvage vehicle as set forth in KRS 186A.335, the insurance company may make application for a regular certificate of title. The application for certificate of title shall be made on form required by KRS 186A.060 and shall include the following:

(a) The assigned certificate of title; and

(b) Verification on the company letterhead that the motor vehicle is a theft recovery and a description of the damage to the motor vehicle.

Section 5. Recorded Lien Against Title. An application for a certificate of title to be issued pursuant to KRS 186A.530(2) shall be rejected by the Transportation Cabinet if there is a lien against the vehicle recorded in the Automated Vehicle Information System.

Section 6. Additional Information which may be Required. (1) The Transportation Cabinet may require an inspection of a rebuilt motor vehicle by the Kentucky State Police if:

(a) All documentation required by Section 3 of this administrative regulation is not available; or

(b) A check of the National Crime Information Center computer identifies the motor vehicle as one with a nonconforming vehicle identification number.

(2) If the repair documentation submitted in accordance with the requirements of Section 3 of this administrative regulation appears to be significantly less than seventy-five (75) percent of the value of the motor vehicle, the Transportation Cabinet may require:

(a) A statement from the insurance company of the damage done to the motor vehicle; or

(b) A salvage pool receipt which describes the damage to the motor vehicle.

Section 7. Material Incorporated by Reference. The material incorporated by reference may be viewed, copied or obtained free of charge from any county clerk or the Transportation Cabinet's, Division of Motor Vehicle Licensing. The Division is located on the 2nd and 3rd floors of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-5301. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

Section 8. Repeal of Administrative Regulation. Administrative regulation 601 KAR 9:047, Rebuilt or reconstructed vehicle registration is hereby repealed.

NORRIS BECKLEY, Commissioner
JERRY ANGLIN, Deputy Secretary
DON C. KELLY, P. E., Secretary

APPROVED BY AGENCY: December 12, 1994

FILED WITH LRC: December 29, 1994 at 1 p.m.

PUBLIC HEARING: A public comment hearing on administrative regulation 601 KAR 9:200 will be held on February 23, 1995 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by February 18, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by February 18, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on February 23, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: The owners of the 30,000 motor vehicles which will be branded as a result of the passage of HB 225 and the promulgation of this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation will be implemented uniformly statewide. There should be no change in the cost of living or employment in the state as a result of the promulgation of the administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The cost of used cars which have branded titles will likely be lower. That is an increase in the cost of doing business for the recyclers but a decrease for the persons who purchase the vehicles. However, the branding of the motor vehicle titles is mandated by KRS Chapter 186A. This administrative regulation is just the mechanism for implementation of the branding program.

(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 first year following implementation will see a problem in that not all of the motor vehicles which have been severely damaged and then rebuilt will have a branded title since brands are only being imposed from December 1, 1994 forward. Therefore, a seller will be able to price a previously damaged motor vehicle without a brand higher than one damaged to the same extent which does have a brand. Regardless of the implementation date of a new program such as this, the inequity will exist for a short period of time. Further the administrative regulation sets forth the application process for obtaining a title for a motor vehicle which has been rebuilt.

2. Second and subsequent years: The application process for obtaining a title for a motor vehicle which has been rebuilt is the same for all persons.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The Transportation Cabinet must pay for the cost of reprogramming the Automated Vehicle Information System (AVIS).

1. First year: This cost will all be incurred in fiscal year 1994-95.
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: Road fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: The economic impact will be on the recycler industry in Kentucky. Since motor vehicle titles have not previously been branded in Kentucky, the recyclers based here and eligible to title a rebuilt motor vehicle in Kentucky, have done a booming business. They believe the price of these motor vehicles after they are rebuilt will be reduced by the passage of HB 225. However, this is out-weighed by the protection offered to the public.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There was a major discussion of whether the bill was to be imposed retroactively or prospectively. One alternative was to place a brand on any motor vehicle which the Transportation Cabinet was told had been rebuilt. The other alternative was to only brand those motor vehicle titles received after the December 1, 1994 implementation date. The cabinet's general counsel said that unless HB 225 had specifically allowed the retroactive application, only prospective application could be allowed.

(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 duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. All motor vehicles which meet the definition of a "rebuilt vehicle" are to be branded.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation

781 KAR 2:011. Repeal of Department of Vocational Rehabilitation Independent living rehabilitation services administrative regulations.

RELATES TO: KRS 151B.190, 34 CFR Part 361, 29 USC 722

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

NECESSITY AND FUNCTION: 781 KAR 2:010 and 781 KAR 2:020 are no longer required because the department no longer administers a program of independent living rehabilitation services.

Section 1. 781 KAR 2:010 and 781 KAR 2:020 are hereby repealed.

SAM SERRAGLIO, Commissioner

APPROVED BY AGENCY: December 9, 1994

FILED WITH LRC: January 4, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 1995 at 10 a.m. Eastern Time in the DVR Training Room, 61-62 Fountain Place, Wilkinson Boulevard, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency by February 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: George Parsons, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521.

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Parsons

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

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic 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: There will be no reporting or paperwork requirements. The department no longer conducts a program of independent living services.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No expenditures are anticipated as the result of repeal of administrative regulations.

(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: The administrative regulations to be repealed are no longer necessary.

(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 detrimental effect on those issues will ensue.

(c) If detrimental effect would result, explain detrimental effect:

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

(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 repeals administrative regulations governing the independent living services program. As a result of changes in the 1992 amendments to the Rehabilitation Act, the department no longer operates an independent living services program and the policies are no longer necessary.

(11) TIERING: Is tiering applied? No. The regulation serves only to repeal existing administrative regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. This administrative regulation repeals administrative regulations no longer needed.

3. Minimum or uniform standards contained in federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The repeal of these administrative regulations is a result of shifting responsibility for the management of the independent living program to the Statewide Independent Living Council pursuant to the 1992 amendments to the Rehabilitation Act.

5. Justification or imposition of the stricter standards, or additional

or different responsibilities or requirements.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 39:080. Reporting requirements of automobile insurers regarding payment of personal injury benefits.

RELATES TO: KRS 189.125, 304.39-350
STATUTORY AUTHORITY: KRS 304.2-110, 304.39-350
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.39-350 provides that the Commissioner of Insurance shall report to the Legislative Research Commission the total amount of payments made by insurers of motor vehicles for personal injuries incurred by their covered motorists as a result of an accident using a motor vehicle. In order to report accurately to the Legislative Research Commission, it is necessary to promulgate an administrative regulation which requires insurers to submit this data to the Commissioner of Insurance.

Section 1. Reporting Requirement. (1) All insurers of motor vehicles shall report to the commissioner the total amount of payments made by the insurer for personal injuries incurred by their covered Kentucky motorists as a result of an accident using a motor vehicle.

(2) Insurers of motor vehicles shall include in the report only those personal injury payments which resulted from accidents that occurred during the reporting time period regardless of whether the insurer's claim file is open or closed.

(3) The total amount of personal injury payments reported by each insurer of motor vehicles shall not include any amounts set aside by the insurer in reserves for the payment of future potential personal injury claims. The total amount of personal injury payments shall include only those amounts actually expended by each insurer of motor vehicles during the time periods set forth by Section 2 of this administrative regulation.

Section 2. Reporting Format. (1) The data required by Section 1 of this administrative regulation shall be submitted to the department once per year for two (2) consecutive years.

(2) The reported data shall cover the following time periods:

(a) The first report shall be filed with the department on or before July 31, 1995, and shall cover the time period beginning July 15, 1994, and ending July 14, 1995.

(b) The second report shall be filed with the department on or before July 31, 1996, and shall cover the time period beginning July 15, 1995, and ending July 14, 1996.

(3) The data required by this administrative regulation shall be submitted to the department in writing and the report shall be entitled "Personal Injury Payment Report".

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 12, 1995
FILED WITH LRC: January 12, 1995 at noon

PUBLIC HEARING: A public hearing shall be held on February 21, 1995, at 9 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 16, 1995, five (5) days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 9 a.m. (ET), on February 21, 1995, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sharron S. Burton, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032 Ext. 249.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: Sharron S. Burton, Counsel

(1) Type and number of entities affected: There are approximately 800 property and casualty insurers licensed to do business in Kentucky. This administrative regulation will apply to all property and casualty insurers who insure motor vehicles for use by Kentucky residents.

(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: Within the first year following implementation of the proposed administrative regulation, the insurers of motor vehicles will be required to report the total amount of personal injury benefit payments made to the insurers' covered Kentucky motorists.

2. Second year following implementation. The same report will be required from insurers of motor vehicles for the second year.

3. Subsequent years. No report will be required for subsequent years as a result of this proposed administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The only cost to the Department of Insurance associated with the proposed administrative regulation will be the personnel cost of collecting and organizing the reported data. There will be no savings.

2. Continuing cost or savings: The cost of collecting and organizing the reported data will continue until July of 1996. After this date, the insurers will not be required to report the personal injury benefit payment information to the Department of Insurance.

3. Additional factors increasing or decreasing costs: Once the data is reported to the Department of Insurance, the commissioner is required, in turn, to report the findings to the LRC. This will increase the personnel and paperwork costs of the department minimally. This increase in cost will end in July of 1996.

(b) Reporting and paperwork requirements: On the basis of the data reported to the department by insurers of motor vehicles, the commissioner is required, pursuant to KRS 304.39-350, to report to LRC the total amount of payments made by insurers of motor vehicles for personal injuries incurred by their covered motorists as a result of an accident using a motor vehicle.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The normal budget currently in effect for the Department of Insurance is sufficient to cover the implementation costs 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, or:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: It was suggested at the notice of intent public hearing that the information sought by the department be obtained from the closed claim reports filed by property and casualty insurance companies pursuant to 806 KAR 3:130. This alternative source of information was rejected by the Department due to the fact that the closed claim report is not tailored to extract the information required by KRS 304.39-350. For instance, the closed claim form requires insurers to report all bodily injury payments. KRS 304.39-350 requires the Commissioner to report the personal injury payments of each insurer in regards to its own covered Kentucky motorists. Therefore, the information reported on the closed claim form is broader than the information required by KRS 304.39-350. Further, the reports collect annual data differently: Closed claim reports include payments made on claim files closed during the calendar year regardless of when the injury occurred; and KRS 304.39-350 reports are to include payments made during the July to July reporting period for injuries sustained during that July to July reporting period.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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? No. As is required by statute, the proposed administrative regulation will apply equally to all property and casualty insurers who insure motor vehicles for use by Kentucky residents.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:440. Discount Option Program.

RELATES TO: KRS 205.6330(2)

STATUTORY AUTHORITY: KRS 194.050, 205.6330(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall establish a program of last resort which permits an individual with family income below 200 percent of the federal poverty level to purchase health services from Medicaid participating providers at the Medicaid rate. This administrative regulation sets forth the provisions of the Discount Option Program (DOP) which is established to fulfill this requirement.

Section 1. Definitions. (1) "Cabinet" means the Kentucky Cabinet for Human Resources or a contracting agency of the Kentucky Cabinet for Human Resources participating in DOP.

(2) "Eligible individual" means a person who has applied for DOP and has been found to meet all applicable conditions for eligibility pertaining to DOP.

(3) "Family unit" means an individual or group of individuals living in the same household whose income is considered in determining eligibility for DOP consisting of the following:

(a) A parent, a stepparent, the minor child and minor stepchild;

1. A minor parent shall be included in the parent's family unit which shall also include the child of the minor parent; or

2. If the minor parent is living with the child's other parent, regardless of their marital status, a separate family unit shall be established.

(b) An unmarried couple that has at least one (1) minor child in common, and siblings of that child;

(c) A single adult individual or couple without a minor child.

(4) "Gross income" means all earned and unearned income received by the members of the family unit. Gross income shall consist of:

(a) Wages;
(b) Social Security;
(c) Pension;
(d) Child support;
(e) Self-employment;
(f) Railroad retirement;
(g) Black lung;
(h) Veterans Administration (VA) benefits;
(i) Unemployment Insurance benefits;
(j) Worker's compensation;
(k) Supplemental Security Income (SSI) benefits; and
(l) Aid to Families with Dependent Children (AFDC) benefits.

(5) "Health services or items covered by Medicaid" means the following health care services or items:

(a) Inpatient, outpatient, and emergency hospital services;
(b) Physician services;
(c) Home health services;
(d) Durable medical equipment;
(e) Family planning services;
(f) Laboratory and radiology services;
(g) Dental, vision and hearing services for individuals under age twenty-one (21);
(h) Emergency and nonemergency transportation services;
(i) Primary care services;
(j) Rural health clinic services;
(k) Nurse midwife services;
(l) Advanced registered nurse practitioner services;
(m) Nurse anesthetists services;
(n) Pharmacy services;
(o) Community mental health services;
(p) Renal dialysis services;
(q) Podiatry services;
(r) Ambulatory surgical center services;
(s) Hospice services;
(t) Alternative home and community based services for the mentally retarded;
(u) Home health services;
(v) Psychiatric residential treatment center services for individuals under age twenty-one (21);
(w) Inpatient psychiatric hospital services for individuals age sixty-five (65) or over or under age twenty-one (21) meeting patient status criteria;
(x) Targeted case management services;
(y) Home and community based services;
(z) Preventive health care services; and
(aa) Screening services.

(6) "Liquid assets" means all cash, or assets readily convertible to cash, owned by the members of the family unit. Liquid assets shall consist of:

(a) Cash on hand;
(b) Checking accounts;
(c) Saving accounts;
(d) Certificate of deposits;

(e) Stocks, mutual fund shares, bonds, and similar financial instruments; and

(f) Any other item readily convertible to cash.

(7) "Medicaid participating provider" means a provider of health services enrolled in the Medicaid Program by written agreement to comply with Medicaid Program administrative regulations in the provision of services to an eligible individual.

(8) "Medicaid Program" means the state program administered by the cabinet in compliance with 42 USC 1396, and which is designed to provide for the health care needs of Kentucky's medically indigent citizenry.

(9) "Minor child" means an individual who is:

(a) Under the age of twenty-one (21) and living with a parent; or

(b) Under the age of eighteen (18) and living with a legal guardian in the same household; or

(c) Regardless of his residence, an individual listed in paragraph (a) or (b) of this subsection attending college or a similar type of higher education facility on a full-time basis, as determined by the college or similar type of higher education facility.

(10) "Minor parent" means an individual under the age of twenty-one (21) who has a minor child.

Section 2. Application. (1) Application for DOP may be filed at a county office location of the cabinet.

(2) An applicant may file an application in a county other than the county of residence.

(3) The office accepting the DOP application shall complete the form, determine eligibility for the program and process the application.

(4) Each potential applicant who registered for DOP with the cabinet prior to the effective date of this administrative regulation shall be:

(a) Contacted by the office which received the registration; and

(b) Asked to complete an application.

Section 3. Income Eligibility Requirements. (1) The family unit's total gross income shall be below 200 percent of the official poverty income guidelines for the appropriate family size, as promulgated by the Department of Health and Human Services, United States Government, and revised annually.

(2) Parental income shall not be considered in an eligibility determination for a child who is:

(a) Age twenty-one (21) or older; or

(b) Regardless of age, not living with the parent or attending college, or a similar type of higher education facility, on a full-time basis as determined by the college or similar type of higher education facility.

(3) A legal guardian's income shall be considered in determining eligibility for a child living in the same household as the legal guardian until the child reaches the age of eighteen (18).

(4) A grandparent's income shall not be considered for a grandchild living with the grandparent unless the grandparent is the legal guardian.

(5) Income shall be considered available from a spouse of a common-law marriage, recognized by another state, living in the same household.

(6) To determine the monthly gross income of an individual:

(a) The average gross income of the most recent two (2) calendar months prior to the application month shall be used; or

(b) If the last two (2) calendar months do not represent the ongoing situation in cases of terminated or reduced income, an estimate of anticipated income that best indicates the family unit's ongoing income shall be used.

(c) The average monthly amount of self-employment profit shall be used.

1. The self-employment profit shall be determined by allowing work expense deductions directly related to producing the goods or services and without which the goods or services could not be produced.

2. For annual self-employment income, the average monthly amount of income shall be obtained by dividing the annual self-employment profit by twelve (12).

(d) For seasonal, contract and occasional work, an average of the actual income received in the most recent two (2) calendar months prior to the application month shall be used.

(e) Except for the cost of producing income in self-employment income, no deductions shall be allowed from total gross income.

(7) The cabinet shall require verification of earned and unearned income.

(a) Self-employment income and deductions for the cost of producing income shall be verified by:

1. The most recent tax return; or

2. If no tax return is filed, the actual reported income and deductions of the most recent two (2) calendar months prior to the application month.

(b) Wages shall be verified by:

1. Check stub;

2. Employer statement; or

3. Contract.

(c) Benefits from an unearned income source shall be verified by:

1. Award letter from Social Security Administration;

2. Company pension statement;

3. Internal Revenue Service record;

4. Veterans record;

5. Railroad retirement record;

6. Support order;

7. Statement or copy of check from the absent parent;

8. Statement from individual providing income to the applicant; or

9. Other documentation from the payor of the benefit.

(d) The applicant's statement shall be acceptable verification of no income.

Section 4. Resource Consideration. (1) Limit for liquid assets shall be:

(a) For an individual, $2000;

(b) For family size of two (2) or more, $4000 plus fifty (50) dollars for each additional family member over two (2).

(2) Total liquid assets above the allowable amounts shall result in ineligibility for benefits for the family unit.

(3) The cabinet shall require verification of liquid assets.

(a) Liquid assets shall be verified by:

1. Statement from a bank or other financial institution of the current value of the financial instrument;

2. Checking account statement; or

3. Savings account statement;

(b) The applicant's statement shall be acceptable verification of no liquid assets.

(c) An applicant who knowingly provides false information regarding liquid assets shall be referred for fraud investigation in accordance with Section 12 of this administrative regulation.

Section 5. Residency and Citizenship. (1) The DOP eligible individual shall be a citizen of the United States.

(2) The DOP eligible individual shall be a resident of Kentucky.

(3) The state of residence shall be Kentucky for a DOP eligible individual if the individual is:

(a) Age twenty-one (21) and over; or

(b) If married or emancipated from parental control, under age twenty-one (21); and

(c) Residing in the state; and

1. Intends to remain permanently or for an indefinite period; or

2. Entered the state with a job commitment or to seek employment.

(4) For an unmarried or unemancipated individual less than age twenty-one (21), the state of residence shall be the state in which the

parent of the child resides.

(5) The applicant shall not be required to maintain a fixed and permanent address.

(6) No minimum duration requirement shall be necessary to establish residency.

(7) Unless there are indications that the applicant actually resides in another state, the applicant's statement shall be acceptable verification of residency.

Section 6. Insurance Conditions. (1) The cabinet shall determine if a member of the family unit is covered by a health insurer.

(2) If a member of the family unit is covered by a health insurer, the following information shall be provided:

(a) Name of the health insurer, including Medicare;

(b) Health coverage identification number; and

(c) Effective date of health insurance coverage.

(3) If health insurance coverage is indicated on the DOP certification form, a Medicaid participating provider may require health insurance identification information be provided prior to providing service. The DOP eligible individual shall present identifying information regarding health insurance coverage with the DOP certification form.

(4) A DOP eligible individual covered by a health insurance plan shall be eligible to participate in DOP to the extent that the health insurance plan does not cover the otherwise eligible health service or item, in whole or in part including where the health service or item is subject to a deductible or copayment and provided that the health service or item is medically necessary and appropriate.

(5) The statement of the applicant shall be acceptable verification of no health insurance coverage.

Section 7. Time Standards. An eligibility determination shall be made after receipt of a completed and signed application, which includes verification of income and assets, not to exceed five (5) working days from the date of the application.

Section 8. Certification. (1) The certification period for an eligible individual shall begin on the date of approval.

(2) The certification period shall be time-limited and shall continue for the remainder of the approval month and the three (3) calendar months following the approval month.

(3) The certification period for an eligible individual shall not precede the effective date of this administrative regulation.

(4) Each certification period shall require the filing of a new application and a complete investigation of eligibility including verification of income and liquid assets.

(5) At the time of approval, the cabinet shall provide the DOP eligible individual written verification of the certification period.

Section 9. Scope of Program. (1) The provision of eligible services to the DOP eligible individual by the Medicaid participating provider shall include the health services and items subject to coverage and limitations set forth in Title 907 of Kentucky Administrative Regulations except for long term care facilities as defined by KRS 216.510(1);

(2) Except for hospital services, health services and items subject to the prior authorization requirements of the Medicaid Program shall not be considered DOP eligible services.

(3) Health services or items provided in an emergency room for nonemergency care situations, as determined by the hospital, shall not be considered DOP eligible services.

(4) If the DOP eligible individual is not eligible for the Kentucky Hospital Care Program, the hospital shall charge the DOP eligible individual the rate established for hospital services pursuant to subsection (5)(b) of this section.

(5) Unless the DOP eligible individual has a health insurance plan which covers the health service or item in whole or in part including where the health service or item is medically necessary and appropriate, the Medicaid participating provider shall collect from the DOP eligible individual the lower of the usual and customary charge or:

(a) The rate established by administrative regulation in Title 907 of the Kentucky Administrative Regulations by the cabinet for a fee based health service or item with a fixed rate or upper limit, if the fee based health service or item is:

1. Advanced registered nurse practitioner services;
2. Dental services;
3. Durable medical equipment;
4. Family planning services;
5. Hearing services;
6. Hospice services;
7. Laboratory services;
8. Local health department services;
9. Nurse anesthetists services;
10. Nurse midwife services;
11. Physician services;
12. Podiatry services;
13. Psychiatric residential treatment facility services;
14. Radiology services;
15. Renal dialysis services;
16. Transportation services;
17. Vision services; or

(b) The following rate for a cost based reimbursed service or item:

1. For home health services, the established interim rate per provider;
2. For inpatient hospital services, the established per diem rate;
3. For outpatient hospital services, the established interim rate;
4. For community mental health center services, the established rate per provider;
5. For inpatient psychiatric hospital services, the established per diem rate;
6. For primary care centers and rural health clinic services, the fee-for-service rate per procedure;
7. For targeted case management services, the established interim rate per provider;
8. For alternative home and community based services for the mentally retarded, the established interim rate per provider;
9. For home and community based services, the established interim rate per provider; or

(c) The following rate for other types of reimbursed services or items:

1. For ambulatory surgical center services, a rate of sixty-five (65) percent of charges; or
2. For pharmacy services, the rate listed in the current quarterly "Kentucky Medicaid Program Drug List", obtained in printed format or accessed by on-line computerized listing, plus the Medicaid established dispensing fee. If a pharmacy, using the rate listed in the current quarterly "Kentucky Medicaid Program Drug List", charges the DOP eligible individual a rate higher than the federal maximum allowable cost (FMAC), the pharmacy shall not be subject to provisions in Section 12 of this administrative regulation.

(6) In order to be charged the rate specified in subsection (5) of this section, the DOP eligible individual shall present to the Medicaid participating provider at the time the health service or item is accessed:

(a) If applicable, a copy of any proof of health insurance; and

(b) The written verification of the certification period.

(7) Payment for a health service or item shall be the responsibility of the DOP eligible individual in accordance with the Medicaid participating provider's payment requirements.

Section 10. Requirements of Medicaid Participating Providers. (1) If not in conflict with Kentucky administrative regulations under Title 907 of the Kentucky Administrative Regulations, a Medicaid participating provider may apply his general practice rules to a DOP eligible

individual.

(2) A Medicaid participating provider shall have the freedom to decide whether or not to accept a DOP eligible individual, in accordance with the freedom of choice provisions within the applicable provider manuals adopted by the cabinet and incorporated by reference in Title 907 of the Kentucky Administrative Regulations.

Section 11. Confidentiality. (1) Disclosure of information concerning a DOP applicant or DOP eligible individual shall be limited to a purpose directly connected with the administration of DOP to include:

(a) Establishing eligibility; or

(b) Providing services.

(2) Case records or listings of DOP applicants and DOP eligible individuals shall not be:

(a) Open for public inspection; nor

(b) Used in any manner so as to become a part of public record.

Section 12. Fraud and Abuse. (1) Recipient fraud of DOP occurs when the DOP eligible individual intentionally misrepresents or conceals facts regarding:

(a) The income and liquid assets of the family unit;

(b) Residency or citizenship of a member of the family unit; or

(c) Current health insurance coverage of a member of the family unit.

(2) A DOP eligible individual found guilty of fraud shall be subject to the provisions of KRS 205.850(4) and (7).

(3) A Medicaid participating provider found guilty of knowingly charging the DOP eligible individual a rate higher than the amount specified in Section 9 of this administrative regulation shall be subject to the provisions of KRS 205.6330(2)(c).

(4) A DOP eligible individual suspected of fraud or a Medicaid participating provider suspected of charging a rate higher than the Medicaid rate for a DOP covered service as specified in Section 9 of this administrative regulation shall be reported by writing to the Office of the Inspector General at 275 East Main Street, Frankfort, Kentucky 40621 or calling 800-372-2970.

Section 13. Hearing Rights and Appeals. (1) An applicant or eligible individual who is dissatisfied with any action or inaction by the agency accepting the application and making the eligibility determination shall be entitled to a fair hearing before an impartial hearing officer in accordance with the same hearing provisions available to applicants and recipients of Aid to Families with Dependent Children provided in 904 KAR 2:055.

(2) A hearing request shall be made in writing to the Cabinet for Human Resources, Division of Administrative Review, Hearing Branch, 275 East Main, Frankfort, Kentucky 40621.

Section 14. Material Incorporated by Reference. (1) The form necessary for the application and determination of eligibility of DOP is DOP-1, effective April 1, 1995.

(2) This form may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: January 13, 1995

FILED WITH LRC: January 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by February 16, 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 K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected:

(a) Medicaid participating providers, with the exception of long-term care facilities, are required to charge eligible individuals of the Discount Option Program (DOP) the lower of the usual and customary charge for a service or the Medicaid rate for a health care service or item. Since the Medicaid rate for a service or item is usually at a lower rate than the usual and customary rate of the health care provider, the affected providers may receive a lower payment for the same service than what is charged other non-Medicaid patients. This rate charged to an eligible individual of DOP may result in decreased revenues for Medicaid providers. Since the DOP eligible individual is responsible for the payment of the service accessed, the Medicaid provider may experience a decrease in uncompensated services currently provided to individuals under 200 percent of poverty who are ineligible for Medicaid or other government programs for the payment of health care services.

(b) There are approximately 389,000 uninsured Kentuckians with income less than 200 percent of poverty level. Using the 1990 U. S. Census average household figure of 2.6 members, a maximum of 149,000 families could access the program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: Since no requests were received, the public hearing for the Notice of Intent was not held; however, ad hoc public meetings were held on September 28, 1994, and December 12, 1994. No public comments were received regarding 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 comment received: Since no requests were received, the public hearing for the Notice of Intent was not held; however, ad hoc public meetings were held on September 28, 1994, and December 12, 1994. Health care providers stated that additional administrative costs may result from performing insurance benefits analysis to determine appropriate billing of eligible services. Since the DOP eligible individual is responsible for the payment of the service accessed, the Medicaid provider may experience a decrease in uncompensated services currently provided to individuals under 200 percent of poverty who are ineligible for Medicaid or other government programs for the payment of health care services.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: The Medicaid participating provider is required to charge eligible individuals of DOP a rate for a covered service or item no more than the Medicaid rate for the covered service or item. The health care provider will be required to utilize current Medicaid reimbursement rates in order to correctly charge a DOP eligible individual. A Medicaid participating provider who knowingly charges a DOP eligible individual a rate higher than the Medicaid rate shall be subject to a fine of $500 for each violation as required by KRS 205.6330(2)(c). Additional effort by the health care provider will be required to insure the DOP recipient is not charged more that the current Medicaid rate for the service or item instead of the usual rate

to non-Medicaid patients. Since the DOP eligible individual will be charged a rate that is not higher than the Medicaid rate for a service or item, the DOP eligible individual will be assured uniformity of rates for health care services from all Medicaid participating providers throughout the state. Costs will be stabilized for these individuals to the same extent the Medicaid rates remain stable. An application form completed by eligibility staff will relieve the DOP applicant of completing a form.

1. First year following implementation: Data unavailable. No data was provided in the ad hoc meetings from Medicaid providers regarding the possible decrease in revenues as a result of accepting DOP eligible individuals. There is insufficient data to compute the actual cost to Medicaid providers for providing eligible services and items at the Medicaid rate to eligible individuals. The number of DOP eligible individuals who access a service or item can not be determined. The number of DOP eligible individuals who access services or items provided by Medicaid providers will vary based on the type of service or item provided by the Medicaid provider. Since payment for a health service or item is the responsibility of the eligible individual, the cost of some services will continue to be prohibitive to the individual due to the cost of the service or item even when charged at the Medicaid rate.

2. Second and subsequent years: Data unavailable.

(3) Effects on the promulgating administrative body: Applications for DOP may be filed at any county office location in the Cabinet for Human Resources to maximize accessibility and to spread the impact of implementation over the entire Cabinet permitting existing staff to handle the increased workload. These locations include county offices of the Department for Social Insurance, Department for Employment Services, Department for Health Services, Department for Mental Health and Mental Retardation Services, Department for Social Services and selected agencies under contract with the cabinet including county health departments. Additional staff time will be required to accept and process the applications in the county where the application is filed. Staff time is needed to answer inquiries and provide information to program applicants and eligible individuals or to individuals making inquiries in the program. Completion of a form used for the application and determination process, which is also used as proof of certification, is required as well as postage for mailing forms. The program benefit of DOP for the eligible individual is the ability to purchase health care services from Medicaid providers at the Medicaid rate. The Medicaid provider does not bill and does not receive payment from the cabinet. Since the payment for the health service or item is the responsibility of the DOP eligible individual, there are no program benefit costs.

(a) Direct and indirect costs or savings:

1. First year: $100,000

2. Continuing costs or savings: Continuing costs should increase about 5 percent to allow for increased printing, mailing and salaries.

3. Additional factors increasing or decreasing costs: None For ease in administering the program, the same form used for the application is used for the eligibility determination completed by the worker accepting the application. A copy of this form is provided to the eligible individual on approval as proof of certification with the period of eligibility listed on the top of the form.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing general and agency funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None - Since no requests were received, the public hearing for the Notice of Intent was not held; however, ad hoc public meetings were held on September 28, 1994, and December 12, 1994. No public comments were received regarding the economic impact to Kentucky.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by state law.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation of DOP will cause a positive effect on public health of the citizens of Kentucky. DOP eligible individuals are afforded a method through DOP to obtain health care services at the Medicaid rate which is usually at a lower rate than the rate charged to other non-Medicaid patients. Because of the increased access of health care services, an eligible individual may have an improved quality of health. Health care services may be sought when needed and on a regular basis creating continuity and better coordination of care by the health care provider.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Individuals or families with income below 200 percent, without health care coverage who can not qualify for Medicaid or other programs covering health care costs, may not obtain needed health care services if DOP is not implemented.

(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: None

(11) TIERING: Is tiering applied? No. Tiering was not used since application of policy is required to be applied in a like manner for all individuals.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services

908 KAR 2:090. 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

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 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 law enforcement officer as defined in KRS 446.010(24).

(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 645.120.

Section 3. Transportation. (1) A peace officer shall:

(a) Transport an individual pursuant to KRS Chapter 202A or 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.028, 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 subsection (1) of this section 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 (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 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.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: January 12, 1995

FILED WITH LRC: January 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for Tuesday, February 21, 1995, at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by Thursday, February 16, 1995, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(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. The public hearing that was scheduled December 29, 1994 was cancelled due to the lack of a response from the public. However, the President of the Kentucky Jailer's Association submitted a comment after the public hearing suggesting a change in the definition of "peace officer" (Section 1(6)). As a result, this definition has been changed as suggested. 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. The fees for services by the peace officers, sheriffs, hospitals and ambulance providers will be negotiated and reimbursed by the community mental health centers.

(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 public hearing that was scheduled December 29, 1994 was cancelled due to the lack of a response from the public. However, the President of the Kentucky Jailer's Association submitted a comment after the public hearing suggesting a change in the definition of "peace officer" (Section 1(6)). As a result, this definition has been changed as suggested. 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 fees for providers of transportation services, evaluations 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 reports will assist staff to monitor the program.

(4) Assessment of anticipated effect on state and local revenues. Since local jails will not be used to hold individuals during the commitment process, jailers will not incur the expense of serving these individuals. Funding has been allocated to the community mental health centers to offset the costs of transportation, mental health evaluation and hospitalization for individuals held under commitment proceedings.

(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:

(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 during the commitment process.

(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

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 when no other reimbursement source is available.

Other Explanation: Transportation, evaluation and hospitalization will be reimbursed by either the individual's health insurance, Medicare, Medicaid or the community mental health center.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the January 9, 1995

The January meeting of the Administrative Regulation Review Subcommittee was held on Monday, January 9, 1995, at 10 a.m. in Room 131 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the December 8, 1994 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators John David Preston, Nick Kafoglis; Representatives Woody Alllen, Jim Bruce and Tommy Lee.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines, Tim Lowry, Sharon Cantrell, Karen Milborn.

Guests: Frank Leiderman, Gerard Fee, Treasury; George Russell, Board of Elections; James M. Ringo, Amye Majors, Theresa Gargan, Ross Carter, Office of Attorney General; Jennifer Hays, Paul P. Jones, Revenue Cabinet; William P. Hanes, Pam Johnson, Kentucky Retirement Systems; Bill Pettus, John Grant, Board of Embalmers & Funeral Directors; Ronald Pritchert, Tom Young, Department of Fish & Wildlife Resources; Donna G. Dutton, Danny Willis, Don L. Notter, Alan F. Hamilton, Edward S. Ford III, Randy Wise, Vicki Searcy, Department of Agriculture; Carl Campbell, Jerri L. Wallace, Dave Rosenbaum, Jim Villines, Natural Resources and Environmental Protection Cabinet; Louis Smith, Brenda Priestley, Susan Alley, Jack Damron, Department of Corrections; John C. Barton, Kentucky State Police; Susan Goins, Cindy Schweickart, Kevin Noland, Department of Education; Judith G. Walden, Department of Housing, Buildings and Construction; Valerie Salven, Gary Lee, Department of Workers' Claims; Wayne Richard, Ralph Von Derau, John H. Walker, Karen Doyle, Mike Cheek, Paul Gibson, Anita Moore, Ked Fitzpatrick, Cabinet for Human Resources; Ed O'Daniel, Kentucky Distillers Association; Laurence N. Benz, Terry C. Brown, Kentucky Physical Therapy Association; Vanessa McDermott, Regina Durbin, Kyana Physical Therapy Services; Judith Taylor, Jim Carloss, Kentucky Chapter Physical Therapy; Rhonda Adams Willis, Kentucky Chiropractic Society; Bill Doll, Kentucky Medical Association; D. Ray Gillespie, Kentucky Self-Insurers Association; George L. Atkins III, CorVel Corporation; Tony Sholar, Kentucky Chamber of Commerce; Nancy Galvagni, Kentucky Hospital Association; Tod Griffin, Kentucky Retail Federation; Mike Helton, KPMA; James Baker, Western Kentucky Coal Association; James Allen; David Graves, Brooklawn Youth Services; Kathleen M. LePera, Donna Clemons, Penny DeVenuto, Kleinert, Kutz & Associates; Bob White, Allen D. Rose, The Broadhurst Group; Nancy Whitted-Peabody, Medirisk, Inc.; Steve Wilborn, Kentucky Petroleum Council.

The following administrative regulations were found deficient by the Subcommittee:

Department of Agriculture: Weights and Measures; Motor Fuel

302 KAR 79:010. Testing and inspection program. This administrative regulation was: (1) amended by: (a) adding 40 CFR 80.27 to the STATUTORY AUTHORITY section; (b) deleting language which allowed the Department to accept variances from ASTM standards for gasoline containing other oxygenates, because KRS 363.904 only allows the Department to deviate from ASTM standards for gasoline containing up to 10% ethanol"; (c) changing language in Section 8(2)(b) to comply with KRS 13A.222(4) drafting requirements; and (2) found deficient because the Subcommittee determined that the Department's imposition of "warning letters" and "administrative penalties" for violations of the motor fuel law violated: (a) KRS 13A.120(2)(h) which provides that an administrative body shall not promulgate administrative regulations on any matter which is beyond the statutory authorization of the body to promulgate; and (b) KRS 13A.100(1) which provides that each statement of general applicability, policy, procedure, memorandum or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body; or affects private rights or procedures available to the public shall be prescribed by administrative regulation, because the Department acknowledged adoption and application of a formula used to assess administrative fines and penalties which had not been included in the administrative regulation.

Senator Preston stated that: (1) the regulation exceeded: (a) KRS 363.906, which only provides for the collection of annual fees; and (b) KRS 363.908, which permits the Department to collect civil penalties for violations of the motor fuel law; (2) these statutory provisions do not provide authority for the Department to: (a) impose "administrative fines" as Section 8(2)(b), of the administrative regulation proposes; and (b) issue "warning letters" for first time or minor violations.

Donna Dutton, General Counsel for the Department of Agriculture, disagreed, saying: (1) KRS 363.902(4), states that the Department may promulgate administrative regulations to "implement and enforce KRS 363.902 - 363.908"; and (2) the Department interprets, the reference to "any previous fines", found in KRS 363.908(2), to include a inference to both "civil" and "administrative fines".

Senator Preston did not agree, stating: (1) KRS 363.902(4) does not offer specific statutory authority for the imposition of "administrative penalties"; and (2) the interpretation of the language found in KRS 363.908(2), refers to "civil penalties", and does not infer "administrative fines".

In response to questions by Representative Lee, Representative Bruce and Senator Kafoglis, Ms. Dutton stated that: (1) to date, a penalty is assessed in cases where the Department, upon inspection, finds contaminated gasoline; (a) a lab determines whether there has been a violation of ASTM standards; (b) when a violation has occurred, it is often difficult for the Department to determine what party is at fault; (c) the penalty, however, is initially assessed against the retail owner, but in some cases the retailer has notified the Department that the wholesaler/distributor is at fault; (d) if the retailed presents evidence of fault to the Department, notification of a violation is then sent to the wholesaler; (2) minimum fines range from $34.00 to a maximum of $1,000.00 for first time offenses; (a) $1,000.00 fines may be assessed whether the violation is willful or not, as the fine is based upon testing of specific contaminants and levels; (b) a formula (price per gallon x # of gallons of gas x .25 = amount of fine) is applied; (c) the formula has been adopted by the Department which is patterned after a similar Tennessee formula; (3) the Department did not agree with the interpretation of KRS 363.908 to require the Department to issue a "civil penalty" for any violation of the motor fuel law.

In response to Senator Preston's question whether the Department has included the formula used to assess fines in the administrative regulation, Ms. Dutton explained that it had not been included. The Subcommittee approved a motion by Senator Preston to find the administrative regulation deficient because it exceeded statutory authority granted by KRS 363.902(4).

Labor Cabinet: Department of Workers' Claims

803 KAR 25:089. Workers' compensation medical fee schedule for physicians. Regina Durbin stated that: (1) the physical medicine portion of the medical fee screen, which covers physical therapy services, did not appear to comply with legislative intent that administrative regulations insure fees and reimbursements for medical services under KRS Chapter 342 that are fair, current and reasonable for similar services for which treatment is paid for by general health insurance; (2) this administrative regulation implements the statutory

requirement for a 25% reduction in total medical costs by (a) the new medical fee screen; (b) the hospital fee screen; and (c) the managed care networks; (3) the new fee screen has resulted in an overall reduction of 30% in physical medicine charges; (4) physical therapy generally requires multiple procedures, and the regulatory requirement that charges be cascaded with regard to multiple procedures means;(a) a reimbursement rate for services of 100% for the first charge, 75% for the second charge, 50% for the third change, and 25% for the fourth charge; and (b) an actual rate of reimbursement for physical therapy services of 50%, which is significantly below the cost to the private physical therapist to provide the service; (6) physical therapists have reduced the cost of workers' compensation, because the return to work rate is 85% which insures the return of workers to the work force and less claims paid by the workers' compensation system; and (7) the adverse financial impact on physical therapists will reduce the supply of physical therapists, and access to physical therapy by injured workers to physical therapy in rural areas. Ms. Durbin requested the Subcommittee to find this administrative regulation deficient in order to force the agency to reconsider the net reimbursement rate, and the effect of cascading on the rate, for physical therapy services

In response to a question by Representative Bruce, Ms. Durbin stated that, while she had met with the agency, the changes in the administrative regulation were insufficient to provide adequate and fair compensation for physical therapy services; that the 30% reduction imposed by the fee screen was fair, but the agency's failure to correct the effects of cascading has resulted in physical therapy bearing a disproportionate share of the statutory mandate for a 25% reduction in total medical costs.

In response to a question by Chairman Kerr, Ms. Durbin stated that:(1) the number of times a physical therapist sees a patient is determined after consultation among the physician and physical therapist; (2) release of the patient is determined by the physician, usually after consultation with the physical therapist; (3) after therapy sessions, the physician sees the patient, and then determines whether additional therapy is needed; and (4) the physical therapist will recommend release and return to work if it is believed that further treatment is not required and the patient can return to work.

Kathleen LePera, workers' compensation account representative for Kleinert, Kutz & Associates Hand Care Center, stated that: (1) this administrative regulation did not allow for multiple primary procedures, even if they were carried out on different areas of the body or through different surgical openings; (2) while multiple procedure discounts are justifiable, an across the board discount for surgical procedures that were performed in the same operative session was excessive, and violated the legislative intern of KRS 342.020 for an overall reduction in fees; (3) as an example of current policy, in a replanting of 4 fingers, reimbursement for charges for implanting 3 of the fingers will be at one-fourth the original fee, even though the: (a) procedure requires 4 to 6 hours per finger; (b) the last finger replanted in a more difficult procedure than replanting the first finger; and (c) total procedure is exceedingly demanding, requires the repair of a great number of structures, covers a wide physical area; (4) multiple procedure discounts: (a) compensate the physician who replant 4 fingers on one patient at a rate that is, at times, 75% lower than the rate paid for replanting 1 finger for 4 patients; and (b) ignores the fact that it takes no less time to replant 4 fingers than it does to replant 1 finger on four different patients; and (5) multiple procedure discounts are improperly applied to second and third injections and radiological examinations within a single office visit, because injection or x-ray are more in the nature of supply than service. Ms. LePera requested that the administrative regulation be amended to: (a) permit additional compensation for additional surgeries during the same operative session; and (b) clarify the use of multiple procedures discount as is applies to additional injections or x-rays in a non-surgical setting.

Representative Lee stated that the costs involved in the reattachment of multiple fingers on one patient would be less than those for the reattachment of one finger on four patients because the single patient is sedated, in the operating room, and all paperwork completed. Ms. LePera stated that while hospital administrative and anesthesiology costs would be less for the attachment of 4 fingers on one patient than for the attachment of one finger for 4 patients, the time involved for attachment of each of the fingers is the same for all fingers, and require separate procedures. She added that in a situation involving two separate procedures, such as those for carpal tunnel and cubital tunnel, that are done on the same day, payment would be less than it would be if they had been performed on separate days, even though they are separate procedures, including separate incisions, closing, and other accompanying procedures.

In response to a question by Representative Lee, Ms. LePera stated that: (1) often, under the previous fee reimbursement schedule, 100% reimbursement for the second or more finger was made; (2) she believed each finger should be considered, and reimbursed, as a new primary procedure; and (3) while she would agree to some reduction for multiple procedures performed the same day, the current reduction was excessive.

Senator Kafoglis stated that: although some were warranted in the situation in which four fingers were reattached to the same patient, it did not appear that a full fee for every digit was justified, because with one patient pre- and post-operative evaluation and care were the same. Ms. LePera stated: (1) there were additional costs and amount of care involved with workers' compensation patients than with other patients; (2) the intent of the statutes would appear to provide adequate payment based upon the surgical procedure, time and skill involved; and (3) no less time or skill is required for the fourth as for the first finger reattached.

Senator Kafoglis stated that: (1) the full reimbursement for each multiple procedure placed a value on the mechanical aspects of care, rather than other more important aspects of physician care of patients; and (2) while compensation in addition to that provided for by the fee schedule established by this administrative regulation should be made, he did not believe that a full fee for ever multiple procedure was appropriate. Ms. LePera stated that some states, in particular Michigan and North Dakota, allow full fee for each finger, and consider the reattachment of each finger a new primary procedure.

Senator Kafoglis stated that he agreed that the: (1) physical therapists had a reasonable argument against the fee schedule established for physical medicine by this administrative regulation; and (2) reimbursement for their services was reduced beyond statutory intent.

In response to questions by Chairman Kerr, Ms. LePera stated that: (1) the standard reimbursement for a single finger would depend on the number of blood vessels that had to be repaired, the tendons and nerves involved; (2) an example would be the $1,300 permitted per repair of blood vessel with vein grafting, which would result in a payment of $1,300 for the first blood vessel, $650 for the second blood vessel; (3).depending upon the procedure, the fee would vary with the procedure, and that some would include an amount for follow-up, post-operative procedures. ,

Terry Brown, President, Kentucky Physical Therapy Association, stated that: (1) the association agreed that: (a) skilled services should be reimbursed at an appropriate level; and (b) reimbursement for unskilled services that can be performed by most health care providers should be decreased, especially since charges for the provision of unskilled services could be abused in order to increase reimbursement; (2) Medirisk, the agency's consultant, proposed that the 25% reduction in overall medical costs mandated by KRS Chapter 342 be achieved by a reduction in the fee schedule of 15%, and a 10% reduction by the use of managed care and other conservation methods; (3) however, fees for physical medicine codes were actually reduced by more than 30% by using cascading, and an arbitrary limit of 4 procedures per visit was established; (4) the only office-based procedure to which cascading applies is physical medicine; (5) no

payer source in Kentucky, including Medicare, employs cascading; (6) while physical medicine fees were not increased, some non-physical medicine fees were significantly increased, which has resulted in physical medicine bearing a disproportionate share of fee reduction, contrary to the mandate of KRS Chapter 342.020 which requires fair, current and reasonable charges in the same community for like services paid for by general health insurers; (7) while KRS Chapter 342 does not specify how the 25% reduction in medical costs is to be achieved, it does not require physical medicine to bear a disproportionate share of the reduction; and (8) the effect of this administrative regulation on physical medicine will be to put providers, who have effectively and efficiently returned injured employees to employment, out of business. Mr. Brown added that Medirisk and the agency: (1) admitted that the information regarding physical medicine reimbursement was limited; (2) did not reexamine and recalculate the rates for skilled services; and (3) requested that the Subcommittee find this administrative regulation deficient because it does not comply with statutory authority and legislative intent.

803 KAR 25:091 (& E). Workers' compensation hospital fee schedule.

Commissioner Turner stated that: (1) applicable statutes required the reduction of expenditures in the workers' compensation program by 25%, which required a reduction of $80,000,000 of the $300,000,000 spent by Kentucky employers for the treatment of injured workers in 1994; (2) only two classes of medical providers, physical therapists and hand surgeons, have appeared before the Subcommittee to object to this administrative regulation; (3) the agency supported medical providers by: its: (a) opposition to tying the fee schedule to Medicare; (b) support for the allowance of additional sums for evaluation and management; (c) obtaining increased payment for physicians who deal daily with patients to compensate for the nuisance element of workers' compensation care: the contacts with insurance companies and attorneys, and the time consumed by reporting and communications requirements; (4) physical therapists failed to point out that Blue Cross, the largest Kentucky health insurance plan, does not pay for half of the procedures the agency pays for under the medical fee schedule; (5) the federal agency for health care policy and research has indicated that most treatment for low back pain by physical therapy and other modalities does not work; (6) the agency had examined extensive material relating to billings and payments for particular procedures through Medirisk, physician consulting review service and others; and (7) rules that apply to all providers provide that they may, by report, request and receive adequate compensation for multiple trauma that necessitates hours of medical service and treatment.

Senator Preston stated that the statute provided for a 25% reduction in medical costs, that material presented to the Subcommittee indicated that application of the cascading effect resulted in a 45 to 50 % reduction as it relates to physical therapists. In response to a question by Senator Preston, Commissioner Turner stated that the: (1) reduction as it relates to physical therapists direct charges was closer to 28%; (2) additional reductions or effects of cascading did not affect only physical therapists; and (3) the rules applying to physical therapists affect all providers of physical medicine, such as chiropractors.

In response to a question by Senator Kafoglis, Commissioner Turner stated that under the proposed Medicare fee schedule considered by the General Assembly: (1) there would have been greater cuts in reimbursement different areas if it had been enacted; (2) multiple procedures, such as multiple reattachment of fingers, would have been treated similarly; and (3) physical therapists would have been subject to a greater reduction because Medicare will not pay for many of the modalities rendered by them.

Representative Lee stated that: (1) physicians had complained that additional submission of information to insurers for additional reimbursement, which Commissioner Turner had stated was available to providers, did not result in additional payment; and (2) evidence provided the Subcommittee indicated that additional work on the administrative regulation was required before the Subcommittee could make a determination that the fee schedule complied with statutory authority and intent. Representative Lee asked whether the agency and those appearing before the Subcommittee could meet and attempt to reach a settlement of the issues raised.

Nancy Peabody, Medirisk, stated that Medirisk: (1) had 15 years' experience in the development of medical fee schedules; (2) develops fee schedules for four other states and collects fee schedules nationally for every state; (3) produces fee schedules for the private sector, insurers and providers; (4) analyzes information to develop an understanding its effects on pricing and health care; (5) establishing an orderly, uniform system involves an understanding of different impacts on various providers, even though differential impacts are not intended; (6) the fee schedule for hand surgery was modeled after a standard insurer's policy and is included in a number of worker compensation programs, including Medicare; (7) while physical medicine services data was limited for Kentucky workers' compensation plan, it included over 165,000 claims, and Medirisk has a data base of over 450,000,000 claims for the private sector of which a significant number are for Kentucky; (8) physical medicine services includes a large variety of providers, including physical therapists, medical doctors, chiropractors, the data for which shows a great variety in fees charged and paid; and (9) the fee schedule established is an attempt to address the lack of uniformity in physical medicine reimbursement and to establish a uniform guideline for the payment of claims in order to control costs.

Senator Kafoglis stated that it was difficult to understand the impact of the statutory reduction in costs and the fee schedule on particular practitioners, and asked whether a further review and redistribution in the cuts could be and comply with the statutory mandate of a 25% reduction in expenses.

Commissioner Turner stated that: (1) extensive negotiations with physical therapists had been conducted; and (2) the fee schedule pays physical medicine providers within the 75 percentile of what general health care insurers pay, that 25% would pay more while 75% would pay the amount paid under the fee schedule or below that amount.

Senator Preston stated that: (1) KRS 342.035 mandates a 25% reduction in total medical costs to be achieved in a fair, current, and reasonable manner with regard to medical expenses; (2) while a surgeon should not receive 100% compensation for multiple procedures, such as those discussed for reattachment of fingers, the current fee schedule of 25% for the last three appeared unfair; (3) while a 28% reduction for physical therapist reimbursement would appear to be acceptable, the cascading effect that increases this to 40 or 45% appears to be unfair, considering the statutory mandate of 25%; (4) KRS Chapter 342 would permit the Subcommittee to determine whether the fee schedule established by the administrative regulation complied with the statutory requirements of fairness, currency, and reasonableness; and (5) the reductions appear not to be fair, current, or reasonable. Senator Preston moved that the administrative regulation be found deficient for the reasons stated.

Representative Lee stated that: (1) KRS Chapter 342 permits the Subcommittee to determine whether the fee schedule complies with its requirement of fairness; (2) that while the fee schedule is reasonable in many cases, it is not reasonable in certain cases; and (3) seconded the motion because the administrative regulation had to considered as a whole, and did not completely comply with KRS Chapter 342.

In response to a question by Chairman Kerr, Commissioner Turner stated that the amendment to the administrative regulation to which the agency and the physical therapists had agreed to propose to the Subcommittee: (1) addressed physical therapists' concerns regarding a number of skilled procedures, but did not address cascading; and (2) would not be offered since it appeared the administrative regulation would be found deficient by the Subcommittee; and (3) the existing fee schedule for therapists would become

effective until the next Regular Session of the General Assembly.

Senator Kafoglis stated that the agency had done a commendable job, but that the administrative regulation imposed some inequities.

In response to a question by Chairman Kerr, Ms. Peabody stated that some providers, like radiology, had lower reductions, closer to 30%, while primary care, point-of-contact, providers received a small increase.

Commissioner Turner stated that the discussion relating to the 1988 fee schedule did not consider that the: (1) 1988 fee schedule covered only 50% of procedures customarily performed by providers; (2) new fee schedule included new procedures to which relative values were attached; (3)process did not consist of an amendment of the 1988 fee schedule, but the development of a new fee schedule including procedures now performed and compensated by insurers, and limited by the statutory requirement of a 25% reduction in expenditures.

Ms. Peabody stated that the proposed reimbursement is higher than what would have been paid if the 1988 fee schedule had been followed.

In response to a suggestion by Representative Bruce that the parties continue negotiations, agency personnel stated that the administrative regulation could not be deferred to next month's Subcommittee meeting because the emergency administrative regulation would expire prior to the meeting, and agreed to meet with physical therapists and representatives of hand care surgeons while the Subcommittee considered other administrative regulations.

Upon reporting a failure to reach an agreement, the Subcommittee approved Senator Preston's motion that this administrative regulation was deficient.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Treasury: State Treasury

20 KAR 1:080. Linked deposit. This administrative regulation was amended to: (1) comply with: (a) KRS 13A.222(4) drafting requirements; (b) KRS 13A.110 and KRS 13A.2251(1), which requires the agency to incorporate by reference the forms entitled, "Loan Application" and "Investment Application", which are required, by the Department, to be completed by prospective applicants and eligible lending institutions; (c) KRS 13A.2251(1)(b),(c) to include a statement as to how the forms may be obtained or inspected by the public or interested parties; (d) KRS 13A.2251(3) which requires that one copy of each application be filed with the regulations compiler; and (2) delete Section 1 in its entirety and to insert the substance of that section in the NECESSITY AND FUNCTION statement.

Department of Law: Attorney General

40 KAR 1:030. Open records and open meetings decisions. This administrative regulation was amended to comply with: (1) KRS 13A.120(2)(e), deleting language that repeated or summarized statutory language; and (2) KRS 13A.222(4) drafting requirements.

Revenue Cabinet: Income Tax, General Administration

103 KAR 15:080. Depreciation; calculation and recognition of "transition amount" . This administrative regulation was amended as follows: (1) Pursuant to KRS 13A.120(2)(e),(f), which prohibits the repetition or summarization of statutory language in an administrative regulation: (a) Sections 1 and 2(2) were deleted in their entirety; and, (b) except for the first sentence, the language in Section 2(1) was deleted; (2) the incorporation of material by reference was deleted from Section 2, and a new Section 4 was inserted to incorporate reference by material; and (3) pursuant to KRS 13A.222(4)(b), "shall" was inserted in lieu of "is" to express a mandatory requirement.

Kentucky Employees' Retirement System: General Rules

Pam Johnson and Bill Hanes appeared before the Subcommittee representing the Kentucky Retirement Systems. The following administrative regulations were amended to correct statutory citation. KRS 61.645(9)(e) was amended to read KRS 61.645(9)(F) in the STATUTORY AUTHORITY section. A federal citation, 26.U.S.C. 415, was added to the RELATES TO section in 105:150, 105 KAR 1:260, and 105 KAR 1:280.

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. In the NECESSITY AND FUNCTION clause the words "The Statutes" at the beginning of the first sentence was replaced with "KRS 16.578, 16.601 and 61.640".

105 KAR 1:190. Qualified domestic relations orders. Section 5(4) was amended for clarification. Relating to qualified domestic relations orders (QDRO) the first sentence was amended to clarify that disability service is not to be included in the computation for determining the amount payable to the alternate payee. The second sentence was amended to clarify that service purchased during the marriage shall be included in the calculation. Senator Preston moved for approval of the amendment and Representative Bruce seconded the motion. The motion passed.

Chairman Kerr asked several questions concerning the QDRO. He asked if the alternate payee dies prior to the member's retirement is there no payment to the alternate payee. Bill Hanes stated that that was correct, and there would be no payment to the estate. Chairman Kerr asked if the law allows for a lump sum payment if the QDRO calls for it. He asked "Do you make lump sum payments pursuant to such an order? Bill Hanes responded that there is nothing in the law that sets out such a procedure, that everything that is in the administrative regulation does all the promulgating. He stated "We have the one statute that sets up the QDRO and provides that the Board shall promulgate that QDRO".

Chairman Kerr then asked if either the statute or the administrative regulation allows a lump sum distribution at the dissolution of the marriage of the parties. Mr. Hanes responded that the current administrative regulation does, adding that that is what they are changing. Chairman Kerr said "So they won't be able to get a lump sum. They will have to stay in the retirement program." Mr. Hanes responded that the member's amount would increase as opposed to paying out to the estate (in the event of the death of the alternate payee).

Chairman Kerr reiterated several questions for a summary clarification: (1) Would any money that would not go to the alternate payee or the alternate payee's estate go to the member's account? Mr. Hanes responded "yes"; (2) Can the QDRO specify a lump sum distribution at the time of dissolution of the marriage? Mr. Hanes responded "No"; and (3) Is there no additional cost or savings to the retirement systems (they are just going to pay it out to the member)? Mr. Hanes responded "Yes", and he added that this a policy decision, that all rights accrue to the member and any rights that go to the alternate payee are derived from the member.

105 KAR 1:200. Retirement procedures and forms.

105 KAR 1:210. Disability procedures.

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.

Board of Embalmers and Funeral Directors

201 KAR 15:100. Schools recognized by the board. Pursuant to KRS 13A.120(2)(e),(f), prohibits the repetition or summarization of statutory language in an administrative regulation, Section 1 of this

administrative language was deleted, and language was inserted that established the requirements for a course of study that did not repeat or summarize statutory language.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Jack Damron and Louis Smith appeared before the Subcommittee representing the Department. Incorporated material Corrections Polices and Procedures (CAP) 9.4 and 9.9, were amended for grammatical corrections. CAP 25.4 was amended to retain the list of persons to whom notices of furlough are sent, rather than just being sent to the particular county.

Department of State Police: Driver Training

502 KAR 10:035 (& E). Commercial driver's license skill testing. This administrative regulation was amended to add: (1) 49 CFR 383.75 to the RELATES TO section; and (2) KRS 281A.150(2) and (3) to the STATUTORY AUTHORITY section.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:091. Workers' compensation hospital fee schedule. Nancy Galvagni, Kentucky Hospital Association, and agency personnel stated that they had reached an agreement for hospital billing for physician services for physicians who are paid a contract amount to locate and practice in the area served by the hospital but who are not employees of the hospital. Ms. Galvagni stated that the cost to charge ratio to pay hospitals was determined by dividing hospital costs by revenues, but that hospital expenses did not include salaries paid to physicians or nurse-anesthetists in the calculation of the ratio, as it did nurses' , dietitians', administrators', and other employees' salaries. She added that: (1) KRS Chapter 342's requirement of fair, current, and reasonable reimbursement would require a consideration of these charges; (2)having shown the agency where this information could be obtained from the hospital federal Medicaid cost report, the agency was willing to consider this information and its financial impact, and amending it at the Health and Welfare committee meeting at which the administrative regulation would be reviewed; (3) the impact should not be significant on workers' compensation costs; and (4) consideration and inclusion would particularly assist small rural hospitals who need to employ physicians in order to obtain physicians to serve the rural area.

This administrative regulation was amended to: (1) redefine "independent practitioner" to include physicians who are paid, under contract, an amount to locate in the area served by the hospital but who are not employees of the hospital; (2) provide for hospital billing for the professional component of the physician's services;(3) to delete matters governed by other administrative regulations or provided for by statute; and (4) comply with the drafting requirements of KRS Chapter 13A.

803 KAR 25:110. Workers' compensation managed health care plans. This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

803 KAR 25:120. Training or education programs eligible for retraining incentive benefits. This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

Cabinet for Human Resources: Department for Health Services: Health Services and Facilities

902 KAR 20:320. Psychiatric residential treatment facility operation and services. The Cabinet proposed amendments to conform language, found in the following sections to the Americans with Disabilities Act of 1990: Sections 11(1)(e); 12(6)(a)1., 2., 12(6)(d), and 12(6)(e)(4).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

State Board of Elections: Forms and Procedures

31 KAR 4:090E. Mock elections for school children. In response to Representative Bruce's questions, George Russell stated that: (1) the Board of Elections has taken precautions to insure that no political party takes advantage of this new process unfairly, as no results of the mock elections are released until the official election is over; and (2) this administrative regulation: (a) involves a class work scheduled program that is administered by the schools; and (b) does not involve children in the campaign process.

Kentucky Employees' Retirement system: General Rules

105 KAR 1:215. Administrative hearing.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

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

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.

Chairman Kerr pointed out that: (1) KRS 257.020, KRS 257.030 and KRS 13A.120(3) require that administrative regulations relating to "the prevention, control and eradication of communicable diseases in livestock" be approved by the State Board of Agriculture prior to filing; (2) KRS 13A.220(5)(a) and (b) requires that each administrative regulation contain a statement that: (a) the administrative body has reviewed and approved the administrative regulation; and (b) the date of such approval; (3) these administrative regulations do not contain the information required by KRS 13A.120(3) and 13A.220(5)(a) and (b); (4) Department personnel have demonstrated that the administrative regulations were approved by the State Board of Agriculture by producing copies of the minutes; (5) these administrative regulations will be approved, with the understanding that if future administrative regulations fail to comply with KRS 13A.120(3) and KRS 13A.220(5)(a) and (b) they will not be accepted for filing by the Regulations Compiler.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary.
501 KAR 6:130. Western Kentucky Correctional Complex.

Department of Education: Office of District Support Services: School Administration and Finance

702 KAR 3:275. School district tax rate formulas.

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 Medicaid Services: Medicaid Services

907 KAR 1:009E. Physicians' services.
907 KAR 1:010E. Payments for physicians' services.

William Doll, representing the Kentucky Medical Association, expressed the Association's opposition to these administrative regulations, stating: (1) since litigation is pending concerning these regulations he would not comment on the specific issues before the courts; (2) when the provider tax was first initiated in Kentucky, there was an assumption at that time that such a tax levy would allow reimbursement rates for Medicaid to remain at a reasonable level. This however, has not been the case; (3) the cuts proposed by the Cabinet in these administrative regulations do not: (a) serve to promote reasonable rates; (b) reasonable access to Medicaid services; and (c) discourage physician participation in the Medicaid program.

In response to Senator Preston's question to explain in what ways the administrative regulations were considered by the Association to be inconsistent with the enabling legislation, he responded: (1) there is a jurisdictional question, as House Bill 250 indicates that the Health Care Policy Board is the entity charged with the responsibility for dealing with Medicaid in an overall sense, even though it is not responsible for the day-to-day operations of the program; (2) the Cabinet's proposed cuts for physician services goes well beyond the day-to-day operations of Medicaid, and to the extent that it is going to be enacted, it is more the province of the Board, than the Department of Medicaid, to effect those changes; and (3) that he did not have a specific statutory citation to provide the Subcommittee at this time showing the inconsistency with the statute, but would be happy to provide the citation to House Bill 250 to show the jurisdictional question.

Senator Preston stated that the issue: (1) should also be raised at the Cabinet's public hearing after it files its ordinary administrative regulations, at which time the Cabinet could respond to the jurisdiction question; and (2) can be considered again when the Subcommittee reviews and considers the Cabinet's "ordinary" administrative regulations governing Medicaid reimbursement for physician services.

Subcommittee staff advised the members that: (1) litigation concerning these emergency administrative regulations is still pending; (2) it appears that a request for an agreed order by the KMA and the Cabinet is pending before Judge Joseph Hood to possibly convert the initial preliminary injunction into a permanent injunction; and (3) the Cabinet has indicated that it plans to file ordinary administrative regulations, 907 KAR 1:009 and 907 KAR 1:010, before January 15th, 1995.

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.

Revenue Cabinet: Income Tax, General Administration

103 KAR 15:090. Computing the amortization deduction for intangible assets.

Board of Medical Licensure

201 KAR 9:005. Ethical conduct.

Department of Agriculture: Livestock Sanitation

302 KAR 20:180. Restrictions equine viral arteritis. Because the agency failed to file a proposed amendment within 5 days before the Subcommittee meeting as required by KRS 13A.320(2)(b), this administrative regulation was deferred.

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. Because the agency failed to file a proposed amendment within 5 days before the Subcommittee meeting as required by KRS 13A.320(2)(b), this administrative regulation and the two administrative regulations listed below were deferred.

Performance Standards for Surface Mining Activities

405 KAR 16:200. Revegetation.

Performance Standards for Underground Mining Activities

405 KAR 18:200. Revegetation.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020E. Corrections policies and procedures.
501 KAR 6:070E. Kentucky Correctional Institution for Women.

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. Kentucky Educational Collaborative for State Agency Children.

Other Business

Chairman Kerr informed the members that he was resigning from the Subcommittee, and introduced his replacement, Representative Jesse Crenshaw. Subcommittee members stated that they had enjoyed working with Chairman Kerr, and expressed their appreciation of the Chairman's fairness, objectivity, and his policy of ensuring that members of the public, state agencies, and Subcommittee members were given the opportunity to express their opinion.

The Subcommittee adjourned at 12:30 p.m. until February 1, 1995 at 10 a.m. in Room 149 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 ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Meeting of December 14, 1994

The Interim Joint Committee on Elections and Constitutional Amendments met on December 14, 1994 and submits the following report:

The Committee determined that the following administrative regulation as amended by the Administrative Regulation Review Subcommittee complied with the provisions of KRS Chapter 13A and was, therefore, approved by the Committee:

General Government Cabinet: State Board of Elections
31 KAR 4:080. Preclearance counties.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **H2**

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 **H13**

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 **H26**

The Subject Index is a general index of regulations published in VOLUME 21 of the Administrative Register, and is mainly broken down by agency.

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12 KAR 1:115E	3166	5-13-94
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12 KAR 1:120E	3166	5-13-94
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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
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12 KAR 1:145E	3169	5-13-94
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12 KAR 1:155E	3170	5-13-94
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12 KAR 1:160E	3170	5-13-94
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12 KAR 1:165E	3171	5-13-94
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12 KAR 1:170E	3171	5-13-94
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12 KAR 1:175E	3173	5-13-94
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12 KAR 6:010E	3174	5-13-94
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12 KAR 6:015E	3174	5-13-94
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12 KAR 6:020E	3175	5-13-94
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12 KAR 6:025E	3175	5-13-94
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907 KAR 1:023E	3185	4-29-94
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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
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30 KAR 3:020	3340	(See Volume 21)
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201 KAR 1:081	3343	(See Volume 21)
301 KAR 1:085		
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401 KAR 5:001	3348	(See Volume 21)
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702 KAR 3:270	3378	(See Volume 21)
704 KAR 3:401	3382	(See Volume 21)
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705 KAR 4:231	3391	(See Volume 21)
803 KAR 1:085		
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815 KAR 45:025	3155	(See Volume 21)
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31 KAR 4:090E	1448	10-17-94
32 KAR 1:100E	242	7-14-94
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32 KAR 1:110E	1863	12-20-94
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32 KAR 1:120E	1864	12-20-94
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40 KAR 2:070E	243	7-14-94
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40 KAR 2:080E	243	7-14-94
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40 KAR 2:090E	245	7-14-94
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301 KAR 2:044E	995	8-15-94
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902 KAR 8:080E	899	7-15-94
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902 KAR 8:090E	901	7-15-94
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904 KAR 2:361E	275	7-15-94
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905 KAR 1:010E	905	7-15-94
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905 KAR 7:240E	284	7-15-94
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