ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on the first Monday of each month. See **tentative agenda** on pages 2373-2375 of this Administrative Register for the next meeting.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - April 3, 1995, 10 a.m.
Room 149, Capitol Annex

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

KHEAA Grant Programs

11 KAR 5:130. Student applications.
11 KAR 5:140. KTG award determination procedure.
11 KAR 5:160. Disbursement procedures.

DEPARTMENT OF STATE
Registry of Election Finance

Reports and Forms

32 KAR 1:110E. Clarification of total contributions. (Deferred from March)
32 KAR 1:120E. Schedule for public fund transfers. (Deferred from March)
32 KAR 1:130E. Adoption of public finance manual and forms. (Deferred from March)
32 KAR 1:140E. Cash contributions. (Deferred from March)

DEPARTMENT OF PERSONNEL

State Employee Benefit Fund

101 KAR 4:010E. Health and other benefits. (Deferred from February)

FINANCE AND ADMINISTRATION CABINET

Personnel Pilot Programs

200 KAR 22:020E. Guideline for Comprehensive Employment Manuals required by pilot agencies under KRS 18A.430.

GENERAL GOVERNMENT CABINET

Kentucky Real Estate Appraisers Board

201 KAR 30:030. Types of appraisers required in federally related transactions; certification and licensure.
201 KAR 30:040. Standards of practice administrative regulation.
201 KAR 30:130. Standards for education approval - fees.

ECONOMIC DEVELOPMENT CABINET
Department of Agriculture

Livestock Sanitation

302 KAR 20:075 & E. Identification of "farm fresh" cattle.

Pesticides

302 KAR 31:015. Certification.

Weight and Measures; Motor Fuel

302 KAR 79:010. Testing and inspection program.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection

Air Quality - General Administrative Procedures

401 KAR 50:038 (& E). Air emissions fee. (Public Hearing in January)

JUSTICE CABINET
Department of Corrections

Kentucky Parole Board

501 KAR 1:030. Determining parole eligibility.
501 KAR 1:040. Conducting parole revocation hearings.
501 KAR 1:050. Granting final discharge from parole.

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. (Deferred from March)
501 KAR 6:040. Kentucky State Penitentiary.
501 KAR 6:150. Eastern Kentucky Correctional Complex.

Youth Alternative Centers

501 KAR 12:010. Definitions.
501 KAR 12:020. Administration; management.
501 KAR 12:030. Fiscal management.
501 KAR 12:040. Personnel.
501 KAR 12:050. Physical plant.
501 KAR 12:060. Security; control.
501 KAR 12:070. Safety; emergency procedures.

501 KAR 12:080. Sanitation; hygiene.
501 KAR 12:090. Medical services.
501 KAR 12:100. Food services.
501 KAR 12:110. Classification.
501 KAR 12:120. Admission; release.
501 KAR 12:130. Resident programs; services.
501 KAR 12:140. Resident rights.
501 KAR 12:150. Hearings, procedures, disposition.

TRANSPORTATION CABINET

Property Acquisition and Uniform Relocation

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet.

Department of Vehicle Regulation

Motor Vehicle Tax

601 KAR 9:200 & E. Registration of titling of rebuilt motor vehicles. (Repeals 601 KAR 9:047) (Public Hearing in February)

Department of Highways

Traffic

603 KAR 5:112. Annual permits for moving utility equipment, poles, or pipes.
603 KAR 5:191. Repeal of 603 KAR 5:190.
603 KAR 5:230. Bridge weight limits on the extended weight coal or coal by-products haul road system.

Division of Planning

603 KAR 9:010. Railroad crossing closure procedure.
603 KAR 9:020. Automatic gates of railroad/highway crossings.

EDUCATION, ARTS AND HUMANITIES CABINET

Department of Education

Office of Chief State School Officer

701 KAR 5:100. Guidelines for alterative models for school-based decision making.

Office of District Support Services

General Administration

702 KAR 1:001. Implementation guidelines - Kentucky School Facilities Planning Manual.

School Administration and Finance

702 KAR 3:120. Uniform school financial accounting system.
702 KAR 3:130. Internal accounting.

Bureau of Learning Results Services

Learning Results Services

703 KAR 4:010. The formula for determining successful schools.

Office of Learning Programs Development

Office of Learning Support Services

704 KAR 7:120. Home/Hospital instruction.

Education Professional Standards Board

704 KAR 20:680. Professional code of ethics for Kentucky school certified personnel.

Office of Special Instructional Services

Exceptional and Handicapped Programs

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

WORKFORCE DEVELOPMENT CABINET

Department of Vocational Rehabilitation

Administration

781 KAR 1:010. Department of Vocational Rehabilitation appeal procedures. (Deferred from March)

Department for the Blind

Department for the Blind

782 KAR 1:040. Appeal procedures for applicants and clients. (Deferred from March)

LABOR CABINET

Occupational Safety and Health

803 KAR 2:301. Adoption of 29 CFR Part 1910.11-.19.
803 KAR 2:307. Adoption of 29 CFR Part 1910.101-.120.
803 KAR 2:308. Adoption of 29 CFR Part 1910.132-.140.
803 KAR 2:317. Adoption of 29 CFR Part 1910.261-.275.
803 KAR 2:320. Adoption of 29 CFR Part 1910.1000-.1500.
803 KAR 2:403. Adoption of 29 CFR Part 1926.50-.66.
803 KAR 2:404. Adoption of 29 CFR Part 1926.100-.107.
803 KAR 2:407. Adoption of 29 CFR Part 1926.250-.252.
803 KAR 2:412. Adoption of 29 CFR Part 1926.500-.503.
803 KAR 2:413. Adoption of 29 CFR Part 1926.550-.556.
803 KAR 2:415. Adoption of 29 CFR Part 1926.650-.653.

803 KAR 2:416. Adoption of 29 CFR Part 1926.700-.706.
803 KAR 2:417. Adoption of 29 CFR Part 1926.750-.753.
803 KAR 2:421. Adoption of 29 CFR Part 1926.950-.960.
803 KAR 2:424. Adoption of 29 CFR Part 1926.1071-.1092.
803 KAR 2:425. Adoption of 29 CFR Part 1926.1100-.1148.
803 KAR 2:500. Adoption of 29 CFR Part 1915, 1917, 1918 and 1919, maritime employment.
803 KAR 2:600. Adoption of 29 CFR Part 1928.

Department of Workers' Claims

Workers' Compensation

803 KAR 25:075. Attorney fee discount.

Department of Insurance

Motor Vehicle Reparations (No-fault)

806 KAR 39:080. Reporting requirements of automobile insurers regarding payment of personal injury benefits. (Public Hearing in February)

Kentucky Racing Commission

Thoroughbred Racing

810 KAR 1:009. Jockeys and apprentices.
810 KAR 1:014. Weights.
810 KAR 1:016. Running of the race.
810 KAR 1:017. Objections and complaints.
810 KAR 1:025. Licensing thoroughbred racing.
810 KAR 1:027. Entries, subscriptions, and declarations.

CABINET FOR HUMAN RESOURCES

Department for Health Services

Emergency Medical Services and Ambulance Service Providers

902 KAR 14:060E. Nonemergency health care transportation services.

Radiology

902 KAR 100:040. General provisions for specific licenses.
902 KAR 100:100. Industrial radiography.
902 KAR 100:142. Wire line service operations.

Public Assistance

904 KAR 2:015E. Supplemental programs for the aged, blind and disabled.
904 KAR 2:017E. Job opportunities and basic skills (JOBS) child care and supportive services.
904 KAR 2:035E. Right to apply and reapply.
904 KAR 2:370. Technical requirements, job opportunities and basic skills.
904 KAR 2:440. Discount Option Program. (Public Hearing in February)

Department for Social Insurance

Food Stamp Program

904 KAR 3:030E. Application process.

Department for Social Services

Day Care

905 KAR 2:140E. Child day care programs.

Department for Medicaid Services

Medicaid Services

907 KAR 1:009 (& E). Physicians' services. (Public Hearing in February)
907 KAR 1:010 (& E). Payments for physicians' services. (Public Hearing in February)
907 KAR 1:016E. Psychiatric hospital services. (Deferred from March)
907 KAR 1:671 (& E). Conditions of Medicaid Provider Participation; enrollment, documentation of services, disclosure, claims processing, withholding overpayments, appeals process, and sanctions.

Department for Mental Health and mental Retardation Services

Mental Health

908 KAR 2:090 & E. Decriminalization of mental illness. (Public Hearing in February)

KENTUCKY HEALTH POLICY BOARD

Administration

909 KAR 1:070 (& E). Data reporting by health care providers.
909 KAR 1:200 & E. Twenty-four (24) hour Pilot Insurance Program.

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

EXECUTIVE BRANCH ETHICS COMMISSION

Date: March 15, 1995
Executive Branch Ethics Commission

(1) **9 KAR 1:010**, Statement of financial disclosure.

(2) The Executive Branch Ethics Commission 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 April 28, 1995 at 10 a.m., at Room 386 Capitol Annex, 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 April 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: Jill E. LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, 702 Capitol Annex, 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 Executive Branch Ethics 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 the subject matter of this administrative regulation is KRS 11A.110.

(b) The administrative regulation that the Executive Branch Ethics Commission intends to promulgate will amend 9 KAR 1:010. It will adopt an updated Statement of Financial Disclosure form and the instructions for using the new form.

(c) The necessity and function of the proposed administrative regulation is as follows: The Executive Branch Ethics Commission has updated its Statement of Financial Disclosure form and has drafted instructions for using the new form. The form will be used for the 1995 reporting year, due by April 15, 1996 for state employees.

(d) The benefits expected from administrative regulation are: Those individuals who are required to file an annual Statement of Financial Disclosure will know which form to use and will be provided with the official instructions for their guidance.

Date: March 15, 1995
Executive Branch Ethics Commission

(1) **9 KAR 1:040**, Executive agency lobbying handbook and forms.

(2) The Executive Branch Ethics Commission 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 April 28, 1995 at 9 a.m., at Room 386 Capitol Annex, 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 April 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: Jill E. LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, 702 Capitol Annex, 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 Executive Branch Ethics 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 the subject matter of this administrative regulation is KRS 11A.110.

(b) The administrative regulation that the Executive Branch Ethics Commission intends to promulgate will amend 9 KAR 1:040. It will provide for the agency's adoption of the Executive Agency Lobbying Handbook (041595) including the registration statement, updated registration statements, and termination notification forms found inside the handbook.

(c) The necessity and function of the proposed administrative regulation is as follows: The Executive Branch Ethics Commission is required to promulgate regulations to officially adopt any handbook it uses and any form it uses.

(d) The benefits expected from administrative regulation are: Executive agency lobbyists, their employers, and other interested persons

can learn about executive agency lobbying law by reading the Executive Agency Lobbying Handbook and they will know which forms to use to file initial or updated registration statements, or to notify the commission of their termination.

FINANCE AND ADMINISTRATION CABINET

Date: March 14, 1995
Finance and Administration Cabinet

(1) **200 KAR 20:010**, Health insurance coverage for nonstate employees.

(2) The Finance and Administration Cabinet intends to promulgate an amendment to the existing regulation.

(3) The amendment will allow the Commissioner of the Department of Personnel to accept personal checks in payment of insurance premiums by nonstate employees.

(4) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for April 27, 1995, at 10 a.m. at the Department of Personnel Conference Room, 200 Fair Oaks Lane, Frankfort, Kentucky 40601.

(5)(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 20 days prior to April 27, 1995, the public hearing will be cancelled.

(6)(a) Persons wishing to request a public hearing or make written comments should mail their written request or comments to the following address: Angela C. Robinson, Attorney, Office of Legal and Legislative Services, Finance and Administration Cabinet, Room 374 Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

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

(8)(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 18A.2251(2).

(b) The necessity and function of the proposed amendment is as follows: KRS 18A.2251(2) requires the Secretary of the Finance and Administration Cabinet and the Secretary of the Cabinet for Human Resources to provide a system to enroll any citizen who elects to purchase health insurance coverage pursuant to provisions of the statute. The statute also requires that the Finance and Administration Cabinet promulgate an administrative regulation which establishes the manner in which the premiums for health insurance coverage shall be paid. The current regulation requires payment of premiums by cashier's or certified check or by money order. The proposed amendment allows the Department of Personnel to accept personal checks in payment of health insurance premiums upon a determination by the commissioner that the payor is financially solvent.

(c) The benefits to be expected from the amendment are: Goodwill of citizens purchasing health insurance premiums as provided for in KRS 18A.2251 and time savings for Department of Personnel staff who will no longer be required to return personal checks and explain why they cannot be accepted.

(d) The regulation will be implemented by acceptance of personal checks by the Department of Personnel.

KENTUCKY BOARD OF DENTISTRY

Date: March 11, 1995
The Kentucky Board of Dentistry

(1) **201 KAR 8:220**, Clinical examination for licensure of dentists. This proposed administrative regulation will allow dental candidates for licensure to successfully complete the clinical examinations offered by the following groups: the Southern Regional Testing Agency, Inc., the Western Regional Testing Association, or the CORE examination through the Northeast Regional Board and the Central Regional Testing Association.

(2) The Kentucky Board of Dentistry 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 April 28, 1995 at 9 a.m., in the Kentucky Board of Dentistry office, 10101 Linn Station Road, Louisville, Kentucky, 40223.

(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 April 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: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Louisville, Kentucky 40223, (502) 423-0573, FAX (502) 423-1239.

(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 Gary Munsie 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 clinical examinations is KRS 313.050 and 313.220.

(b) The administrative regulation that the Kentucky Board of Dentistry intends to promulgate will amend 201 KAR 8:220. It will allow candidates for licensure by examination to have a choice of taking any one of several regional examinations, rather than being limited to making a satisfactory score on the examination offered by the Southern Regional Testing Agency, Inc., which is the only examination presently accepted by the board. As amended, this regulation will allow a dental licensure candidates to be licensed if he successfully passes the examination of the Southern Regional Testing Agency Inc., the Western Regional Testing Association or the CORE examination through the Northeast Regional Board and the Central Regional Testing Association.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will allow the board to offer candidates for licensure more flexibility in taking examinations without compromising the quality and character of the examination now offered.

(d) The benefit expected from this administrative regulation is that candidates for licensure will have additional choices as to which examination they complete in order to be licensed in Kentucky.

(e) The regulation will be implemented by the Executive Director and Executive Secretary of the Board of Dentistry in accordance with KRS 313.050, 313.060 and KRS 313.100.

Date: March 11, 1995

The Kentucky Board of Dentistry

(1) **201 KAR 8:277**, Clinical examination for licensure of dental hygienists. This proposed administrative regulation will allow dental hygienists candidates for licensure to successfully complete the clinical examinations offered by the following groups: the Southern Regional Testing Agency, Inc., the Western Regional Testing Association, or the CORE examination through the Northeast Regional Board and the Central Regional Testing Association.

(2) The Kentucky Board of Dentistry 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 April 28, 1995 at 9 a.m., in the Kentucky Board of Dentistry office, 10101 Linn Station Road, Louisville, Kentucky, 40223.

(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 April 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: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Louisville, Kentucky 40223, (502) 423-0573, FAX (502) 423-1239.

(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 Gary Munsie 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 clinical examinations is KRS 313.270 and 313.290.

(b) The administrative regulation that the Kentucky Board of Dentistry intends to promulgate will amend 201 KAR 8:277. It will allow candidates for licensure by examination to have a choice of taking any one of several regional examinations, rather than being limited to making a satisfactory score on the examination offered by the Southern Regional Testing Agency, Inc., which is the only examination presently accepted by the board. As amended, this regulation will allow a dental hygienist candidate to be licensed if he successfully passes the examination of the Southern Regional Testing Agency Inc., the Western Regional Testing Association or the CORE examination through the Northeast Regional Board and the Central Regional Testing Association.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will allow the board to offer candidates for licensure more flexibility in taking examinations without compromising the quality and character of the examination now offered.

(d) The benefit expected from this administrative regulation is that candidates for licensure will have additional choices as to which examination they complete in order to be licensed in Kentucky.

(e) The regulation will be implemented by the Executive Director and Executive Secretary of the Board of Dentistry in accordance with KRS 313.270, 313.290 and 201 KAR 8:260.

STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Date: March 13, 1995

Kentucky State Board of Registration for Professional Engineers and Land Surveyors

(1) Subject matter of new administrative regulation, **201 KAR 18:129**, is the repeal of 201 KAR 18:130, "Administrative adjudication procedure."

(2) Kentucky State Board of Registration for Professional Engineers and Land Surveyors 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 April 26, 1995, at 10 a.m., at the Board Office located at the Kentucky Engineering Center, 160 Democrat Drive, 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 within 20 days prior to April 26, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky State Board of Registration for Professional Engineers and Land Surveyors 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 disciplinary hearing procedure is KRS 322.290.

(b) The administrative regulation that the Kentucky State Board of Registration for Professional Engineers and Land Surveyors intends to promulgate will repeal 201 KAR 18:130.

(c) The necessity and function of the proposed administrative regulation is as follows: The board has adopted a new administrative regulation governing new disciplinary and grievance procedures (201 KAR 18:131) which supersedes the administrative regulation which will be repealed.

(d) The benefits expected from administrative regulation are: 201 KAR 18:130 will be superseded by an administrative regulation which will provide greater due process and efficiency in disciplinary hearings, and will eliminate confusion among registrants as to which regulation applies.

(e) The administrative regulation will be implemented as follows: No disciplinary hearings will be held under 201 KAR 18:130.

TOURISM CABINET
Department of Fish and Wildlife Resources

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

(1) Regulation Number and Title: **301 KAR 1:015** Boats and outboard motors, restrictions; **301 KAR 1:016** Private camps, boat docks, etc.; **301 KAR 1:085** Mussel shell harvesting; **301 KAR 1:201** Fishing limits.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 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, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to April 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, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of these administrative regulations is KRS 150.620, 150.625, 150.520, and 150.470.

(b) The administrative regulations that the department intends to promulgate will:

1. Amend 301 KAR 1:015 as follows:

a. On Gist Creek Lake, change boat length or motor size limits, or both. Specific length or horsepower standards will be set after receiving public comments.

b. Prohibit all but electric motors on Lebanon City Lake.

2. Amend 301 KAR 1:016 as follows:

a. Require a nontransferable permit for boat docks on department-owned lakes.

b. Require that dock permit holder renew every five years and pay a fee.

c. Require all current permits to be renewed by December 31, 1996.

d. Clarify and further define construction standards for boat docks.

e. Allow only one boat dock per individual or domicile.

3. Amend 301 KAR 1:085 as follows:

a. Establish a mussel sanctuary around Brush Creek Island (River Mile 387.0 to 388.7) on the Ohio River.

b. Establish a mussel sanctuary around Manchester Islands (River Mile 394.6 to 397.1) in the Ohio River.

4. Amend 301 KAR 1:201 as follows:

a. On Lebanon City Lake, establish: 15-inch size limits on largemouth and smallmouth bass; 9-inch size and 15-fish creel limit on crappie; a 30-fish limit on bluegill and shellcrackers; and a 5-fish creel limit on channel catfish.

b. On Lake Malone, establish a 12-15 inch slot limit for largemouth bass.

c. On Nolin River Lake, establish a 15-inch size limit on largemouth and smallmouth bass, but allow anglers to keep one bass under 15 inches.

d. On Rough River Lake, establish: an aggregate creel and size limit on white bass, yellow bass, striped bass and their hybrids; a 15-inch size limit on largemouth and smallmouth bass, but allow anglers to keep one bass under 15 inches.

e. On Cave Run Lake, establish a 13-16 inch slot limit on largemouth and smallmouth bass.

(c) The necessity and function of the proposed administrative regulation is to manage the harvest of fishes so as to improve fishing conditions, and to protect mussel diversity around the Ohio River Islands Nations Refuge.

(d) The benefits expected from the administrative regulation are improvement in the quality of fishing and better management of the ecological processes in waters requiring special regulations, and protection of mussel diversity.

(e) This administrative regulation will be implemented by publishing its provisions through brochures and media outlets, and enforcement by the Divisions of Law Enforcement and Water Patrol.

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

(1) Regulation Number and Title: **301 KAR 2:050,** Land Between the Lakes hunting rules.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 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, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to April 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, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 150.250 and 150.620.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:050 as follows: Amendments will make hunter safety certificate and game tagging requirements consistent with those in effect in the remainder of the state.

(c) The necessity and function of the proposed administrative regulation is to delineate the special hunting requirements at Land Between the Lakes.

(d) The benefits expected from the administrative regulation are improved wildlife management and public safety at Land Between the Lakes.

(e) This administrative regulation will be implemented by publicizing its provisions in brochures and through mass media outlets, and enforcement through the department's Division of Law Enforcement and by Land Between Lakes enforcement personnel.

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

(1) Regulation Number and Title: **301 KAR 2:125,** Small game and furbearer hunting on federal areas.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing small game and furbearer hunting is KRS 150.015, 150. 370 and 150.620.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will contain subject matter formerly contained in 301 KAR 2:049. This administrative regulation will stipulate requirements for small game hunting on Ft. Campbell, Ft. Knox, Land Between the Lakes and Reelfoot National Wildlife Refuge. Substantive changes from 301 KAR 2:049 consist primarily of calendar date shifts of season openings or closings. On LBL, the requirement that raccoon and opossum hunters check in and out will be eliminated; trappers will no longer be required to participate in a drawing; and special requirements for traps will be eliminated.

(c) The necessity and function of the proposed administrative regulation is to establish season dates and other requirements for hunting on federally owned wildlife management areas, and to give conservation officers authority to enforce laws on these federal lands.

(d) The benefits expected from the administrative regulation are wildlife management and allowing outdoor recreation on federal areas.

(e) The administrative regulation will be implemented as follows: Its provisions will be publicized by the department and by various federal agencies; enforcement will be a joint effort between state and federal law enforcement officials.

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

Date: April 1, 1995
Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 50:033**, Acid rain phase II application forms. The subject matter of this proposed regulation relates to the necessity of the Division for Air Quality to adopt for phase II of the acid rain program the forms designed by the U.S. Environmental Protection Agency (U.S. EPA) as follow up to phase I, which was implemented at the federal level. The adoption of this rule is required for approval of Kentucky's Title IV acid rain program by the U.S. EPA. The regulation will establish five forms addressing a certificate of representation, phase II permit application, new unit exemption, retired unit exemption, and repowering extension plan.

(2) The Division for Air Quality intends to incorporate the federal acid rain phase II application forms by reference.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 28, 1995 at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

(b) If a minimum of 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 April 28, 1995, the public hearing will be canceled.

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation relating to acid rain phase II application forms is 42 USC 7651-7651o, KRS 224.10-100 and 224.20-100. The Division for Air Quality, in 401 KAR 50:072, incorporated by reference the federal acid rain program. This proposed administrative regulation would incorporate the federal acid rain phase II application forms corresponding with 401 KAR 50:072.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will incorporate by reference the federal acid rain phase II application forms corresponding with 401 KAR 50:072.

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

(d) The promulgation of this administrative regulation will fulfill one of the requirements for federal approval of Kentucky's Title IV acid rain program and Title V permits program. Implementation of the acid rain program will result in enhanced protection of the Commonwealth's citizens and environment.

(e) This administrative regulation will be implemented by requiring that specific forms related to phase II be submitted with a source's Title IV phase II permit application.

JUSTICE CABINET
Division of Charitable Gaming

Date: March 14, 1995
Justice Cabinet
Division of Charitable Gaming

(1) The subject matter of this administrative regulation, **500 KAR 11:001**, is definitions describing terms found in 500 KAR Chapter

11 not otherwise defined in KRS 238.505.

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, April 28, 1995, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to Friday, April 28, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(9).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish definitions for terms found in 500 KAR Chapter 11 not otherwise defined in KRS 238.505.

(c) The necessity and function of this administrative regulation is as follows: This administrative regulation establishes definitions of terms used throughout 500 KAR Chapter 11 not otherwise defined in KRS 238.505.

(d) The benefits expected from the administrative regulation are: This administrative regulation establishes definitions of terms used throughout 500 KAR Chapter 11 not otherwise defined in KRS 238.505. The definitions will promote greater understanding of the regulations.

(e) The administrative regulation will be implemented as follows: These definitions will be applicable to those regulations, ordinary and emergency, currently in effect. Licensees will be provided copies of this regulation by the Division of Charitable Gaming.

Date: March 14, 1995
Justice Cabinet
Division of Charitable Gaming

(1) The subject matter of this administrative regulation, **500 KAR 11:030**, is standards for the construction and distribution of charity game tickets and for the conduct of play of charity game tickets.

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, April 28, 1995, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to Friday, April 28, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(2), (9) and 238.545(2).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish certain standards for the construction, distribution and sale of charity game tickets.

(c) The necessity and function of this administrative regulation is as follows: Under KRS Chapter 238, licensed charitable organizations are permitted to sell charity game tickets as a form of charitable gaming. These gaming supplies require construction, distribution and rules of

play that are standard.

(d) The benefits expected from the administrative regulation are: Charity game tickets will be sold and played throughout the Commonwealth of Kentucky in a uniform manner as a result of these standards. The charity game tickets will be manufactured for sale and distributed for sale at the retail level in a uniform manner. The administrative regulation will prevent manipulation of winning tickets, thus elevating the level of play. Defects in the manufacture of the charity game tickets will be addressed in a uniform and fair manner.

(e) The administrative regulation will be implemented as follows: Auditors and other fiscal personnel in the Division of Charitable Gaming will work closely with the division's inspectors to monitor compliance with the regulation by all licensed charitable organizations, manufacturers and distributors.

Date: March 14, 1995
Justice Cabinet
Division of Charitable Gaming

(1) The subject matter of this administrative regulation, **500 KAR 11:040**, is standards for the construction and distribution of bingo supplies and equipment and for the conduct of play of bingo.

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, April 28, 1995, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to Friday, April 28, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(2) and (9).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish certain standards for the construction, distribution and sale of bingo supplies and equipment, and for the conduct of play.

(c) The necessity and function of this administrative regulation is as follows: Under KRS Chapter 238, licensed charitable organizations are permitted to conduct bingo as a form of charitable gaming. Bingo gaming supplies and equipment require uniform construction and distribution rules and rules of play that are standard.

(d) The benefits expected from the administrative regulation are: Bingo will be played and conducted throughout the Commonwealth of Kentucky in a uniform manner as a result of these standards. The bingo supplies and equipment will be manufactured for sale and distributed for sale at the retail level in a uniform manner. The administrative regulation will prevent manipulation, thus elevating the level of play.

(e) The administrative regulation will be implemented as follows: Auditors and other fiscal personnel in the Division of Charitable Gaming will work closely with the division's inspectors to monitor compliance with the regulation by all licensed charitable organizations, manufacturers and distributors.

Date: February 27, 1995
Justice Cabinet
Division of Charitable Gaming

(1) The subject matter of this administrative regulation, **500 KAR 11:050**, Raffle standards, is standards for the construction and distribution of raffle materials and for the conduct of raffles.

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, April 28, 1995, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to Friday, April 28, 1995, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(2), (4), (9), and 238.550(1).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish the standards for the construction and distribution of raffle materials and for the conduct of raffles.

(c) The necessity and function of this administrative regulation is as follows: The Division of Charitable Gaming is authorized to regulate the conduct of raffles and to establish recordkeeping requirements. This administrative regulation establishes standards for the conduct of raffles and recordkeeping standards relative to the conduct of raffles.

(d) The benefits expected from the administrative regulation are: All raffles will be conducted in a similar manner. There will be uniform recordkeeping. Raffle participants will be informed from the date of purchase of a raffle ticket of the date, time and place of the raffle; the prize(s) to be awarded; and other pertinent information.

(e) The administrative regulation will be implemented as follows: The Division of Charitable Gaming's inspectors and other personnel will monitor licensed and statutorily exempt organizations for compliance.

Date: February 27, 1995
Justice Cabinet
Division of Charitable Gaming

(1) The subject matter of this administrative regulation, **500 KAR 11:060**, Tipping prohibited, is the prohibition of tipping or other gratuitous conduct in the course of gaming.

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, April 28, 1995, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to Friday, April 28, 1995, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.540(4), and 238.515(2), (9).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish that tipping and other forms of gratuitous conduct constitute compensation prohibited by KRS 238.540(4).

(c) The necessity and function of this administrative regulation is as follows: The Division of Charitable Gaming is authorized to regulate the conduct of charitable gaming. Charitable gaming is to be conducted by uncompensated volunteer personnel. Tips and other gratuitous conduct aimed at volunteers is considered compensation by the Division of Charitable Gaming.

(d) The benefits expected from the administrative regulation are: All charitable gaming will be conducted by volunteers. There will be no promises or gifts or other gratuitous conduct used as conditions for a volunteer's commitment.

(e) The administrative regulation will be implemented as follows: The Division of Charitable Gaming's Inspectors and other personnel will monitor licensed and statutorily exempt organizations for compliance.

Date: March 14, 1995
Justice Cabinet
Division of Charitable Gaming

(1) The subject matter of this administrative regulation, **500 KAR 11:070**, is the method by which a charitable organization notifies the Division of Charitable Gaming of its intent to engage in charitable gaming activities which do not require licensure.

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, April 28, 1995, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to Friday, April 28, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to this administrative regulation.

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

(b) This administrative regulation will not amend an existing administrative regulation. It will establish the requirements and methods for notifying the Division of Charitable Gaming of exempt status.

(c) The necessity and function of this administrative regulation is as follows: KRS 238.535(1) offers charitable organizations conducting certain exempt charitable gaming activities the opportunity to be exempt from licensure. Under KRS 238.535(2), any charitable organization claiming to be exempt from licensure is to notify the Division of Charitable Gaming of the status. This administrative regulation establishes a procedure for such notification.

(d) The benefits expected from the administrative regulation are: KRS 238.535(2) requires any charitable organization claiming to be exempt under KRS 238.535(1) to notify the Division of Charitable Gaming of the status. This administrative regulation establishes a procedure and form for such notification. All charitable organizations considered exempt will only file an initial notification form with the Division of Charitable Gaming, and will file no other reports or forms until the charitable gaming activities cease to be of the nature described in KRS 238.535(1).

(e) The administrative regulation will be implemented as follows: The Division of Charitable Gaming will provide the Form CG-T-Exempt to each charitable organization which has notified the Division of Charitable Gaming of its exempt status by correspondence since the effective date of HB 206, KRS 238.500 et seq. The Division of Charitable Gaming will require all charitable organizations claiming exemption to complete the form. Forms will be distributed to all county clerks in Kentucky to be made available to charitable organizations qualifying for exemption.

Date: February 27, 1995
Justice Cabinet
Division of Charitable Gaming

(1) The subject matter of this administrative regulation, **500 KAR 11:080**, Special charity fundraising event, is the regulation of a "special charity fundraising event" as defined in KRS 238.505(9).

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, April 28, 1995, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to Friday, April 28, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.505(9), 238.535, and 238.515(2), (9).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish conditions under which a "special charity fundraising event" as described in KRS 238.505(9) may be held.

(c) The necessity and function of this administrative regulation is as follows: KRS 238.505(9) authorizes a special charity fundraising event, such as a fair, carnival, bazaar or festival, that is of short, definite and limited duration and requires licensure by the Division of Charitable Gaming. This administrative regulation further defines a special charity fundraising event, and establishes prize amounts, duration and frequency.

(d) The benefits expected from the administrative regulation are: Licensed charitable organizations may twice a year conduct festivals, bazaars, carnivals, or fairs under certain specified conditions of longer duration than is normally permissible.

(e) The administrative regulation will be implemented as follows: Organizations will apply for a license to conduct a "special charity fundraising event." The Inspectors of the Division of Charitable Gaming and the Division of Charitable Gaming's licensing section personnel will monitor special charity fundraising events for compliance.

Date: February 27, 1995
Justice Cabinet
Division of Charitable Gaming

(1) The subject matter of this administrative regulation, **500 KAR 11:090**, Special limited charitable games, is the exclusion from "special limited charitable games" of certain wheel games including low value noncash prizes and low cost participation.

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, April 28, 1995, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to Friday, April 28, 1995, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.505(18), 238.535(1), and 238.515(2), (9).

(b) This administrative regulation will not amend an existing administrative regulation. It will establish that only certain non-cash prize wheel games qualify as "special limited charitable games" under KRS 238.505(18) so as to require licensure.

(c) The necessity and function of this administrative regulation is as follows: Many charitable organizations which conduct wheel games requiring a low cost participation fee and in which low value noncash prizes are awarded would otherwise be exempt from licensure requirements under KRS 238.535(1). It will establish that only certain noncash prize wheel games qualify as "special limited charitable games" under KRS 238.505(18) so as to require licensure.

(d) The benefits expected from the administrative regulation are: Many charitable organizations which conduct wheel games requiring a low cost participation fee and in which low value noncash prizes are awarded would otherwise be exempt from licensure requirements under KRS 238.535(1). This regulation will authorize certain charitable organizations to utilize the licensure exemption provisions of KRS 238.535(1). Additionally, no special limited charitable game license will be required.

(e) The administrative regulation will be implemented as follows: Organizations conducting wheel games which do not qualify as "special limited charitable games" will have the option (depending on expected annual gross receipts) of applying for a charitable gaming (organization) license or qualifying for exemption under KRS 238.535(1). The Inspectors of the Division of Charitable Gaming and the Division of Charitable Gaming's licensing section personnel will monitor wheel game activities for compliance.

Date: February 27, 1995
Justice Cabinet
Division of Charitable Gaming

(1) The subject matter of this administrative regulation, **500 KAR 11:100**, Division employees prohibited from playing charitable games, is the prohibition against participation by the employees of the Division of Charitable Gaming as players in any charitable games authorized under KRS Chapter 238.

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

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Friday, April 28, 1995, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of

notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to Friday, April 28, 1995, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.510(4), and 238.515(2), (9).

(b) This administrative regulation will not amend an existing administrative regulation. It will remove any potential conflict of interest or appearance of impropriety by prohibiting Division of Charitable Gaming employees from participating in charitable games authorized by KRS Chapter 238.

(c) The necessity and function of this administrative regulation is as follows: The Division of Charitable Gaming is authorized to license various entities and to regulate the conduct of charitable gaming. By prohibiting Division of Charitable Gaming employees' participation in any charitable games, any appearance of impropriety or potential conflict of interest is removed.

(d) The benefits expected from the administrative regulation are: It is expected that this regulation will remove any potential conflict of interest or appearance of impropriety that could result were Division of Charitable Gaming personnel, who are charged with licensing and regulating charitable gaming, observed playing or otherwise participating in charitable games.

(e) The administrative regulation will be implemented as follows: Division of Charitable Gaming staff will be informed of the regulation. The division director will approve any request for participation in a charitable game, as a necessary function of an employee's job duties, on a case-by-case basis.

JUSTICE CABINET
Department of Corrections

Date: March 14, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: assessment center operations; inmate conflicts; referral procedure for inmates adjudicated guilty but mentally ill; government services projects; inmate 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 April 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 April 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 6:020, as follows:

1. Assessment center operations (17.2) shall be amended to reflect the current practice of reporting operational matters to the warden.
2. Inmate conflicts (18.3) shall be added to reflect the procedure for investigating and documenting conflicts between inmates.
3. Referral procedure for inmates adjudicated guilty but mentally ill (18.12) shall be amended to reflect the procedure for referring inmates to the Kentucky Correctional Psychiatric Center for evaluation.
4. Government services projects (19.1) shall be amended to update current procedures for allowing inmates to work for government

agencies other than the Department of Corrections.

5. Inmate furloughs (25.4) shall be amended to make this policy consistent with other policies.

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

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

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

Date: March 14, 1995
Justice Cabinet
Department of Corrections

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

(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 April 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 April 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 6:080, as follows: Classification manual shall be amended to clarify scoring of detainers and administrative factors.

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

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

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

Date: March 14, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:120**, Blackburn Correctional Complex: natural disaster plan (tornado), emergency preparedness plan manual, fire safety plans, drills and related staff duties, duties of fire safety officer, menu and special diets, food service: inspection, health protection and sanitation, dining room guidelines, food service security: knife and other sharp instrument and utensil control, purchasing, storage and farm products, food service operations manual, Office of Public Advocacy attorney visits, inmate claims, legal and support services for indigent inmates, restoration of forfeited good time, inmate visiting.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 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 April 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 6:120, as follows:

1. Natural disaster plan (Tornado) (08-02-01) shall be amended to reflect minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

2. Emergency preparedness plan manual (08-03-01) shall be amended to reflect minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

3. Fire safety plans, drills and related staff duties (08-04-01) shall be amended to reflect how often sprinklers shall be inspected, staff assignment of weekly fire safety and sanitation inspection, title change from fire safety officer to fire safety and sanitation officer and minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

4. Duties of fire safety officer (08-05-01) shall be amended to reflect the change of fire safety inspection from weekly to monthly and minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

5. Menu and special diets (11-01-01) shall be amended to reflect doctors orders for special diets to be reviewed semiannually, and to reflect where evening snack may be obtained.

6. Food service: inspection, health protection and sanitation (11-02-01) shall be amended to reflect the requirement of food handler cards from the local Health Department for food service employees.

7. Dining room guidelines (11-04-01) shall be amended to reflect a no smoking policy during meal serving times, and minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

8. Food service security: knife and other sharp instruments and utensil control (11-05-01) shall be amended to change location of the knife shadow box from manager's office to coordinator's office and minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition, and revise Attachment A.

9. Purchasing, storage and farm products (11-06-01) shall be amended to reflect the deletion of the cannery operation.

10. Food service operations manual (11-07-01) shall be amended to reflect the deletion of OJT baking position and minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

11. Office of Public Advocacy Attorney Visits (14-01-01) shall be amended to reflect when and where the public advocacy comes to visit inmates at BCC.

12. Inmate claims (14-05-01) shall be deleted entirely due to the duplication of corrections policy and procedures.

13. Legal and support services for indigent inmates (14-06-01) shall be amended to reflect a higher charge for copying legal documents for nonindigent inmates and minor word changes throughout to bring this policy into compliance with LRC regulations, converted ACA standards numbers from 2nd to 3rd Edition.

14. Restoration of forfeited good time (15-04-01) shall be deleted entirely due to the duplication of corrections policy and procedures.

15. Inmate visiting (16-02-01) shall be amended to separate visiting hours and days for general population and the A-1 Unit population, change location of visitor registration, limit the number of adult visitors per inmate, delete information contained in corrections policy and procedures, restrict certain areas from visitation, change procedure for counting inmates in the visiting area.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Blackburn 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: March 14, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:130**, Western Kentucky Correctional Complex: invoice and voucher processing, monetary receipts during nonbusiness hours, inmate funds, agency funds and accounting procedures, health care services, inmate recreation and leisure time activities.

(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 April 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 April 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 6:130, as follows:

1. Invoice and voucher processing (02-00-03) shall be amended to correct a typographical error.

2. Monetary receipts during nonbusiness hours (02-00-04) shall be amended to reflect the current operating procedures at WKCC.

3. Inmate funds (02-01-01) shall be amended to reflect several minor changes and notes the abolishment of inmates possessing money.

4. Agency funds and accounting procedures (02-02-01) shall be amended to reflect minor changes and deletion of a gratuity of $50 for inmates leaving the facility.

5. Health care services (13-02-01) shall be amended to reflect a more comprehensive screening form in Attachment IV.

6. Inmate recreation and leisure time activities (22-00-01) shall be amended to reflect minor changes and the elimination of arts and crafts being done in the dorm or bed area.

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

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

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

TRANSPORTATION CABINET

Date: March 15, 1995
Transportation Cabinet

(1) **601 KAR 1:025**, Transportation of hazardous materials.

(2) The Kentucky Transportation 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 April 27, 1995 at 4 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 April 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 transporting hazardous materials by air or highway is KRS 174.410(2), 174.430(1) and 49 CFR Part 130 and 171 through 180.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 601 KAR 1:025 transporting hazardous materials by air or highway.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 174.410(2) provides the Secretary of Transportation Cabinet in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources shall adopt by reference or in its entirety the federal hazardous materials transportation regulation 49 CFR as amended to effectively carry out the intent of KRS 174.400 though 174.435 relating to the transportation of hazardous material by air or highway. This amended administrative regulation incorporates the latest changes to the federal regulations as set forth by the United States Department of Transportation.

(d) The benefits expected from the administrative regulation are increased highway safety and national uniformity for safety in the transportation of hazardous materials.

Date: March 15, 1995
Transportation Cabinet

(1) **603 KAR 4:035**, Logos.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation amending the way the logo program in Kentucky is administered. Specifically the cabinet is considering adding, if approved by the Federal Highway Administration, Exits 105 & 112 on I-65 to the fifth legend logo test area. In addition, the cabinet might possibly consider a reduction in cost or other grant-in-aid for the fifth legend logo for nonprofit organizations.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 27, 1995 at 11 a.m., local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to April 27, 1995 the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the logo sign placement along fully controlled access highways is KRS 177.0734 through 177.0738.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 603 KAR 4:035, Logo sign placement along fully controlled access highways.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 177.0734 through 177.0738 require the Commissioner of Highways to prescribe by administrative regulations reasonable standards for the erection of specific information panels within highway rights-of-way to provide directional information for business establishments offering goods and service in the interest of the travelling public. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of specific motorists signing designed to inform motorist where travel related goods and services are available. Furthermore, as a result of the recommendation of the Governor's Highway Signage and Tourism Task Force, the Federal Highway Administration is allowing Kentucky to experiment with the fifth legend logo for tourist activity signing along specified interstate and parkway routes. This administrative regulation sets forth criteria to be followed in the erection and maintenance of those signs to be used as a demonstration project for the fifth legend logo signs relating to tourist activity. The demonstration project is scheduled to be evaluated in early 1997.

(d) The benefits expected are: Increased participation in the fifth legend logo program so that the test period can be more accurately evaluated.

Date: March 15, 1995
Transportation Cabinet

(1) **603 KAR 5:050**, Uniform traffic control devices.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation to adopt an addendum to Part VI of the "Manual on Uniform Traffic Control Devices" which has been incorporated by reference in 603 KAR 5:050. The Federal Highway Administration recently announced that the addendum had been published.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 27, 1995 at 9 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to April 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 implementation of an administrative regulation relating to uniform traffic control devices is KRS 189.337 and 23 CFR Part 655 Sub-part F.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend existing administrative regulation 603 KAR 5:050, Uniform traffic control devices.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.337(2) requires the Transportation Cabinet, Department of Highways to adopt a uniform system of traffic control devices. The Federal Highway Administration thorough it's regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the "Manual on Uniform Traffic Control Devices". This administrative regulation defines this system by incorporating by reference the" Manual on Uniform Traffic Control Devices" and the changes adopted by the Federal Highway Administration.

(d) The benefits expected are: Increased highway safety by the inclusion of temporary signaling devices which were inadvertently excluded by the Federal Highway Administration in an earlier version of Part VI of the "Manual on Uniform Traffic Control Devices".

Date: March 15, 1995
Transportation Cabinet

(1) **603 KAR 5:070**, relating to motor vehicle dimension limits and **603 KAR 5:250**, Selection of national truck network highways and reasonable access to these highways.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to 603 KAR 5:070 to include all recently completed

highways which should be in the listing of roads eligible for use by vehicles with increased dimensions (e.g., 102" wide rather tan 96"). It will consider the removal of roads from the list of those allowed to be used by vehicles with increased dimensions if there is a newer, more accessible route included. The Transportation Cabinet also intends to amend 603 KAR 5:250 to shift the emphasis on the evaluation of roads from engineering templets to actual road geometrics.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 27, 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 April 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 regulations.

(a) The statutory authority for the promulgation of administrative regulations relating to motor vehicle dimension limits and reasonable access is KRS 189.222 and 23 CFR Part 658.

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

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the state primary road system. The state primary road system consists of those roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that there be reasonable access of at least one mile from the highways over which motor vehicles with increased dimensions are allowed to operate. The federal regulation also requires that vehicles with increased dimensions which are transporting household goods and truck tractors towing only one semitrailer which does not exceed 28 ft. be provided statewide access unless a route is specifically excluded for safety reasons. This administrative regulation is adopted to set the maximum motor vehicle dimensions for all classes of highways and to provide for the procedures for the selection of additional highway segments to be included in the list of highways to be used by motor vehicles with increased dimensions.

(d) The benefits expected are: Stronger correlation between federal and state requirements and an updating of the list of highways which are eligible for use by the vehicles with increased dimensions.

Date: March 15, 1995
Transportation Cabinet

(1) **603 KAR 5:075**, relating to permits for transporting overweight or overdimensional vehicles; **603 KAR 5:076**, relating to multistate permits for transporting overweight or overdimensional vehicles; and **603 KAR 5:110**, relating to the transportation of overdimensional manufactured homes.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations governing the Southeastern States Agreement to issue regional oversized/overweight permits for the multistate movement of certain vehicle combinations. Further, the Kentucky fee for the overweight/overdimensional permit will be amended to reflect a recent court decision.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 27, 1995 at 10 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to April 27, 1995 the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to permits for moving overdimensional or overweight vehicles is KRS 189.270.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 603 KAR 5:075, Permits for moving overdimensional or overweight vehicles and will also amend 603 KAR 5:110, Permits for transporting overdimensional manufactured homes. Further, the Transportation Cabinet intends to promulgate a new administrative regulation 603 KAR 5:076 relating exclusively to the multistate permits.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.270 authorizes the Department of Highways to issue permits for the movement of vehicles exceeding legal dimensions or weights. This administrative regulation establishes the

permit application procedure within the Transportation Cabinet and establishes movement requirements which are in the interest of highway safety. The proposed amendment to this administrative regulation will allow the Transportation Cabinet to participate with the other southeastern states in the issuance of regional oversized/overweight permits. The purpose is to provide a routine uniform mechanism for processing multistate permits for certain oversized/overweight vehicle combination travelling between southeastern states. The process will only apply to what is called the "envelope vehicle" which is transporting nondivisible loads.

(d) The benefits expected from the change to the administrative regulation is an ease in the administrative burden of member states and of the motor carrier industry who move oversized/overweight vehicles and loads. Each state will continue to issue and receive full payment for each permit issued.

Date: April 15, 1995
Transportation Cabinet

(1) **603 KAR 5:115**, **603 KAR 5:220**, and **603 KAR 5:320** relating to the transportation of coal and coal by-products and to cooperative agreements for the movement of coal, coal by-products.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations governing the reporting of coal and coal by-products transported in Kentucky, inclusion of roads in the extended weight coal and coal by-product road system based upon that reporting and cooperative agreements for the transportation of coal at extended weights.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 27, 1995 at 1 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to April 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 coal transportation and cooperative agreements is KRS 42.455(8), 177.977, and 177.9771.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend existing administrative regulations 603 KAR 5:115 and 5:220 and possibly include a new administrative regulation (603 KAR 5:310).

(c) The necessity and function of the proposed administrative regulation relating to coal transportation is as follows: KRS 42.455 designates the Kentucky Transportation Cabinet as the agency responsible for the identification of public highways, roads, and streets that comprise the official coal haul highway system. In addition, both KRS 42.455 and 177.977 require the Transportation Cabinet to publish this information in a directory on an annual basis. In order to discharge this responsibility, the cabinet must gather pertinent information from all coal shippers or owners regarding the movement of coal in Kentucky. This administrative regulation specifies procedures at intervals to be used in reporting this information to the Transportation Cabinet. In addition, KRS 177.9771 requires the coal road system transportation report to include coal by-products allowing the transportation of coal by-products to be reported to the Transportation Cabinet is necessary in order for the cabinet to prepare this report and to include such highways on the extended weight coal and coal by-products system. KRS 177.979 provides for the Department of Highways to enter into cooperative agreements for the transportation of coal. This administrative regulation is necessary to define procedures, requirements, and limitations for cooperative agreements. It will specifically evaluate the enforcement of the cooperative agreements. HB 558 passed by the 1994 General Assembly set forth additional times under which cooperative agreements could be entered into in order to include roads otherwise ineligible in the extended weight coal and coal by-products haul road system. The cooperative agreement process pursuant to HB 558 is also discussed.

(d) The benefits expected are: The clear cut understanding of what forms must be filed and by whom relating to the transportation of coal and coal by-products. Further, it sets forth who may enter into a cooperative agreement regarding the transportation of coal at extended weights.

Date: March 15, 1995
Transportation Cabinet

(1) **603 KAR 5:151**, Mailboxes and newspaper delivery boxes.

(2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation establishing safety criteria for the erection of mailboxes and newspaper delivery boxes on state-owned highway right-of-way.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 27, 1995 at 3 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 April 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 safety criteria for the erection of mailboxes and newspaper delivery boxes is KRS 176.050.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate is a new administrative regulation relating to safety criteria for the erection of mailboxes and newspaper delivery boxes on state-maintained highways.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 176.050 requires the Department of Highways to prescribe administrative regulations for the care and maintenance of roads after they have been constructed. KRS 177.106 requires any persons to obtain a permit for any encroachment to the right-of-way of any state-maintained highway. Mailboxes and newspaper delivery boxes erected on the right-of-way of a state-maintained highway frequently plays a hazard to the traveling public as well as impede function, maintenance, or operation of the highway. This administrative regulation is intended to establish safety criteria for the erection of mailboxes and newspaper delivery boxes.

(d) The benefits expected are: Increased highway safety.

EDUCATION PROFESSIONAL STANDARDS BOARD

Date: February 27, 1995
Education Professional Standards Board

(1) **704 KAR 20:020**, Fifth-year program for renewal of provisional teaching certification.

(2) The Education Professional Standards Board 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 April 28, 1995, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to April 28, 1995, the public hearing will be cancelled.

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the standards for a fifth-year program for certificate renewal is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:020, Fifth-year program for renewal of teaching certificates. Some form of this regulation has been in existence since 1964; the last revision was adopted in July 1988. It is proposed to phase out this regulation by establishing a September 1, 1995, date when candidates shall not be admitted to this plan for certificate renewal and by adopting a deadline date of September 1, 2000, for completion of a program for those who are admitted before September 1, 1995. It is also proposed to repeal 704 KAR 20:010, Ranking procedures: general, and to incorporate the relevant standards into 704 KAR 20:020.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 and 161.030 vests authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the standards for the fifth-year program acceptable for certificate renewal for candidates admitted prior to September 1, 1995.

(d) The benefits expected from administrative regulation are: The current regulation establishes requirements for the fifth-year program which is required for certificate renewal. The proposed amendments phase out these requirements by September 1, 2000. Requirements more focused on improving what teachers know and are able to do are being adopted in a new regulation to replace this administrative regulation.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented through colleges and universities approved by the Education Professional Standards Board for offering fifth-year programs. Candidates will be advised by their university and college advisors on specific requirements and procedures (as outlined in these administrative regulations) to complete the planned fifth-year program. Once the program has been completed, the applicant shall document completion of the approved program by application to the Division of Certification.

Date: February 27, 1995
Education Professional Standards Board

(1) **704 KAR 20:021**, Planned fifth-year program.

(2) The Education Professional Standards Board intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 28, 1995, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to April 28, 1995, the public hearing will be cancelled.

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the standards for a fifth-year program for certificate renewal is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will supersede an existing administrative regulation, 704 KAR 20:020, which will be phased out for applicants applying for admission effective September 1, 1995. The proposed regulation provides the following two plans for completing the fifth-year program required for certificate renewal:

1. Plan I: A master's degree (a) in a professional education specialty for which certification is issued, (b) in an academic subject for which teacher certification is issued, or (c) in professional education with emphasis in an academic subject for which certification is issued.

2. Plan II: An approved 32-semester-hour program beyond the bachelor's degree and the four-year program of teacher preparation, with the option of completing 12 with professional development in keeping with proposed guidelines.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.028 and 161.030 vests authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the standards for the fifth-year program acceptable for certificate renewal.

(d) The benefits expected from administrative regulation are: The planned fifth-year program shall ensure that all teachers receive advanced preparation to become more effective teachers.

(e) The administrative regulation will be implemented as follows: The provisions of the proposed administrative regulation will be implemented through universities and colleges which have been approved by the Education Professional Standards Board to offer fifth-year programs. Candidates pursuing renewal of certification will be advised by their university and college advisors on specific requirements and procedures (as outlined in these administrative regulations) to complete the planned fifth-year program. Once the program has been completed, the applicant shall document completion of the approved program by application to the Division of Certification.

Date: February 27, 1995
Education Professional Standards Board

(1) **704 KAR 20:305**, Written examination prerequisites for teacher certification.

(2) The Education Professional Standards Board 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 April 28, 1995, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to April 28, 1995, the public hearing will be cancelled.

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the written examination prerequisites for teacher certificate is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:305, Written examination prerequisites for teacher certification. In KRS 161.030, the Kentucky General Assembly mandated that the issuance of initial Kentucky certification require the successful completion of a testing program and that the Education Professional Standards Board shall determine the minimum acceptable level of achievement on each test. It is now proposed to establish new specialty tests effective November 1, 1995, and that applicants who do not successfully complete the new tests shall be allowed to take the former specialty tests up to December 1, 1997. The new specialty tests include two components, one of which requires constructed response for which passing scores will not be set until December 1, 1997. During the interim, applicant scores on the new specialty tests may be used to revise the passing scores and will be used to establish the passing scores for the constructed response tests.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.030 requires that all new teachers,

including out-of-state teachers with less than two (2) years of experience, successfully complete appropriate written tests prior to initial certification in Kentucky. The tests are to measure communication skills, general knowledge, professional education concepts, and knowledge in the specific teaching field of the applicant. The Education Professional Standards Board is charged with selecting the tests; determining minimum acceptable levels of achievement on each test; establishing a reasonable fee related to the cost of administration of the tests, such fees to be paid by the teacher applicants; and establishing procedures for persons having less than minimum levels of performance on any test to repeat that test and be informed of strengths and weaknesses in performance areas. The regulation implements such duties relative to teacher testing.

(e) The administrative regulation will be implemented as follows: Colleges and universities shall be informed of the requirement for the new tests so that correct information may be provided to teacher education candidates. The brochure published by the Office of Teacher Education and Certification relative to the testing requirements and teacher internship program shall be revised. The Education Testing Service shall be informed of the new tests so that the Kentucky information in the registration bulletin may be brought up to date.

Date: February 27, 1995
Education Professional Standards Board

(1) **704 KAR 20:510**, Probationary certificate for teachers of exceptional children.

(2) The Education Professional Standards Board 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 April 28, 1995, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to April 28, 1995, the public hearing will be cancelled.

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the written examination prerequisites for teacher certificate is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:510. Probationary Certificate for Teachers of Exceptional Children. It is proposed to amend this regulation in order to repeal the provision for trainable mentally handicapped because the Education Professional Standards Board has adopted a revision of 704 KAR 20:245 to discontinue the issuance of the certification for trainable mentally handicapped. Furthermore, it is proposed to adopt in its place the provision for issuing a probationary certificate for teaching the moderately and severely disabled.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.020 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures adopted by the Education Professional Standards Board. This regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of exceptional children.

(d) The benefits expected from administrative regulation are: There is a shortage of fully qualified teachers of exceptional children in most Kentucky school districts. This regulation provides that in those cases where the superintendent of the employing school district can document evidence that a qualified teacher is not available a one-year probationary certificate may be issued to an applicant who has completed all requirements for classroom teaching and who has completed a minimum of nine semester hours of credit from the special education component of the approved curriculum. In addition, the applicant must also complete twelve clock hours of training required by the Office of Special Instructional Services and an additional six clock hours of training during the fall conference conducted by the Division of Exceptional Children Services.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by the Division of Certification notifying local school superintendents of the provisions and procedure for applying for the probationary certificate. Also, teacher education institutions approved for offering the preparation programs for teachers of exceptional children will be informed of the provisions for the probationary certificate.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

Date: March 14, 1995
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:018**, Refuse collection and compaction equipment standards.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 21, 1995, at 10:30 a.m. (ET), at the Galt House East, Fourth Avenue and River Road, Louisville, Kentucky.

(4) The public hearing will be held whether or not a request for a public hearing is received.

(5) Persons wishing to attend the public hearing should notify the agency at the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:018, as follows: The proposed revisions will update a reference to the American National Standards Institute (ANSI) Z245.1-1992, "Waste Collection, Processing and Disposal Equipment - Mobile Collection and Compaction Equipment," and adopt by reference American National Standards Institute (ANSI) Z245.2-1992, "Refuse Collection, Processing and Disposal Equipment - Stationary Compactors."

(c) The necessity and function of the proposed administrative regulation is: The present regulation adopts by reference, American National Standards Institute (ANSI) Z245.1-1975, "Safety Requirements for Refuse Collection and Compaction Equipment," which, at the time of adoption, covered both stationary and mobile equipment. The proposed revisions will update the regulation adopting the changes instituted by the American National Standards Institute.

(d) The benefits expected from the proposed administrative regulation are: Adoption of this proposed amendment will update the regulation. The now referenced regulation is no longer available through the American National Standards Institute. As proposed the amendment will allow the employers of Kentucky access to the most up-to-date safety and health information on refuse collection and compaction equipment.

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

Date: March 14, 1995
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 21, 1995, at 10:30 a.m. (ET), at the Galt House East, Fourth Avenue and River Road, Louisville, Kentucky.

(4) The public hearing will be held whether or not a request for a public hearing is received.

(5) Persons wishing to attend the public hearing should notify the agency at the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:320, as follows: The corrections to 29 CFR 1910.1200, "Hazard Communication," as published in the Federal Register, Volume 59, Number 245, December 22, 1994, will be incorporated by reference, and the extension of start-up dates for portions of 29 CFR 1910.1001, "Asbestos," as published in the Federal Register, Volume 60, Number 34, February 21, 1995, are to be incorporated by reference.

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

(d) The benefits expected from the proposed administrative regulation are: Adoption of these proposed amendments will clarify for Kentucky employers and employees working in general industry the requirements of the hazard communication standard, and allow those employers whose employees are exposed to asbestos additional time to comply with the new regulation regulating asbestos. The proposed amendment relating to hazard communication exempts from this regulation any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), only when subject to comprehensive regulations issued under the Act by the Environmental Protection Agency.

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

Date: March 14, 1995
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 21, 1995, at 10:30 a.m. (ET), at the Galt House East, Fourth Avenue and River Road, Louisville, Kentucky.

(4) The public hearing will be held whether or not a request for a public hearing is received.

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:403, as follows: The corrections to 29 CFR 1926.59, "Hazard Communication," as published in the Federal Register, Volume 59, Number 245, December 22, 1994, will be incorporated by reference.

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

(d) The benefits expected from the proposed administrative regulation are: Adoption of this proposed amendment will clarify for Kentucky employers and employees working in general industry the requirements of the hazard communication standard. This amendment exempts from this regulation any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), only when subject to comprehensive regulations issued under the Act by the Environmental Protection Agency.

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

Date: March 14, 1995
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 21, 1995, at 10:30 a.m. (ET), at the Galt House East, Fourth Avenue and River Road, Louisville, Kentucky.

(4) The public hearing will be held whether or not a request for a public hearing is received.

(5) Persons wishing to attend the public hearing should notify the agency at the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:425, as follows: The extension of start-up dates for portions of 29 CFR 1910.1101, "Asbestos," as published in the Federal Register, Volume 60, Number 34, February 21, 1995, are to be incorporated by reference.

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

(d) The benefits expected from the proposed administrative regulation are: Adoption of this proposed amendment will allow those employers whose employees are exposed to asbestos additional time to comply with the new regulation regulating asbestos.

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

Date: March 14, 1995
Labor Cabinet
Department of Workplace Standards
Kentucky Occupational Safety and Health

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 21, 1995, at 10:30 a.m. (ET), at the Galt House East, Fourth Avenue and River Road, Louisville, Kentucky.

(4) The public hearing will be held whether or not a request for a public hearing is received.

(5) Persons wishing to attend the public hearing should notify the agency at the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:500, as follows: The corrections to 29 CFR 1915.1200, 1917.28, and 1918.90, "Hazard Communication," as published in the Federal Register, Volume 59, Number 245, December 22, 1994, will be incorporated by reference, and the extension of start-up dates for portions of 29 CFR 1910.1001, "Asbestos," as published in the Federal Register, Volume 60, Number 34, February 21, 1995, are to be incorporated by reference.

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

(d) The benefits expected from the proposed administrative regulation are: Adoption of these proposed amendments will clarify for Kentucky employers and employees working in the public sector maritime industry the requirements of the hazard communication standard, and allow those employers whose employees are exposed to asbestos additional time to comply with the new regulation regulating asbestos. The proposed amendment relating to hazard communication exempts from this regulation any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), only when subject to comprehensive regulations issued under the Act by the Environmental Protection Agency.

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

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
Division of Oil and Gas

Date: March 10, 1995
Public Protection and Regulation Cabinet
Department of Mines and Minerals
Division of Oil and Gas

(1) Proposed administrative regulation number and title: **805 KAR 1:150**, Form and content of the operations and reclamation proposal required in a permit application on a severed mineral tract.

(2) The Department of Mines and Minerals, Division of Oil and Gas, 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 April 27, 1995, at 10 a.m. (EST), in the First Floor Conference Room of the Department of Mines and Minerals, 3572 Iron Works Road, Lexington, Kentucky 40511.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present on April 27, 1995, the public hearing 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 April 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Department of Mines and Minerals, Division of Oil and Gas, Attention: Rick Bender, P. O. Box 14090, Lexington, Kentucky 40512-4090, (606) 254-0367.

(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 Mines and Minerals, Division of Oil and Gas, at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this proposed administrative regulation is KRS 353.5901.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate will not amend an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 353.5901(1) directs that a prospective operator of a well on a tract on which "there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed ... shall submit to the department an operations and reclamation proposal ... on forms provided by the department ...."

(d) The benefit expected from this proposed administrative regulation is: It will provide a standardized form for use in filing for a permit to drill a well on a severed mineral tract.

(e) The proposed administrative regulation will be implemented as follows: Permit applications to drill, deepen or reopen a well on a tract of land where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed, shall include the form which would be established by this proposed administrative regulation, the specific content of which form is described in KRS 353.5901(1)(a)-(d).

Date: March 10, 1995
Public Protection and Regulation Cabinet
Department of Mines and Minerals
Division of Oil and Gas

(1) Proposed administrative regulation number and title: **805 KAR 1:160**, Posting of danger signs on all facilities used for the storage of oil.

(2) The Department of Mines and Minerals, Division of Oil and Gas, 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 April 27, 1995, at 1 p.m. (EST), in the First Floor Conference Room of the Department of Mines and Minerals, 3572 Iron Works Road, Lexington, Kentucky 40511.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present on April 27, 1995, the public hearing 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 April 27, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Department of Mines and Minerals, Division of Oil and Gas, Attention: Rick Bender, P. O. Box 14090, Lexington, Kentucky 40512-4090, (606) 254-0367.

(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 Mines and Minerals, Division of Oil and Gas, at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this proposed administrative regulation is KRS 353.656.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate will not amend an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 353.656 directs that a well operator shall cause danger signs to be posted on all oil storage facilities. The proposed administrative regulation will establish minimum requirements as to size and other information to be included on the subject signs.

(d) The benefit expected from this proposed administrative regulation is: It will create threshold standards for danger signs, which will in turn afford greater protection to public health and safety.

(e) The proposed administrative regulation will be implemented as follows: Danger signs will be posted by the well operator on those active and abandoned facilities for which he is responsible and by the department on facilities which are deemed to be abandoned and for which there is no responsible party and which pose imminent danger to public health and safety. Noncompliance by a well operator shall result in the issuance to him of a notice of violation and other legal actions, as required.

CABINET FOR HUMAN RESOURCES
Commission for Children with Special Health Care Needs

Date: February 23, 1995
Commission for Children with Special Health Care Needs

(1) **902 KAR 4:070**. Handicapped children's services.

(2) The Commission for Children with Special Health Care Needs 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 April 28, 1995, at 9 a.m., in the Board Room of the Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217.

(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 April 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: Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217, (502) 595-4459.

(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 Commission for Children with Special Health Care Needs

at the address listed above.

(7) To comply with the American's with Disability Act, the language within this administrative regulation needs to be amended to reflect the proper use of language when referring to individuals with disabilities. This includes changing the title referencing services from Handicapped children's services to Children with Special Health Care Needs Program. This amendment will not change the intent or purpose of this regulation.

(a) The commission's statutory authority is KRS 194.030(13).

(b) This administrative regulation relates to KRS 200.460 to 200.499.

Date: February 23, 1995

Commission for Children with Special Health Care Needs

(1) **902 KAR 4:080**. Disabled Children's Program.

(2) The Commission for Children with Special Health Care Needs 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 April 28, 1995, at 9 a.m., in the Board Room of the Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217.

(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 April 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: Commission for Children with Special Health Care Needs, 982 Eastern Parkway, Louisville, Kentucky 40217, (502) 595-4459.

(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 Commission for Children with Special Health Care Needs at the address listed above.

(7) To comply with the American's with Disability Act, the language within this administrative regulation needs to be amended to reflect the proper use of language when referring to individuals with disabilities. This includes changing the title of the program from Disabled Children's Program to the SSI Children's Support Services Program. This amendment will not change the intent or purpose of this regulation.

(a) The commission's statutory authority is KRS 194.030(13).

(b) This administrative regulation relates to KRS 200.460.

Date: March 15, 1995

Department for Health Services

(1) **902 KAR 14:070**, License procedures and fee schedule for ambulance service providers and tiered response emergency medical services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 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 April 28, 1995, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department for Health Services intends to promulgate will transfer responsibility for licensing ambulance service providers from the CHR Office of Inspector General to the Department for Health Services. Licensing procedures and fee

schedules will be essentially unchanged from those in place at the present time.

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

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

Date: March 15, 1995
Department for Health Services

(1) **902 KAR 14:080**, Ground ambulance service providers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 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 April 28, 1995, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

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

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

Date: March 15, 1995
Department for Health Services

(1) **902 KAR 14:090**, Air ambulance service providers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 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 April 28, 1995, the public hearing will be canceled.

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

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

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

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

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

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request,

in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

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

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

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

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

Office of Inspector General

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:009**. Facility specifications; hospitals.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 facility specifications; hospitals is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:009, as follows:

1. The phrase "physically handicapped" will be replaced with appropriate terminology in Sections 5(3), 20(1)(d) and 25(1) and (2).
2. The phrase "wheelchair patient" will be replaced with appropriate terminology in Section 11(2)(e).
3. Section 8, obstetrical suite. will include labor-delivery-recovery (LDR) and labor-delivery-recovery-postpartum (LDRP) units.
4. Section 9, newborn nursing unit, will include baby holding nurseries.
5. Section 11, psychiatric unit, will be replaced by a requirement for compliance with 902 KAR 20:170, Facility specifications; psychiatric hospitals.
6. Section 12, surgical suite, will increase the minimum clear floor area of operating rooms, and will change endoscopy room requirements.
7. Section 14, radiology suite, will be expanded to include computerized tomography (CT) scanning, magnetic resonance imaging (MRI), cardiac catheterization, linear accelerator, and nuclear medicine.
8. Section 27, waste processing services, will update and address the storage and disposal of medical waste.
9. Section 31, mechanical requirements, will update provisions regarding incinerators, water temperature for clinical use, and medical gas.
10. Section 33, Table 2 will revise pressure relationships and ventilation requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments of Sections 5(3), 11(2)(e), 20(1)(d) and 25(1) and (2) will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable. The remaining proposed amendments will update regulatory requirements to be consistent with current needs for safe and healthful hospitals.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of

Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:021**. Facility specifications; skilled nursing.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 facility specifications; skilled nursing is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:021, Section 4(3)(e) and Section 5(1) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:031**. Facility specifications; personal care homes.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 facility specifications; personal care homes is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:031, Section 4(3)(e) and Section 5(1) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:041**. Operation and services; family care homes.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 operation and services; family care homes is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:041, Section 5(14) to replace "confined to a wheelchair" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:046**. Facility specifications; nursing homes.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 facility specifications; nursing homes is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:046, Section 4(3)(e) and Section 5(2) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:056**. Facility specifications; intermediate care.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 facility specifications; intermediate care is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:056, Section 4(3)(e) and Section 5(2) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:078**. Operations and services; group homes.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 operations and services; group homes is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:078, Section 6(3)(d) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:091.** Facilities specifications, operation and services; community mental health-mental retardation center.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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 from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 facilities specifications, operation and services; community mental health-mental retardation center is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:091, Section 5(1)(b) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:101.** Facility specifications; ambulatory surgical center.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 facility specifications; ambulatory surgical center is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:101, Section 4(3)(e) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:150.** Alternative birth centers.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 alternative birth centers is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:150, Section 5(2)(c)

to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:160**. Chemical dependency treatment services and facility specifications.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 chemical dependency treatment services and facility specifications is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:160, Section 5(2)(c) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:170**. Facility specifications; psychiatric hospitals.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 facility specifications; psychiatric hospitals is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:170, Section 3(3)(f) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:190**. Rehabilitation agency services.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 rehabilitation agency services is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:190, Section 2 to replace the phrase "handicapped and disabled", and Section 5(1) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:230**. Comprehensive physical rehabilitation hospital; facility specifications.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 comprehensive physical rehabilitation hospital; facility specifications is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:230, Section 4(3)(e), Section 5(3), Section 22(1)(d), and Section 27(1) and (2) to replace "physically handicapped", and Section 30(1)(i) to replace "handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:250**. Specialized medical technology services.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 specialized medical technology services is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:250, Section 5(1) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:260.** Special health clinics.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to special health clinics is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:260, Section 5(1) to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:280.** Standards for prescribed pediatric extended care.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 standards for prescribed pediatric extended care is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:280, Section 12(7)

to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:310**. Facility specifications, nursing facilities.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 facility specifications, nursing facilities is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:310, Section 5(3)(e) and Section 6(2) to replace "physically handicapped", and Section 7(2)(b) to replace "wheelchair patients" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Date: March 15, 1995
Cabinet for Human Resources
Office of Inspector General

(1) **902 KAR 20:330**. Psychiatric residential treatment facilities.

(2) The Office of Inspector General 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 April 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 April 28, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4-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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 psychiatric residential treatment facilities is KRS Chapter 216B.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:330, Section 3(2)(d) and Section 4(1)to replace "physically handicapped" with appropriate terminology.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments will modify the terminology that refers to persons with a disability in a manner that could be construed as insensitive, demeaning, or otherwise unacceptable.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be in compliance with the principles of the Americans with Disabilities Act of 1990.

(e) The administrative regulation will be implemented as follows: Licensure requirements will be implemented by the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, in accordance with KRS 216B.042 and 216B.105.

Department for Employment Services

Date: February 23, 1995
Cabinet for Human Resources
Department for Employment Services

(1) **903 KAR 5:290**, Employer contribution rates.

(2) The Cabinet for Human Resources, Department for Employment Services, Division of Unemployment Insurance, intends to amend the administrative regulation cited above.

(3) public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for April 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 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 April 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 Employment Services, 275 East Main Street, 2nd East, 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 employer contribution rates is state statute and by federal regulation.

(b) The administrative regulation that the Department for Employment Services intends to promulgate will amend 903 KAR 5:290, Employer contribution rates. It will set the unemployment insurance tax rate schedule that is in effect for calendar year 1995.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 341.270 requires the Secretary for Human Resources to determine the rate schedule for employers' contributions. The rate schedule in effect for each calendar year shall be determined by the "trust fund balance" as of December 31 of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

(d) The benefit expected from administrative regulation is: This proposed administrative regulation sets forth the applicable employer contribution rates for 1995.

Department for Social Insurance

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Insurance

(1) **904 KAR 2:046**, Adverse action; conditions.

(2) 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 April 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 April 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 AFDC and State Supplementation Program is KRS 205.200(2), 205.245, 45 CFR 205.10(a)(4), 206.10(a)(4), KRS 13A.120 and 194.050.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:046, Adverse action; conditions. It will implement appropriate language as required by the Americans With Disabilities Act (ADA). The amendment makes no changes to existing policy that relate to adverse actions.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment removes any language that is insensitive, demeaning or otherwise unacceptable to persons with a disability in order to meet compliance with the principles of the ADA.

(d) The benefits expected from administrative regulation are: That administrative regulations will meet ADA compliance requirements specific to language that is used.

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Insurance

(1) **904 KAR 2:050**, Time and manner of payments.

(2) Cabinet of 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 April 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 April 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 AFDC and State Supplementation Program is KRS 205.220(1), 45 CFR 255.3 and KRS 194.050.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:050, Time and manner of payments. It will implement appropriate language as required by the Americans With Disabilities Act (ADA). The amendment makes no changes to existing policy that relate to time and manner of payments.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment removes any language that is insensitive, demeaning or otherwise unacceptable to persons with a disability in order to meet compliance with the principles of the ADA.

(d) The benefits expected from administrative regulation are: That administrative regulations will meet the ADA compliance requirements specific to language that is used.

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Insurance

(1) **904 KAR 2:060**, Delegation of power for oaths and affirmations.

(2) Cabinet of 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 April 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 April 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 AFDC and State Supplementation Program is KRS 205.170, 45 CFR 205.32, KRS 194.050 and 13A.120.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:060, Delegation of power for oaths and affirmations. It will implement appropriate language as required by the Americans With Disabilities Act (ADA). The amendment makes no changes to existing policy that relate to delegation of power for oaths and affirmations.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment removes any language that is insensitive, demeaning or otherwise unacceptable to persons with a disability in order to meet compliance with the principles of the ADA.

(d) The benefits expected from administrative regulation are: That administrative regulations will meet the ADA compliance requirements specific to language that is used.

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Insurance

(1) **904 KAR 3:020**, Financial requirements.

(2) Cabinet of 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 April 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 April 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, 7 CFR 273.1, 273.2, 273.8, 273.9, 273.10, 273.11, PL 103-66 and 7 CFR 271.4.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:020, Financial

requirements. It will implement appropriate language as required by the Americans With Disabilities Act (ADA). The amendment makes no changes to existing policy that relate to financial requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment removes any language that is insensitive, demeaning or otherwise unacceptable to persons with a disability in order to meet compliance with the principles of the ADA.

(d) The benefits expected from administrative regulation are: That administrative regulations will meet the ADA compliance requirements specific to language that is used.

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 3:050**, Claims and additional provisions.

(2) 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 April 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 April 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 13A.120.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:050, Claims and additional provisions. The specified regulation is amended to:

(1) Implement provisions of the food stamp recipient claims collection test of federal employee salary offset procedures; and

(2) Clarify, without change, existing food stamp policy regarding the procedures for establishing and collecting food stamp claims. Forms necessary to establish and collect claims are incorporated by reference.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments to this administrative regulation are necessary to:

1. Comply with the provisions of 59 FR 44400-05; and
2. Incorporate the claims and notice of federal employee salary offset forms by reference, in accordance with KRS Chapter 13A.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will implement provisions of the food stamp recipient claims collection test of federal employee salary offset procedures. The provision is designed to increase the collection of overissued food stamp benefits. In addition, we are clarifying, without change, existing food stamp policy regarding the procedures for establishing and collecting food stamp claims. Forms necessary to establish and collect claims are incorporated by reference.

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 3:060**, Administrative disqualification hearings and penalties.

(2) 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 April 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 April 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 13A.120.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:060, Claims and additional provisions. The specified regulation is amended to:

(1) Incorporate new federal requirements which mandate that the cabinet implement increased penalties for the improper use of food stamps for drugs and firearms; and

(2) Delete duplicate information contained in 904 KAR 3:050 and to make appropriate references.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendments to this administrative regulation are necessary to: comply with the provisions of 59 FR 44343-47.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will:

(1) Incorporate new federal requirements which mandate that the cabinet implement increased penalties for the improper use of food stamps for drugs and firearms; and

(2) Delete duplicate information contained in 904 KAR 3:050 and to make appropriate references.

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Insurance

(1) **904 KAR 3:070**, Fair hearings.

(2) Cabinet of 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 April 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 April 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, 7 CFR 273.15, 271.4, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), and FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82).

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:070, Fair hearings. It will incorporate the amended form PAFS-78.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment includes the latest version of the form used to request a fair hearing.

(d) The benefits expected from administrative regulation are: That hearings may be requested for any type of action related to the programs administered by the agency.

Department for Social Services
Division of Family Services

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Services
Division of Family Services

(1) **905 KAR 1:350**, Family preparation section.

(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 April 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 April 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 that shall enable the Department for Social Services to determine the applicant's capacity for adoptive or foster parenthood is KRS 199.472 and 605.150.

(b) The administrative regulation that the Department for Social Services intends to amend is 905 KAR 1:350, Family preparation section. The amendments will implement the new group preparation and selection process which is a joint assessment process used by the Department for Social Services and the applicant for the purpose of determining whether the family can serve children the department has available for placement and how they may best meet these children's needs. There are specific revisions in the number of hours of training and in forms incorporated by reference. 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 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. In compliance with KRS 199.472 and 605.150 the Department for Social Services has promulgated administrative regulations that shall enable staff to determine the applicant's capacity for adoptive or foster parenthood pursuant to KRS 605.090 through 605.130.

(d) The benefits expected from this administrative regulation are: The expected benefits of this administrative regulation are the implementation of the new group preparation and selection process which is a joint assessment process used by the Department for Social Services and the applicant for the purpose of determining whether the family can serve children the department has available for placement and how they may best meet these children's needs. This assessment will assist the department in determining the applicant's capacity for adoptive or foster parenthood. Additionally, some of the incorporated forms have been revised to expedite the approval of applicants for adoptive or foster parents. Other revisions may clarify the existing administration regulations.

Division of Program Management

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Services
Division of Program Management

(1) **905 KAR 6:070**, Program state plan for CSBG.

(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 April 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 April 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 Community Services Block Grant Program is KRS 194.050, 273.448 and 42 USC 9901-9912.

(b) The administrative regulation the Department for Social Services intends to promulgate will amend 905 KAR 6:070, Program State Plan for CSBG to adopt by reference the plan for utilization of CSBG funds for federal fiscal year 1995. The plan is designed to provide the structure for the administration of the CSBG program.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 9901-9912 "Community Services Block Grant Program", enacted August 13, 1981, authorizes grants to states to ameliorate the causes of poverty in communities within the state. KRS 194.050 authorizes the Cabinet for Human Resources to adopt administrative regulations necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and to cooperate with federal agencies for the proper administration of the cabinet and its programs. KRS 273.448 authorizes the Department for Social Services as the state administering agency to establish standards in accordance with applicable state and federal laws and regulations by which administrative, fiscal and programmatic effectiveness of the program shall be measured. The department shall monitor and evaluate community action agencies' compliance with the established standards set forth in this administrative regulation.

(d) The benefits expected from this administrative regulation are: This administrative regulation implements provisions of KRS 273.448 which requires the establishment of standards in accordance with applicable state and federal laws and regulations by which the department can monitor and evaluate administrative, fiscal and programmatic effectiveness of the CSBG programs. This program state plan provides the structure for the administration of the CSBG program with community action agencies providing a wide range of services funded with local, state, private and federal resources. The goal of the proposed plan is to enable low income clients of all ages, in both rural and urban areas, to attain the skills, knowledge and motivation to become self-efficient.

Department for Social Services
Division of Family Services

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Services
Division of Family Services

(1) **905 KAR 7:250**, Kentucky educational collaborative for state agency children.

(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 April 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 April 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 regarding the governance, curriculum, and other topics necessary to educate state agency children is KRS 605.110(e).

(b) The administrative regulation that the Department for Social Services intends to promulgate, with the recommendation of the State Board of Elementary and Secondary Education, will establish the Kentucky Educational Collaborative for State Agency Children to enhance educational services to state agency children through the development of a dynamic education and social services partnership directed at meeting the needs of state agency children as governed by KRS 158.135. The administrative regulation will establish the guidelines for the governance, finance and operation of the collaborative.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 605.110 requires that children maintained in a facility or program operated by the Cabinet for Human Resources shall so far as possible maintain a common school education. This

administrative regulation sets forth policies for complying with KRS 158.135 and 605.110 in Department for Social Services (DSS), Division of Youth Services (DYS), residential, day treatment programs, and group homes; other programs operated, contracted, or financed through the Cabinet for Human Resources serving committed youth, private child caring agencies serving committed children and children, other than foster children, who are in placements financed through the Cabinet for Human Resources.

(d) The benefits expected from this administrative regulation are: This administrative regulation will establish the Kentucky Educational Collaborative for State Agency Children to enhance educational services to state agency children through the development of a dynamic education and social services partnership directed at meeting the needs of children of school age committed to or in the custody of the Cabinet for Human Resources and placed in a cabinet operated or contracted institution, facility or day treatment program, or placed or financed through the cabinet in a private facility pursuant to a child care agreement other than those for foster care, and those children of school age in home and community based services provided as an alternative to intermediate care facility services. This administrative regulation relates to the provision of educational services to state agency children and will not implement KRS 605.115 relating to establishing policies that will assure local school districts providing a funding match shall have direct access to medicaid funding as medicaid providers for the provision of health-related services to eligible children with disabilities under the age of twenty-one.

Division of Aging Services

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Services
Division of Aging Services

(1) **905 KAR 8:160**, Adult Day and Alzheimer's Respite Program.

(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 April 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 April 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 adult day and alzheimer's respite programs is KRS 194.050, 205.204(2) and 42 USC 3001 et seq.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 8:160, Adult Day and Alzheimer's Respite Program.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the standards of operation for the Adult Day and Alzheimer's Respite Program in Kentucky.

(d) The benefits expected from the administrative regulation are: This regulation will amend terminology in Section 6(7)(b) to comply with the principles of the Americans with Disabilities Act of 1990.

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Services
Division of Aging Services

(1) **905 KAR 8:190**, Nutrition program for the elderly.

(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 April 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 April 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 nutrition programs for the elderly is KRS 194.050, 205.204(2) and 42 USC 3001 et seq.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 8:190, nutrition program for the elderly. It will clarify that the furnishing of meals to volunteers and individuals with disabilities who reside at home and accompany older individuals to a meal site is at the option of the nutrition service provider. Other revisions include: requiring nutrition education at least twice a year to program participants; revising the meal planning section to clarify the existing regulation and for compliance with the ADA.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the standards of operation for the nutrition program as implemented by the area agencies on aging.

(d) The benefits expected from the administrative regulation are: These proposed amendments will clarify the existing regulation relating to provider responsibility relating to the provision of meals to volunteers and individuals with disabilities, provision of nutrition education and meal planning. This regulation also will amend terminology to comply with the principles of the Americans with Disabilities Act of 1990.

Date: March 15, 1995
Cabinet for Human Resources
Department for Social Services
Division of Aging Services

(1) **905 KAR 8:220**, General administration, program for the elderly.

(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 April 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 April 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 general administration, program for the elderly, is KRS 194.050, 205.204(2) and 42 USC 3001 et seq.

(b) The administrative regulation the Department for Social Services intends to promulgate will amend 905 KAR 8:220, general administration, program for the elderly. It will clarify the existing regulation as it relates to fire safety provisions for centers and nutrition site operation.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194.050 authorizes the Cabinet for Human Resources to adopt regulations as necessary to implement programs mandated by federal law, or

to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Human Resources as the state agency to administer the Older Americans Act in Kentucky. The function of this regulation is to set forth the policies and procedures governing the general administration of the Older Americans Act in Kentucky.

(d) The benefits expected from the administrative regulation are: The proposed amendments will include provisions for fire safety including standards for sites with and without portable fire extinguishers and training of staff and testing of equipment. Additionally, this regulation will amend terminology in Section 8(1)(f)2 to comply with the principles of the Americans with Disability Act of 1990.

Department of Medicaid Services

Date: March 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 April 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 April 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. The definition of Type III hospitals (state designated teaching hospitals) is being revised effective February 20, 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. The definition of Type III hospitals (state designated teaching hospitals) is being revised effective February 20, 1995.

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

(1) **907 KAR 1:160**, Home and community-based 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 April 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 April 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 home and community based services are KRS 194.050, 42 CFR 440.180, 42 USC 1396a, b, d, n.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:160, to reflect the amendments to the community based services waiver for the aged and disabled individual which was approved by the Health Care Finance Administration; to incorporate by reference the revised Home and Community Based Waiver Manual; and to repeal the administrative regulation 907 KAR 1:432, Incorporation by reference of the home and community based waiver services manual. The approved waiver amendments were to change the reassessment process from every 6 months to at least every 12 months; to combine the assessment and reassessment forms into one form; and add information regarding advanced directives.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the Medicaid coverage provisions for home and community based services.

(d) The benefits expected from administrative regulation are: To amend the administrative regulation and the incorporated by reference Home and Community Based (HCB) Waiver Manual in accordance with KRS Chapter 13A to reflect the approved amendments to the waiver so participating Medicaid providers can be furnished the most up-to-date provider manual.

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

(1) **907 KAR 1:505**, Psychiatric residential treatment facility 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 April 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 April 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 psychiatric residential treatment facility (PRTF) services is KRS 194.050, 42 CFR 440.160, 447.325 and 42 USC 1396a-d.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:505, to incorporate by reference a revised Psychiatric Residential Treatment Facility (PRTF) Manual. The PRTF manual is being revised to correspond with the changes being made to the companion payment regulation 907 KAR 1:510 effective July 1, 1995 which shows an increase in reimbursement to PRTF's from $225 to $230 per diem and the rate shall then be adjusted upward each biennium by 2.22 percent.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth provisions relating to coverage of psychiatric residential treatment facility services by the Medicaid Program.

(d) The benefits expected from administrative regulation are: To revise the incorporated by reference PRTF provider manual to correspond with the companion payment administrative regulation (907 KAR 1:510) changes effective July 1, 1995.

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

(1) **907 KAR 1:510**, Payments for psychiatric residential treatment facility 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 April 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 April 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 payments for psychiatric residential treatment facility services is KRS 194.050, 42 CFR 440.160, and 42 USC 1396a-d.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:510, effective July 1, 1995, to increase the reimbursement rate from $225 to $230 per diem and the rate shall then be adjusted upward each biennium by 2.22 percent.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth provisions relating to payments for psychiatric residential treatment facility services by the Medicaid Program.

(d) The benefits expected from administrative regulation are: With the implementation of this amendment additional psychiatric residential treatment facility beds will be made available for Medicaid recipients with an accompanying reduction in psychiatric hospital utilization by Medicaid recipients.

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

(1) **907 KAR 1:685**, Commission for Children with Special Health Care Needs 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 April 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 April 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 covered services which are provided by the Commission for Children with Special Health Care Needs are KRS 205.520, 42 CFR 431.615, 440.40(b), 440.130, 440.250(c), 441 Subpart B, 441 Subpart F and 441.20.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate, 907 KAR 1:685, will identify Medicaid covered services which are provided by the Commission for Children with Special Health Care Needs.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth coverage of services provided by the Commission for Children with Special Health Care Needs.

(d) The benefits expected from the administrative regulation are: The creation of an administrative regulation will clarify agency policy.

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

(1) **907 KAR 1:690**, Medicaid Payments for Commission for Children with Special Health Care Needs.

(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 April 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 April 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 payment for Medicaid covered services which are provided by the Commission for Children with Special Health Care Needs are KRS 205.520, 42 CFR 431.615, 440.40(b), 440.130, 440.250(c), 441 Subpart B, 441 Subpart F and 441.20.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate, 907 KAR 1:690, will identify Medicaid covered services which are provided by the Commission for Children with Special Health Care Needs.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth payment of Medicaid services provided by the Commission for Children with Special Health Care Needs.

(d) The benefits expected from the administrative regulation are: The creation of an administrative regulation will clarify agency policy.

REPRINT

COMPILER'S NOTE: Due to a typographical error in Section 5(4) on the part of the Petroleum Storage Tank Environmental Assurance Fund Commission, this administrative regulation is being reprinted.

415 KAR 1:070. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the commission to establish a petroleum storage tank account within the fund which may be used to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.

Section 1. Applicability. (1)(a) This administrative regulation does not apply to releases from petroleum storage tanks removed from the ground before January 1, 1974;

(b) Costs of corrective action for releases from petroleum storage tanks removed from the ground after January 1, 1974 or tanks closed in place may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) Costs of corrective action for releases from petroleum storage tanks currently existing and temporarily closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 of this administrative regulation are met; and

(d) Costs of corrective action for releases from petroleum storage tanks currently in use which are not eligible for participation in the financial responsibility account may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility the owner or operator shall have:

(a) Registered the tanks at the facility with the cabinet as required by KRS 224.60-105;

(b) Paid all annual fees as required by KRS 224.60-150;

(c) Submitted the Eligibility and State Financial Responsibility Affidavit form to the commission to certify eligibility for the petroleum storage tank account;

(d) Filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirement of 401 KAR 42:020.

(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action and shall not be made for costs to upgrade the facility.

Section 2. Eligibility Requirements for the Classes of Tanks Described in Section 1(1)(b) of this Administrative Regulation. An owner or operator of a facility of the class described in Section 1(1)(b) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)(c) of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)(c) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(a)1. A release of petroleum is detected at the facility after April 9, 1990; or

2. Corrective action costs associated with a release are incurred after April 9, 1990;

(b) The release has been reported to the cabinet;

(c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed in writing by the cabinet; and

(d) The owner or operator has filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change in service to comply with the requirements of 401 KAR 42:020.

(2) If the owner or operator elects to upgrade the facility, the petroleum storage tanks at the facility shall not be used to store a regulated substance until the upgrade is completed.

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)(d) of this Administrative Regulation. An owner or operator of a facility currently in use which is not in compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070, and 401 KAR 42:090 may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of petroleum is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet;

(3) The owner or operator is taking the actions necessary to bring the facility into compliance with applicable administrative regulations of the cabinet; and

(4) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:060 and 42:070, or as directed in writing by the cabinet.

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1) The entry level for participation in the petroleum storage tank account for an owner or operator of five (5) or less tanks shall be established and maintained at $1,000 per occurrence for taking corrective action.

(2) The entry level for participation in the petroleum storage tank account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at $5,000 per occurrence for taking corrective action.

(3) The entry level for participation in the petroleum storage tank account for an owner or operator of eleven (11) or more tanks shall be established and maintained at $25,000 per occurrence for taking corrective action.

(4) An owner or operator of a facility of the class described in Section 1(1)**(b) and (c)** [~~(c and (d)~~] of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is taken permanently out of service.

(5) The entry level payments contained in subsections (1), (2) and (3) of this section shall apply retroactively to any facility involved in

corrective action that had not been issued a closure letter by the cabinet prior to July 14, 1994.

Section 6. Ineligibility. (1)(a) The commission may determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for which a claim is made.

(b) If the commission makes a determination that a facility should be ineligible for participation in the petroleum storage tank account the commission shall disallow twenty (20) percent of the total allowable reimbursable remediation costs if the owner or operator willfully or recklessly violated the requirements of 401 KAR Chapter 42.

(c) The owner or operator of a facility placed in the petroleum storage tank account by the commission pursuant to 415 KAR 1:060, Section 10(2) shall be denied eligibility for reimbursement as delineated in 415 KAR 1:060, Section 10(2)(a), (b), and (c).

(2) An owner, operator with an assistance agreement may be determined ineligible to receive payment from the petroleum storage tank account if the owner or operator has submitted false or inaccurate information to the commission, and shall be required to repay any monies falsely received.

(3) The commission shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the commission; or

(b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment from the commission by fraud or intentional misrepresentation.

Section 7. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 8. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 9. Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

(2) Costs of corrective action incurred at a facility on or after April 9, 1990 may be payable from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

(3) Costs incurred at a facility for sight investigation or corrective action at the written direction of the cabinet. (19 Ky.R. 1476; Am. 1795; eff. 3-12-93; 21 Ky.R. 1174; 1503; eff. 1-9-95.)

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
302 KAR 20:075E

This emergency administrative regulation provides sellers of cattle a mechanism for identifying cattle as "farm fresh". In order to continue the State Board of Agriculture and the department's efforts to protect health and disease control initiatives for cattle, this administrative regulation must immediately go into effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on February 14, 1995.

BRERETON C. JONES, Governor
ED LOGSDON, Commissioner

GENERAL GOVERNMENT CABINET
Kentucky Department of Agriculture

302 KAR 20:075E. Identification of "farm fresh" cattle.

RELATES TO: KRS Chapter 257
STATUTORY AUTHORITY: KRS 257.030
EFFECTIVE: February 22, 1995
NECESSITY AND FUNCTION: To provide sellers of cattle a mechanism for identifying cattle as "farm fresh".

Section 1. (1) When delivered for sale at any stockyard, all cattle under eighteen (18) months of age that have not been delivered or sold at any stockyard within the previous twenty-seven (27) days may be identified as "farm fresh" cattle. The seller, or his agent, is responsible for making this designation to the stockyard upon delivery by use of a form approved by the Kentucky State Board of Agriculture. Animals delivered more than twenty-four (24) hours before any sale shall not be considered farm fresh. There shall be reasonable notice provided to potential buyers by the stockyard at the time of sale that the cattle are "farm fresh."

(2) Any person found by the department to have misrepresented cattle as farm fresh may be subject to said penalties set forth in KRS 257.990.

ED LOGSDON, Chairman
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: February 22, 1995 at 9 a.m.

STATEMENT OF EMERGENCY
500 KAR 11:001E

The purpose of this emergency administrative regulation is to establish definitions for terms found in 500 KAR Chapter 11 not otherwise defined in KRS 238.505. It is necessary to promulgate this emergency administrative regulation, because HB 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. The administrative regulations currently effective in 500 KAR Chapter 11 require definitions for certain terms not otherwise defined by statute and definitions are needed before an ordinary administrative regulation can be promulgated. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:001E. Definitions.

RELATES TO: KRS 238.500 to 238.995
STATUTORY AUTHORITY: KRS 238.515(9)
EFFECTIVE: March 15, 1995
NECESSITY AND FUNCTION: KRS Chapter 238 authorizes the Division of Charitable Gaming to adopt administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 500 KAR Chapter 11.

Section 1. Definitions. The following definitions describe terms used in administrative regulations found in 500 KAR Chapter 11. Terms not defined below shall have the meanings given to them by KRS 238.505 or if not so defined, the meanings attributed by common use.

(1) "Card" means a card or paper containing five (5) rows of five (5) squares with twenty-four (24) preprinted numbers and a free center space, and the letters, "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(2) "Cash" means currency, coinage or a negotiable instrument.

(3) "Covered" means daubed or smeared with indelible ink.

(4) "Deal" means each separate game or series of charity game tickets with the same serial number.

(5) "Designator" means an item used in the number selection process, such as a ping pong ball, upon which bingo letters and numbers are imprinted.

(6) "Disposable paper bingo card" means a nonreusable, paper bingo card bearing preprinted numbers and assembled in multiple card sheet, single sheet, pad or packet form.

(7) "Face" means a card or paper containing five (5) rows of five (5) squares with twenty-four (24) preprinted numbers and a free center space, and the letters "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(8) "Flare" means a piece of paper or cardboard or similar material which bears printed information relating to the number of prizes to be awarded and the specific prize amounts in a particular deal of charity game tickets.

(9) "Perm number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

(10) "Random number generator" means a device that may be operated manually or automatically and is used to randomly select bingo numbers.

(11) "Selection device" means a device that may be operated manually or automatically and is used to randomly select bingo numbers.

(12) "Serial number" means a unique number printed by the manufacturer on each card in a set.

(13) "Series number" means the number of unique card faces contained in a set.

(14) "Set" means the cards contained within each series.

(15) "Verification book" means a book compiled by the manufacturer of bingo cards that lists the unique pattern of numbers on each card by perm number and is used to verify the authenticity of a

winning card.

(16) "Year" means calendar year.

PAUL F. ISAACS, Secretary
APPROVED BY AGENCY: March 14, 1995
FILED WITH LRC: March 15, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed manufacturers (currently 47), licensed distributors (currently 51), and licensed charitable organizations (currently 636).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(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: Charity Gaming Regulation Account (KRS 238.570(2)).

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is inapplicable.

STATEMENT OF EMERGENCY
500 KAR 11:030E

The purpose of this emergency administrative regulation is to establish standards for the construction and distribution of charity game tickets and for the conduct of play of charity game tickets. It is necessary to promulgate this emergency administrative regulation, because HB 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. Licensed charitable organizations throughout the Commonwealth of Kentucky sell charity game tickets and standards are required before an ordinary administrative regulation can be promulgated. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:030E. Charity game ticket standards.

RELATES TO: KRS 238.545
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(2)
EFFECTIVE: March 15, 1995
NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish certain standards for charity game ticket construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of charity game tickets and for the conduct of play of charity game tickets.

Section 1. Charity Game Ticket Construction Standards. The following standards shall govern the construction of charity game tickets:

(1) Charity game tickets shall be constructed so that concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the charity game ticket using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, constructed, glued and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each charity game ticket in a deal shall bear the same serial number. Only one (1) serial number shall be used in a deal. No serial number used in a deal of charity game tickets shall be repeated by the same manufacturer within a three (3) year period.

(4) The numbers or symbols on a charity game ticket shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol(s) to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) The window slits on each charity game ticket shall be perforated on the three (3) cut sides. All charity game tickets shall be glued on all four (4) edges and between each window. The glue shall be of sufficient strength and type to prevent the undetectable separation or delamination of the charity game ticket.

(6) The following information shall be printed on a charity game ticket measuring one and one-fourth (1 1/4) inches by two and one-fourth (2 1/4) inches or larger, unopened:

(a) The name of the manufacturer, or its distinctive logo;

(b) The name of the game;

(c) The manufacturer's form number;

(d) The price per individual charity game ticket;

(e) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket; and

(f) The number of winners and respective winning numbers or symbols, and specific prize amounts.

(7) The following information shall be printed on a charity game ticket measuring less than one and one-fourth (1 1/4) inches by two and one-fourth (2 1/4) inches, unopened:

(a) The name of the manufacturer, or its distinctive logo;

(b) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket; and

(c) The number of winners and respective winning numbers or symbols, and specific prize amounts.

Section 2. Randomization. The following randomization standards shall govern the manufacture of charity game tickets:

(1) The deal shall be assembled so that winning tickets are placed throughout the deal.

(2) The deal shall be assembled and packaged in a manner which prevents isolation of winning tickets from variations in size, the appearance of a cut edge, or other markings of the tickets.

(3) The deal shall be assembled and packaged in a manner which prevents detection of winning tickets through variations in printing graphics or colors.

(4) Winning charity game tickets shall be distributed and mixed among all other charity game tickets in a deal so as to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning charity game ticket may be determined.

(5) The charity game ticket deal shall be assembled so that no placement of winning or losing charity game tickets exists that allows the possibility of prize manipulation.

Section 3. Packaging and Distribution. (1) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal which includes a warning to the purchaser that the deal may have been tampered with if the package, box or other container was received by the purchaser with the seal broken.

(2) A deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container.

(3) Manufacturers shall print directions on the outside of the package or container of charity game tickets, in bold print of sufficient size to be easily read, requiring that the charity game tickets, upon removal from the packaging container, be thoroughly mixed prior to sale to the public.

(4) Manufacturers shall seal or tape, with a tamper-resistant seal or tape, every entry point into a container of charity game tickets prior to shipment. The seal or tape shall be constructed to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

Section 4. Flares. Every deal of charity game tickets shall contain a flare that has printed or affixed on it the following information:

(1) The name of the game;

(2) The manufacturer's name or logo;

(3) The manufacturer's form number;

(4) The ticket count;

(5) The prize structure that includes the number of winning charity game tickets by denomination, with their respective winning symbols or number combinations;

(6) The cost per play;

(7) A provision to allow "cross out" or "check off" of at least the top three (3) winning tiers; and

(8) The game serial number.

Section 5. Tracking by Manufacturer. Every manufacturer of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 6. Tracking by Distributor. Every distributor of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 7. Defects. (1) Whenever defects in charity game ticket packaging or construction are discovered by a charitable gaming organization, or a suborganization or subordinate organization thereof, volunteer, distributor, manufacturer, or any other individual or entity associated with charitable gaming, the division shall be notified. Upon discovery of a defect, sufficient steps shall be taken to preserve the evidence of the defect, including but not limited to, retaining the original packaging for the defective product, retaining order forms and receipts, and securing any other information that will enable the division to discern the nature and extent of the defect.

(2) Upon receiving a report of a defect in packaging or in the construction of a charity game ticket, the division shall take immediate steps to notify the manufacturer of the defect.

(3) Should the division determine that the defect affects game security or otherwise threatens public confidence in the game, the division may, with respect to deals for use still located within the Commonwealth of Kentucky, require the manufacturer to:

(a) Recall the deals affected that have not been sold at retail to licensed organizations;

(b) Recall the deals, by form number, from the distributor level; or

(c) Issue a total recall of all affected deals.

(4) In choosing and directing a particular recall from subsection (3) of this section, the division shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;

(b) Whether the defect affected game security;

(c) Whether the defect affected game playability;

(d) Whether the defect was limited to a specific number of deals of a particular form number;

(e) Whether the defect was easily detectable by a charitable gaming organization, or a suborganization or subordinate organization thereof;

(f) Whether the defect was easily detectable by members of the general public;

(g) Whether the defect threatens public confidence in the game; or

(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

Section 9. Rules of Play. The following rules of play govern the conduct and sale of charity game tickets:

(1) The flare described in Section 4 of this administrative regulation shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.

(2) Charity game tickets shall not be sold to the public from the original packing box or container.

(3) If a deal of charity game tickets is received in two (2) or more boxes, packages or containers, all of the charity game tickets from the boxes, packages or containers shall be placed out for play at the same time.

(4) No charity game tickets which have been marked, defaced, altered, tampered with or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing shall be placed into play.

(5) Charity game tickets within a deal shall be thoroughly mixed prior to being offered for sale to the public.

(6) All winning charity game tickets shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(7) All winning and unsold charity game tickets and seal cards shall be retained by the licensed charitable organization for a period

of twelve (12) months to allow auditing by the staff of the division.

(8) All used nonwinning charity game tickets and seal cards, and all winning and unsold charity game tickets and seal cards which have been retained for the required twelve (12) month period, shall be disposed of by burning, shredding, destroying or defacing in some manner to prevent reuse of any charity game ticket or seal card or any portion thereof.

(9) An authorized representative of the charitable organization conducting the event at which charity game tickets are sold shall verify the serial numbers or winner protections for all winning charity game tickets redeemed.

(10) If a deal is not played to completion and there remain unsold winning charity game tickets, the licensed charitable organization conducting the gaming shall sell the remaining charity game tickets on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (7) of this section. If no winning charity game tickets remain in the deal, the licensed charitable organization shall consider the deal closed or completed and shall retain unsold charity game tickets as required in subsection (7) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the deal to complete play of the deal.

(11) If a seal card from a deal or deals is not played to completion, the licensed charitable organization shall sell the remaining charity game tickets necessary to play out the seal card on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (1)(g) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the seal card from the deal to complete play of the deal or the seal card.

(12) A charity game ticket shall not be sold for a price which exceeds the single ticket price indicated on the charity game ticket or accompanying flare.

(13) No individual involved in any capacity in the conduct of a charitable gaming event at which charity game tickets are sold shall be permitted to purchase or play charitable game tickets.

PAUL F. ISAACS, Secretary
APPROVED BY AGENCY: March 14, 1995
FILED WITH LRC: March 15, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed manufacturers (currently 47), licensed distributors (currently 51), and licensed charitable organizations (currently 636).

(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 known.

(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 known.

(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 administrative regulation imposes on manufacturers and distributors doing business in the Commonwealth of Kentucky the duty of retaining records of sales for a specific time period, and this requirement will call for extensive paperwork or recordkeeping functions on these entities. It should be noted, however, that manufacturers (all of whom are currently located out of state) have similar (if not more stringent) recordkeeping requirements imposed on them by other states with which they do business. The construction standards and actual distributing rules imposed by the administrative regulation are also fairly accepted industry-wide practices. The charitable organizations will be required to maintain certain records and to retain certain winning and unsold charity game tickets. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the rules of play established by the administrative regulation.

2. Second and subsequent years: The administrative regulation imposes on manufacturers and distributors doing business in the Commonwealth of Kentucky the duty of retaining records of sales for a specific time period, and this requirement will call for extensive paperwork or recordkeeping functions on these entities. It should be noted, however, that manufacturers (all of whom are currently located out of state) have similar (if not more stringent) recordkeeping requirements imposed on them by other states with which they do business. The construction standards and actual distributing rules imposed by the administrative regulation are also fairly accepted industry-wide practices. The charitable organizations will be required to maintain certain records and to retain certain winning and unsold charity game tickets. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the rules of play established by the administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None known.

2. Continuing costs or savings: None known.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: To the extent charitable organizations or other entities report defects in charity game tickets, the Division of Charitable Gaming will have reporting requirements associated with informing the distributors and/or manufacturers of the reports and the Division of Charitable Gaming will necessarily have tracking 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: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

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

(b) Kentucky: None known.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Division of Charitable Gaming, in devising these charity game ticket standards, relied heavily on the standards adopted by "NAGRA" (North American Gaming Regulators Association). These standards have been adopted, in whole or in part, by many other states and Canadian provinces which have laws authorizing charitable gaming.

(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 administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable, as statutory authority does not provide for tiering.

STATEMENT OF EMERGENCY
500 KAR 11:040E

The purpose of this emergency administrative regulation is to establish standards for the construction and distribution of bingo supplies and equipment and for the conduct of play of bingo. It is necessary to promulgate this emergency administrative regulation, because HB 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. Licensed charitable organizations throughout the Commonwealth of Kentucky currently conduct bingo and standards are required before an ordinary administrative regulation can be promulgated. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:040E. Bingo standards.

RELATES TO: KRS 238.545
STATUTORY AUTHORITY: KRS 238.515(2), (9)
EFFECTIVE: March 15, 1995
NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish standards for the construction and distribution of bingo materials and equipment and rules of play. This administrative regulation establishes standards for the construction and distribution of bingo materials and equipment and for the conduct of play of bingo.

Section 1. Bingo Material Construction Standards. The following standards shall govern the construction of bingo materials:

(1) The paper used shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through a packet thereby obscuring other numbers or cards.

(2) Perm numbers shall be displayed in the center square of the card.

(3) Numbers printed on the card shall be randomly assigned.

(4) Each set of cards shall be comprised of cards bearing the same serial number. No serial number shall be repeated by the same manufacturer within one (1) year.

(5) Cards assembled in books or packets shall be glued. Staples shall not be used.

(6) A label shall be placed on the exterior of each carton of bingo cards listing the following information:

(a) Type of product;
(b) Number of booklets or loose sheets;
(c) Series numbers;
(d) Serial number;
(e) Number of cases;
(f) Cut of paper; and
(g) Color of paper.

(7) Bingo card manufacturers shall include a packing slip inside each carton of bingo cards listing the following information:

(a) Type of product;
(b) Number of booklets or loose sheets;
(c) Series numbers;
(d) Serial number;
(e) Number of cases;
(f) Cut of paper; and
(g) Color of paper.

Section 2. Bingo Equipment Approval. (1) All bingo equipment, including but not limited to, designators, receptacles, display boards, random number generators and other selection devices, and other bingo equipment used in the selection and display of game numbers, shall be made available for inspection or testing by the division at any time.

(2) Equipment referenced in subsection (1) of this section shall assure randomness and be free of any defects when used in a bingo game.

Section 3. Tracking by Manufacturer. Every manufacturer of bingo materials shall maintain records sufficient to track the bingo materials from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 4. Tracking by Distributor. Every distributor of bingo materials shall maintain records sufficient to track the bingo materials from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 5. Rules of Play. The following rules of play govern the conduct of bingo games:

(1) All individuals involved in any way in the conduct of bingo shall be trained in the proper conduct of the game and the control of funds.

(2) No bingo card shall be sold after the first number is called for that card's game.

(3) Except for Braille cards intended for use by blind players, bingo cards shall not be reserved by the charitable organization for any player(s). Legally blind players may use their own cards if the licensee does not make Braille cards available.

(4) No two (2) sets of disposable paper bingo cards shall be sold for use in the same game if they have the same series number.

(5) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be awarded.

(6) Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game. This information shall also be posted in a conspicuous place or listed in an occasion program.

(7) All selection equipment shall be free of defects.

(8) After selecting each number, the bingo caller shall:

(a) Clearly announce the letter and number;

(b) Display the ball or other device used as a designator in a manner allowing the players to see the number;

(c) Place the designator in a receptacle so as to prevent it from being placed back in the selection pool; and

(d) Enter each letter and number called on a flash board or similar device for player viewing.

(9) Neither a player nor the charitable organization may separate cards on one (1) sheet or from a packet.

(10) Players shall not play more bingo cards than paid for or received in free plays.

(11) All players shall be physically present at the location where the bingo game is held to play the game or to claim a prize offered.

(12) Winners are determined when the pre-announced pattern of squares is covered by a player on a card. The winning card shall contain the last number called.

(13) It is the player's responsibility to notify the game operator or

caller that the player has a winning bingo combination as announced. If a player fails to stop the game before the next number is called, the bingo shall not be honored. When a player declares a winning card, the following steps are required for winner verification:

(a) The game shall be stopped before the next number is selected. If the next number has already been selected, it shall be secured to ensure that if the declared "bingo" is invalid, the game may continue.

(a) A volunteer for the charitable organization shall take the winning card from the player, holding it in front of a neutral player, and call back the set serial number, perm number, color of the card and the winning combination.

(c) The caller shall verify the call back to ensure the set serial number and card color is in play and to verify the number combination by looking up the perm number in a verification book.

(14) If more than one (1) winner is declared in a bingo game, the following method of awarding prizes shall apply:

(a) Cash prizes shall be divided equally among the verified winners.

(b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall be awarded.

(15) No individual involved in any capacity in the conduct of a charitable gaming event at which bingo is played shall be permitted to purchase bingo cards or play bingo.

Section 6. Winner Verification and Registration. (1) Manufacturers of bingo cards shall provide a verification book or other system for all cards manufactured.

(2) The charitable organization conducting a bingo game shall obtain and use a valid verification book or system that corresponds with the set of cards in play. A valid verification system is one that is certified by the manufacturer to be a true and accurate illustration of the number patterns printed on the faces in a set of cards.

Section 7. Prizes. (1) The values of bingo cards or free packets or charity game tickets awarded players, whether awarded as door or bingo prizes, as birthday prizes, or for any other reason, shall be included in the prize limit of $5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1).

(2) Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(3) Carryover, cumulative or progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if the prizes are initiated and awarded on the same date. Any prizes awarded on carryover, cumulative or progressive games shall be included in the prize limit of $5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1) regardless of the method by which a player is eligible to participate. The licensed charitable organization shall be responsible for ensuring that the value of any carryover, cumulative or progressive game prize, when added to the values of the other prizes of the same date or occasion, does not exceed the $5,000 limit. Prizes carried forward from one bingo occasion or date to another are prohibited.

(4) Any method by which players pay money to be eligible for a drawing, whether or not connected to a bingo game or conditioned on winning a bingo game, shall be considered a raffle.

(5) Each licensed charitable organization awarding door prizes shall maintain accurate records of the following:

(a) The name and address of the individual to whom the door prize was awarded;

(b) The date on which the door prize was awarded;

(c) A description of the door prize;

(d) The fair market value of the door prize; and

(e) An acknowledgment by the individual to whom the door prize was awarded verifying the information in this subsection and verifying receipt of the door prize.

Section 8. Twenty-four (24) Hour Period Defined. "Twenty-four (24) hour period", for purposes of the bingo prize limits and the frequency and duration of the conduct of bingo established in KRS 238.545(1), means a twenty-four (24) hour period commencing at 12:01 a.m. and ending at 12 midnight.

PAUL F. ISAACS, Secretary
APPROVED BY AGENCY: March 14, 1995
FILED WITH LRC: March 15, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed manufacturers (currently 47), licensed distributors (currently 51), and licensed charitable organizations (currently 636).

(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 known.

(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 known.

(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 administrative regulation imposes on manufacturers and distributors doing business in the Commonwealth of Kentucky the duty of retaining records of sales for a specific time period, and this requirement will call for extensive paperwork or recordkeeping functions on these entities. It should be noted, however, that manufacturers (all of whom are currently located out-of-state) have similar (if not more stringent) recordkeeping requirements imposed on them by other states and Canadian provinces with which they do business. The construction standards and actual distributing rules imposed by the regulation are also fairly accepted industry-wide practices. The charitable organizations will be required to maintain certain records and to retain certain records of prizes awarded, including door prizes. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the rules of play established by the administrative regulation.

2. Second and subsequent years: The administrative regulation imposes on manufacturers and distributors doing business in the Commonwealth of Kentucky the duty of retaining records of sales for a specific time period, and this requirement will call for extensive paperwork or recordkeeping functions on these entities. It should be noted, however, that manufacturers (all of whom are currently located out of state) have similar (if not more stringent) recordkeeping requirements imposed on them by other states and Canadian provinces with which they do business. The construction standards and actual distributing rules imposed by the regulation are also fairly accepted industry-wide practices. The charitable organizations will be required to maintain certain records and to retain certain records of prizes awarded, including door prizes. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the rules of play established by the administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None known.

2. Continuing costs or savings: None known.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: The Division of Charitable Gaming will necessarily have tracking functions in

reviewing records and reporting on chains of distribution.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

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

(b) Kentucky: None known.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Division of Charitable Gaming, in devising these bingo standards, relied heavily on the standards adopted by "NAGRA" (North American Gaming Regulators Association). These standards have been adopted, in whole or in part, by many other states and Canadian provinces which have laws authorizing charitable gaming.

(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? Tiering is not applicable, as statutory authority does not provide for tiering.

STATEMENT OF EMERGENCY
500 KAR 11:050E

The purpose of this emergency administrative regulation is to establish standards for the construction and distribution of raffle materials and for the conduct of raffles. It is necessary to promulgate this emergency administrative regulation, because HB 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. Raffles are currently being conducted by various licensed or exempt charitable organizations and raffle standards are required before an ordinary administrative regulation is effective. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:050E. Raffle standards.

RELATES TO: KRS 238.545
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.550(1)
EFFECTIVE: February 28, 1995
NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish standards for the construction and distribution of raffle materials and for the conduct of raffles. This administrative regulation establishes standards for the construction and distribution of raffle materials and for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section and shall be consecutively numbered commencing with the number "1" through the maximum number of tickets to be sold. The detachable section of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall contain the purchaser's name, complete address, and telephone number.

(2) The following information shall be printed on each ticket:

(a) The date and time of the drawing;

(b) The location of the drawing;

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization's license number or exemption number, if any;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over fifty (50) dollars.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall have paid for in full or otherwise become the owner, without lien or interest of others, of all the real or personal property before the drawing at which the winners of the prizes are to be determined.

(2) All raffle prizes shall be awarded on the date indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed for good cause. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) No person shall be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections of all tickets sold prior to the drawing.

(4) Before drawing, the charitable organization shall place each stub or other detachable section of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

(5) No tickets shall be sold after the first drawing.

Section 4. Raffle Ticket Sales Records. (1) For a period of thirty-six (36) months following the date of the raffle drawing, the charitable organization shall maintain accurate records as to the raffle tickets sold. The records shall include:

(a) The name of the charitable organization;

(b) The total number of tickets printed;

(c) The sale price per ticket;

(d) The date of the raffle drawing;

(e) The names and telephone numbers of all persons to whom tickets were given to be sold;

(f) The number of tickets given to each person for sale;

(g) The consecutive numbers of the tickets given to each person for sale;

(h) The number of tickets each person sold;

(i) The number of tickets each person returned unsold;

(j) The actual cash received from each person to whom tickets were given to be sold; and

(k) The cash long or short reported by each person to whom tickets were given to be sold.

(2) Other raffle records. The charitable organization shall retain the winning ticket stubs and an accounting of the total amount of proceeds received from the raffle and the expenses of the raffle for a period of thirty-six (36) months following the date of the raffle drawing.

PAUL F. ISAACS, Secretary
APPROVED BY AGENCY: February 27, 1995

FILED WITH LRC: February 28, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed charitable organizations (estimate approximately 800 during start-up phase) and those charitable organizations qualifying for exemption from licensure requirements under KRS 238.535 (estimate as many as 500 per 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, 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 charitable organization conducting raffles will incur cost of printing of detachable raffle tickets.

(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 charitable organizations conducting raffles will be required to maintain records on the raffles conducted. Each charitable organization shall devise its own recordkeeping mechanisms (computer-generated, manual, etc.).

2. Second and subsequent years: All charitable organizations conducting raffles will be required to maintain records on the raffles conducted. Each charitable organization shall devise its own recordkeeping mechanisms (computer-generated, manual, etc.).

(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: N/A

(b) Reporting and paperwork requirements: It is anticipated that records of charitable organizations conducting raffles will be made available to the Division of Charitable Gaming's personnel, if requested in the course of an inspection or investigation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: 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 administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? All charitable organizations conducting raffles in the Commonwealth of Kentucky will conduct raffles in the same manner and all raffle participants will have the same basic information at the time a raffle ticket is purchased. Tiering was not applicable in this instance as administrative regulation applies equally to all charitable organizations.

STATEMENT OF EMERGENCY
500 KAR 11:060E

The purpose of this emergency administrative regulation is to prohibit tipping and other forms of gratuitous conduct prohibited by KRS 238.540(4). It is necessary to promulgate this emergency administrative regulation, because HB 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. Charitable gaming is to be conducted and administered by charitable organizations utilizing volunteer personnel, who are not to be compensated. Tipping and other forms of gratuitous conduct are compensation prohibited under KRS 238.540(4). This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:060E. Tipping prohibited.

RELATES TO: KRS 238.540(4)
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.540(4)
EFFECTIVE: February 28, 1995
NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming. Charitable gaming is to be conducted and administered only by the charitable organization using volunteer personnel. No person engaged in the conduct and administration of charitable gaming is to receive compensation of any kind. This administrative regulation prohibits tips or other gratuitous conduct.

Section 1. Tipping Prohibited. (1) Tipping or other gratuitous conduct constitutes compensation prohibited by KRS 238.540(4). The charitable organization conducting gaming shall take appropriate measures to inform the public that its volunteers are unable to accept tips or other forms of gratuitous conduct.

(2) Except as provided in subsection (3) of this section, a charitable organization shall not pay remuneration or expenses other than those authorized in KRS 238.550(4), or award or otherwise provide any sort of benefits, to or for or on behalf of any person engaged as a volunteer in the conduct of charitable gaming sponsored by the charitable organization.

(3) A charitable organization shall be permitted to provide volunteer workers the following:

(a) Food or drink of a value not to exceed ten (10) dollars in one (1) day to be consumed on the premises where charitable gaming occurs; and

(b) Any article of clothing worn by the volunteers on the premises where charitable gaming occurs which identifies the volunteer worker as a volunteer for the charitable organization.

PAUL F. ISAACS, Secretary
APPROVED BY AGENCY: February 27, 1995
FILED WITH LRC: February 28, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed charitable organizations (approximately 800) and those charitable organizations qualifying for exemption from licensure requirements under KRS 238.535 (estimate as many as 500 per 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, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No costs or savings.

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No costs or savings.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to Question #11. The statute prohibits consideration of alternatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Administrative regulation applies equally to all charitable organizations conducting gaming.

STATEMENT OF EMERGENCY
500 KAR 11:070E

The purpose of this emergency administrative regulation is to establish a reporting method by which a charitable organization may notify the Division of Charitable Gaming that it is exempt under KRS 238.535. It is necessary to promulgate this emergency administrative regulation, because HB 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. Under KRS 238.525(1), the licensing requirements became effective September 16, 1994. No method had been devised for notification by a charitable organization of exemption from licensure, and exemption notification forms are necessary before an ordinary administrative regulation can be promulgated. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:070E. Exempt activities.

RELATES TO: KRS 238.535
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.535(1), (2)
NECESSITY AND FUNCTION: Any organization exempt from licensure requirements under KRS 238.535(1) is to notify the Division of Charitable Gaming in writing of its intent to engage in exempt charitable gaming. This administrative regulation establishes a reporting method and form by which exemption notices are to be filed with and processed by the division.

Section 1. Any charitable organization which otherwise fully qualifies for licensure but claims to be exempt from licensure under KRS 238.535(1) shall submit to the division, thirty (30) days before the exempt charitable gaming activities first occur, a satisfactorily completed form entitled "Notice of Exemption From Charitable Gaming Licensure Requirement", Form CG-T-Exempt. The division shall acknowledge receipt of Form CG-T-Exempt and the charitable organization may present such acknowledgment to licensed distributors or other vendors or entities requiring verification of licensure status as proof that the charitable organization has notified the division of its exempt status. Provided the gaming activities of the charitable organization remain exempt, no additional exemption notice shall be filed with the division. The charitable organization shall promptly notify the division of any changes in information contained on the Form CG-T-Exempt.

Section 2. Incorporation By Reference. (1) Form CG-T-Exempt, "Notice of Exemption From Charitable Gaming Licensure Requirement, (3/95)", is hereby incorporated by reference.

(2) This form may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Frankfort, Kentucky 40601-2690, 8 a.m. to 4:30 p.m., Monday through Friday.

PAUL F. ISAACS, Secretary
APPROVED BY AGENCY: March 14, 1995
FILED WITH LRC: March 15, 1995

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All charitable organizations conducting exempt charitable gaming will be affected. It is estimated that approximately 500 charitable organizations may be affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No license fee will be required of the charitable organization, and no statutory fee (of one-half of one percent of all gross gaming receipts) will be required.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon

competition) for the:

1. First year following implementation: Form CG-T-Exempt will be filed by all exempt charitable organizations the first year and acknowledgments will be sent out by the Division of Charitable Gaming.

2. Second and subsequent years: Only charitable organizations who have not previously filed a Form CG-T-Exempt will do so in subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the Form CG-T-Exempt will be the only significant cost incurred by the Division of Charitable Gaming.

2. Continuing costs or savings: The printing of the Form CG-T-Exempt will be the only significant cost incurred by the Division of Charitable Gaming.

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the administrative regulation's paperwork requirements are created by the Form CG-T-Exempt themselves, it is anticipated that the division will establish methods by which to acknowledge receipt of the exemption notice and to keep records (based on geographic location, type(s) of organization(s), type(s) 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: KRS 238.535 directs that notice be given the Division of Charitable Gaming of exempt activities. The use of a form is most convenient for both the charitable organization and the Division of Charitable Gaming.

(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 administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. KRS 238.535(2) did not provide for tiering. Tiering is inapplicable.

STATEMENT OF EMERGENCY
500 KAR 11:080E

The purpose of this emergency administrative regulation is to define "special charity fundraising event", and to establish prize amounts, duration and frequency of such events. It is necessary to promulgate this emergency administrative regulation, because HB 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. KRS 238.505(9) authorizes a "special charity fundraising event", but requirements for licensure must be further defined by the Division of Charitable Gaming. This administrative regulation establishes the conditions under which "special charity fundraising event" licenses will be issued. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:080E. Special charity fundraising event.

RELATES TO: KRS 238.505(9)

STATUTORY AUTHORITY: KRS 238.505(9), 238.515(2), (9), 238.535

EFFECTIVE: February 28, 1995

NECESSITY AND FUNCTION: KRS 238.505(9) authorizes a special charity fundraising event, such as a fair, carnival, bazaar or festival, that is of short, definite and limited duration and requires licensure by the Division of Charitable Gaming. This administrative regulation further defines a special charity fundraising event, and establishes prize amounts, duration and frequency.

Section 1. A limited license shall be issued to a licensed charitable organization for the special charity fundraising event described in KRS 238.505(9) if:

(1) The licensed charitable organization submits the satisfactorily completed CG-T-Schedule A referred to in 500 KAR 11:010 and 500 KAR 11:015;

(2) The total cash or fair market value of all prizes to be awarded at the event on games of chance does not exceed $5,000; and

(3) The event does not last longer than five (5) continuous days.

Section 2. No more than two (2) special charity fundraising event licenses will be issued to any one (1) licensed charitable organization in one (1) year.

Section 3. There shall be no separate fee charged by the Division of Charitable Gaming for the issuance of a special charity fundraising event license.

Section 4. If special limited games are conducted at a special charity fundraising event, the licensed charitable organization shall also be licensed to hold the special limited games in accordance with KRS 238.545(4).

Section 5. If bingo is held at a special charity fundraising event licensed under Section 1 of this administrative regulation, the provisions of KRS 238.545(1) limiting the frequency and duration of bingo are inapplicable.

Section 6. A special charity fundraising event licensed under Section 1 of this administrative regulation may be held at a location other than the location specified on the charitable organization's license to conduct charitable gaming issued under KRS 238.535.

PAUL F. ISAACS, Secretary
APPROVED BY AGENCY: February 27, 1995
FILED WITH LRC: February 28, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: Licensed charitable organizations which conduct fairs, bazaars, festivals or carnivals (estimate 500 in number).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

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: Costs of producing and issuing greater number of special events licenses resulting in increased staff time. Increased staff time to review CG-T-Schedule A applications.

2. Continuing costs or savings: Costs of producing and issuing greater number of special events licenses resulting from increased staff time. Increased staff time to review CG-T-Schedule A applications.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Quarterly reports are required of all licensees. A separate license will be issued for each such event.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative prize amount ceilings and lengths of duration were considered, but it was believed that the administrative regulation arrived at fairly and adequately addresses the organizations conducting these "special charity fundraising events."

(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: 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 administrative regulation will apply equally to all licensed charitable organizations. Tiering would not be applicable to this situation.

STATEMENT OF EMERGENCY
500 KAR 11:090E

The purpose of this emergency administrative regulation is to exclude from the definition of "special limited charitable games" found in KRS 238.505 certain wheel games involving low cost participation and noncash prizes of small value, in order to avoid the necessity of a special limited charitable game license. It is necessary to promulgate this emergency administrative regulation, because HB 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. Wheel games as described above are currently being utilized as a form of fundraising by various charitable organizations, and this administrative regulation is required before an ordinary administrative regulation is effective. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:090E. Special limited charitable games.

RELATES TO: KRS 238.505(18)

STATUTORY AUTHORITY: KRS 238.505(18), 238.515(2), (9), 238.535(1)

EFFECTIVE: February 28, 1995

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to approve games to be included among those classified as "special limited charitable games", to establish circumstances under which such games will be conducted, and to establish reporting requirements.

Section 1. In addition to those special limited charitable games described in KRS 238.505(18), all games of chance shall be considered special limited charitable games requiring licensure by the Division of Charitable Gaming where:

(1) The winner is selected on the spinning of a wheel;

(2) The cost of each chance to win exceeds two (2) dollars; and

(3) The fair market value of any one (1) noncash prize awarded the winner exceeds $100.

PAUL F. ISAACS, Secretary
APPROVED BY AGENCY: February 27, 1995
FILED WITH LRC: February 28, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed charitable organizations conducting wheel games (estimate as many as 500 organizations per 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, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

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: It is anticipated that more exemption notices under KRS 238.535(1) will be filed with the Division of Charitable Gaming for staff review, but considerably less staff time will be utilized because fewer license applications will be filed, thus resulting in some savings.

2. Continuing costs or savings: It is anticipated that more

exemption notices under KRS 238.535(1) will be filed with the Division of Charitable Gaming for staff review, but considerably less staff time will be utilized because fewer license applications will be filed, thus resulting in some savings.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Quarterly reports are required of all licensees. There will be less licenses required to be issued as a result of this administrative regulation and, therefore, less quarterly reports to process. More exemption notices will be filed with the Division of Charitable Gaming, however.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

(a) Geographical area in which administrative regulation will be implemented: There will be no separate "special limited charitable game" license fee required for qualifying wheel games and, in instances where an exemption is available, no general charitable gaming (organization) license will be required, thus resulting in greater savings to the charitable organizations.

(b) Kentucky: There will be no separate "special limited charitable game" license fee required for qualifying wheel games and, in instances where an exemption is available, no general charitable gaming (organization) license will be required, thus resulting in greater savings to the charitable organizations.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative prize amounts and cost levels of participation were considered, but it was believed that the administrative regulation arrived at fairly and adequately addresses the organizations conducting noncash prize wheel games.

(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 administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All charitable organizations will be treated the same.

STATEMENT OF EMERGENCY
500 KAR 11:100E

The purpose of this emergency administrative regulation is to prohibit employees of the Division of Charitable Gaming from participating as players in charitable games. This emergency administrative regulation seeks to remove any potential conflict of interest or appearance of impropriety relative to the Division of Charitable Gaming's licensure and enforcement powers and duties. It is necessary to promulgate this emergency administrative regulation, because HB 206 was enacted as emergency legislation and took effect on the date the Governor signed the bill into law, March 16, 1994. The prohibition against any employee participating as a player in charitable games is required before an ordinary administrative regulation is effective due to the fact that the Division of Charitable Gaming has hired personnel who are carrying out the functions of the division. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
PAUL F. ISAACS, Secretary

JUSTICE CABINET
Division of Charitable Gaming

500 KAR 11:100E. Division employees prohibited from playing charitable games.

RELATES TO: KRS 238.510(4)
STATUTORY AUTHORITY: KRS 238.515(2), (9)
EFFECTIVE: February 28, 1995
NECESSITY AND FUNCTION: KRS Chapter 238 authorizes the Division of Charitable Gaming to adopt administrative regulations necessary to carry out the provisions of the chapter. This administrative regulation prohibits employees of the Division of Charitable Gaming, which is charged with licensure and enforcement of charitable gaming in the Commonwealth of Kentucky, from playing any charitable games, and in so doing, removes any potential conflict of interest or appearance of impropriety.

Section 1. No division employee, during his or her term of employment, shall play any charitable game authorized in KRS Chapter 238 unless the employee's participation in the game is authorized in advance by the division director as a necessary function of the employee's job duties.

PAUL F. ISAACS, Secretary
APPROVED BY AGENCY: February 27, 1995
FILED WITH LRC: February 28, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All staff of the Division of Charitable Gaming (currently 16).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

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: N/A

(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: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

(a) Geographical area in which administrative regulation will be

implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternatives which would satisfactorily avoid any potential conflict of interest.

(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 administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applicable in this instance as administrative regulation applies equally to all Division of Charitable Gaming staff.

STATEMENT OF EMERGENCY
902 KAR 14:070E

This emergency administrative regulation, 902 KAR 14:070E, is necessary in order to comply with KRS 211.952, as passed during the last regular session of the General Assembly, which mandated that a single lead agency be established under the supervision and direction of the Commissioner of Health to license, inspect and regulate ambulance service providers. This emergency administrative regulation is needed to act in a timely manner to transfer this authority from the cabinet's Office of Inspector General, Division of Licensing and Regulation to the lead agency within the Department for Health Services and to meet the legislative requirements of KRS 216B.042 and 216B.105 mandating the cabinet to regulate health facilities and service. The previous emergency administrative regulation expired because of an inadvertent failure to meet the filing deadline required for the Statement of Consideration. 902 KAR 14:070E meets the requirements for filing an emergency administrative regulation governing the same subject matter in that it is not identical to 902 KAR 14:030E because:

1. This emergency administrative regulation includes nonemergency health transportation (NEHT) services under the licensing umbrella of ambulance service providers.

2. The title of this emergency administrative regulation has been changed to reflect that this emergency administrative regulation governs ambulance service providers as defined in KRS 211.952, including NEHT services, and that other types of services, such as tiered response prehospital emergency medical services may be licensed under this emergency administrative regulation.

3. This emergency administrative regulation does not include a definition for ambulance service since ambulance provider is defined in KRS 211.950.

4. This emergency administrative regulation includes a definition for:

(a) An air ambulance service;

(b) A ground ambulance service:

(c) A nonemergency health transportation service; and

(d) A tiered response emergency medical service.

A Notice of Intent to promulgate an ordinary administrative regulation to replace this emergency administrative regulation will be filed with the Regulations Compiler on or before February 15, 1995.

BRERETON C. JONES, Governor

MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Health Systems Development

902 KAR 14:070E. License procedures and fee schedule for ambulance service providers and tiered response emergency medical services.

RELATES TO: KRS 211.950 to 211.958, 216B.010 to 216B.130, 216B.990

STATUTORY AUTHORITY: KRS 211.952, 216B.042, 216B.105, 216B.410

EFFECTIVE: March 1, 1995

NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. KRS 211.952 transfers the responsibility for licensing ambulance providers defined in KRS 211.950 from the Division of Licensing and Regulation in the Office of Inspector General, to a single lead agency within the Department for Health Services, Cabinet for Human Resources. This administrative regulation provides requirements for obtaining and maintaining a license to operate an ambulance service and establishes the fee schedule for a license.

Section 1. Definitions. (1) "Air ambulance service" means an ambulance provider licensed by the licensing agency to provide basic, advanced, or specialized levels of emergency and nonemergency medical care, and emergency and nonemergency air transportation as outlined in 902 KAR 14:040 and 14:050 to persons who may require immediate stabilization and continued medical treatment during transit or upon arrival at the patient's destination.

(2) "Ground ambulance service" means an ambulance provider licensed by the licensing agency to provide basic, advanced, or specialized levels of emergency and nonemergency medical care, and emergency and nonemergency ground transportation as outlined in 902 KAR 14:040 to persons who may require immediate stabilization and continued medical treatment during transit or upon arrival at the patient's destination.

(3) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

(4) "Nonemergency health transportation (NEHT) service" means a nonemergency ambulance provider licensed by the licensing agency to provide health care transportation on a scheduled basis to individuals whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during transit or emergency medical treatment upon arrival at the final destination.

(5) "Tiered response emergency medical (TREM) services means a specialized nontransportation ALS emergency medical service which shares staff and equipment with a licensed ALS or BLS ambulance service provider through a written agreement for operation within an identified service area.

Section 2. Licenses. (1) A person shall not establish a ground ambulance service, air ambulance service, a NEHT service, or a TREM service in Kentucky without first obtaining a certificate of need from the Kentucky Health Policy Board (referred to as the board) and shall not operate an air ambulance service, ground ambulance service, NEHT service, or TREMS without first obtaining a license, Form EMS-2, from the licensing agency. Form EMS-2 (12/94) is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

(2) The license shall be conspicuously posted in a public area of

the facility.

(3) A "Kentucky Application for Ambulance Service Licensing", Form EMS-1 (10/94) or an "Application for License to Operate a Nonemergency Health Transportation Service," Form EMS-1N (12-94), incorporated by reference, shall be filed with the Department for Health Services, Emergency Medical Services Branch, 275 East Main Street, Frankfort, Kentucky 40621. Form EMS-1, "Kentucky Application for Ambulance Service Licensing" and Form EMS-1N "Application for License to Operate a Nonemergency Health Transportation Service" may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

(4) An applicant for a license shall, as a condition precedent to licensing or relicensing, be in compliance with applicable administrative regulations under 902 KAR Chapter 14.

(5) The licensee shall, as a condition of licensing or relicensing, be in compliance with the reporting requirements established by the licensing agency and the board, unless otherwise exempted by statute.

(6) The licensee shall maintain and submit completed reports required by:

(a) KRS 216B.410;

(b) 902 KAR 14:040, Section 3(2)(a);

(c) 902 KAR 14:050, Section 6;

(d) The licensing agency; or

(e) The Kentucky Health Policy Board.

(7) A license shall expire one (1) year following the date of issuance, unless otherwise provided in the license certificate.

(8) A license may be renewed upon payment of the prescribed fee and compliance with the provisions for licensing.

(9) A license to operate shall be issued only for the person, service area, and premises, including the number of ambulances named in the application, and shall not be transferable.

(10) A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of an existing facility, capital stock, or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another.

(11) Upon filing a new application for a license due to change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee shall be charged for the remainder of the licensure period.

(12) There shall be full disclosure to the licensing agency of the changes, such as name and address, of:

(a) A person having direct or indirect ownership interest of ten (10) percent or more in the service;

(b) Officers and directors of the corporation, if a service is organized as a corporation; and

(c) Partners, if a service is organized as a partnership.

Section 3. Licensing Inspections. (1) Compliance with licensing administrative regulations shall be ascertained through on-site inspections of the service by representatives of the licensing agency.

(2) Representatives of the licensing agency shall have access to the service during hours the service operates.

(3) A regulatory violation identified during the inspections shall be transmitted in writing to the service by the licensing agency.

(4)(a) The service shall submit a written plan for the elimination or correction of the regulatory violations to the licensing agency within ten (10) days of receipt of the statement of violation.

(b) The plan shall specify the date by which the violation shall be corrected.

(5)(a) Following a review of the plan, the licensing agency shall notify the service in writing of the acceptability of the plan. The licensing agency may conduct a follow-up visit to verify compliance with the plan.

(b) If a portion or all of the plan is unacceptable, the licensing agency shall specify the reasons for the unacceptability. The service shall modify or amend the plan and resubmit it to the licensing agency within ten (10) days after receipt of notice that the plan is unacceptable.

(6) Unannounced inspections may be conducted on complaint allegations, follow-up visits, and annual relicensure inspections. Inspections shall be conducted utilizing the procedures outlined under this section.

(7) The licensing agency may deny, revoke, modify, or suspend the license of a service which:

(a) Fails to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;

(b) Fails to eliminate or correct regulatory violations;

(c) Falsifies an application for licensing;

(d) Tampers with, alters, or changes a license issued by the licensing agency;

(e) Attempts to obtain or obtains a license by fraud, forgery, deception, misrepresentation, or subterfuge;

(f) Provides false or misleading advertising;

(g) Falsifies, or causes to be falsified, a patient record or ambulance run report;

(h) Provides an unauthorized level of service;

(i) Has a history of staff violations which have resulted in disciplinary action under 902 KAR 13:020 and 13:090;

(j) Fails to provide the licensing agency or its representative with true information upon request, or obstructs an investigation regarding alleged or confirmed violations of administrative regulations promulgated under:

1. KRS 211.950 to 211.958;
2. KRS 211.960 to 211.968;
3. KRS 211.990(5); and
4. KRS Chapter 216B; or

(k) Issues a check for a license on an invalid account or an account with insufficient funds to pay the fee specified in Section 4 of this administrative regulation.

(8) The licensing agency may issue an order directing a service to immediately cease and desist operating an ambulance, or providing services, if the licensing agency has reasonable cause to believe that an ambulance or service is unsafe or is being operated in an unsafe or unprofessional manner that is likely to cause harm or create imminent danger to the health and safety of the public.

(9) The licensing agency or the board may deny, revoke, modify, or suspend the license of an ambulance provider if an owner of the service is convicted of obtaining a fee by:

(a) Fraud or misrepresentation; or

(b) Submitting fraudulent or misleading claims for reimbursement to individuals, private insurance companies, or governmental agencies;

(10) The licensing agency shall provide notice and an opportunity for an administrative hearing related to denial, revocation, modification, or suspension of a license in accordance with:

(a) Policies and administrative regulations of the board; and

(b) Provisions of KRS 216B.105.

Section 4. Fee Schedule. The annual licensing fee, including renewals, shall be as follows:

(1) Nonvolunteer ambulance service providers: eighty (80) dollars;

(2) Volunteer ambulance service providers in which a majority of the ambulance runs are made by ambulance attendants who do not receive compensation for their work: twenty (20) dollars.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: March 1, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 300 ground and air ambulance services and approximately 10 nonemergency health transportation services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this administrative regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet. Regulatory activities currently carried out by the Office of the Inspector General will be transferred to the Department for Health Services as required by HB 646 as passed by the 1994 General Assembly. The department will assign necessary staff and funding within previously approved levels.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for ground and air ambulances and nonemergency health care transportation services. This fee income and general funds will be utilized for implementation of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will not create any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation complies with the specific legislative mandate passed by the 1994 General Assembly to establish a single lead EMS agency. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services in Kentucky by reducing or eliminating overlapping authority for EMS personnel and providers at the state level.

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

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed administrative regulation if in conflict:

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

(10) Any additional information or comments: The purpose of this administrative regulation is to comply with HB 646 passed by the 1994 General Assembly.

(11) TIERING: Is tiering applied? Tiering was not applied because the administrative regulation applies to all ambulance providers in Kentucky regardless of location; all Kentuckians, whether urban or rural, are equally served and protected by this administrative regulation of ambulance providers.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or part or division of that local government if it operates an ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect a local government in any additional manner. It merely moves the licensing and regulatory functions for emergency medical services from the Office of the Inspector General to the Department of Health Services.

STATEMENT OF EMERGENCY
902 KAR 14:080E

This emergency administrative regulation, 902 KAR 14:080E, is necessary in order to comply with KRS 211.952, as passed during the last regular session of the General Assembly, which mandated that a single lead agency be established under the supervision and direction of the Commissioner of Health to license, inspect and regulate ambulance service providers. This emergency administrative regulation is needed to act in a timely manner to transfer authority for regulating ground ambulance service providers from the cabinet's Office of Inspector General, Division of Licensing and Regulation to the lead agency within the Department for Health Services and to meet the legislative requirements of KRS 216B.042 and 216B.105 mandating the cabinet to regulate health facilities and service. The previous emergency administrative regulation expired because of an inadvertent failure to meet the filing deadline required for the Statement of Consideration. 902 KAR 14:080E meets the requirements for filing an emergency administrative regulation governing the same subject matter in that it is not identical to 902 KAR 14:040E because:

1. 902 KAR 14:040E excluded nonemergency heath transportation vehicles in the definition of an ambulance. This emergency administrative regulation does not attempt to define ambulance since the definition of an ambulance is included in KRS 211.950.

2. The title of this emergency administrative regulation has been changed to reflect that this emergency administrative regulation governs ground ambulance service providers services as defined in 902 KAR 14:070E.

3. This emergency administrative regulation does not include a definition for ambulance service provider since ambulance provider is

defined in KRS 211.950.

4. This emergency administrative regulation clarifies that "specialized emergency care service" means a basic life support or advanced life support service.

5. Section 4(8)(a) of this emergency administrative regulation is changed to require an affiliation agreement for receipt and coordination of emergency calls, but does not require a dispatch center to dispatch calls for private ambulance service providers.

A Notice of Intent to promulgate an ordinary administrative regulation to replace this emergency administrative regulation will be filed with the Regulations Compiler on or before February 15, 1995.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Health Systems Development

902 KAR 14:080E. Ground ambulance service providers.

RELATES TO: KRS 211.950 to 211.958, 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 211.952, 216B.042

EFFECTIVE: March 1, 1995

NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. KRS 211.952 transferred the responsibility for licensing, regulating and inspecting ambulance service providers defined in KRS 211.950 from the Division of Licensing and Regulation in the Office of Inspector General to a single lead agency within the Department for Health Services, Cabinet for Human Resources ambulance providers. This administrative regulation provides for the minimum licensing requirements for ground ambulance service providers.

Section 1. Definitions (1) "Advanced life support (ALS) service" means an ambulance provider which:

(a) Is licensed by the cabinet; and

(b) Meets the requirements established in Section 8 of this administrative regulation.

(2) "Back-up ambulance" means an ambulance which complies with the requirements of Section 4(3) of this administrative regulation, and is licensed by the cabinet to provide emergency care and transportation if:

(a) One (1) of the licensed primary ambulances is not in service; and

(b) All of the primary ambulances are on runs and extreme circumstances dictate its use.

(3) "Basic life support (BLS) service " means an ambulance provider which meets the requirements established in Sections 2 through 7 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency or scheduled basis to persons who:

(a) Are sick, injured, or otherwise incapacitated; and

(b) May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well-being.

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association; the National Safety Council; or the basic life support for the professional rescuer course of the American Red Cross, which shall include as a minimum one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(6) "Dispatch center" means the location where:

(a) Incoming calls are initially received requesting an ambulance; and

(b) Contact is made with the ambulance service provider for direction to the patient scene.

(7) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 13:100.

(8) "Emergency medical technician-first responder" means a person certified pursuant to 902 KAR 13:110.

(9) "Employee" means ambulance service personnel who may be paid or volunteer, full time or part time.

(10) "Ground ambulance service" is defined in 902 KAR 14:030.

(11) "Interfacility care" means emergency or nonemergency health care provided to a patient during ambulance transportation between two (2) health care facilities.

(12) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

(13) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 9:136.

(14) "Prehospital care" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(15) "Primary ambulance" means a ground ambulance licensed by the cabinet to be utilized by an ambulance service for the provision of:

(a) Emergency care and transportation; or

(b) Nonemergency runs.

(16) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(17) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin (e.g. needles, glass ampules, etc.).

(18) "Specialized emergency care service" means a BLS or ALS ground or air ambulance service that meets the minimal essential requirements as established in Section 9 of this administrative regulation for the provision of mobile emergency medical health care or emergency medical transportation that:

(a) May be unavailable to the general public; and

(b) Has specialized or limited functions which may require exceptional consideration of:

1. Equipment requirements;
2. Personnel requirements; or
3. Hours of operation.

Section 2. Ground Ambulance Licensing Requirements. (1) The following licensing requirements shall apply to ground ambulance service providers:

(a) A person shall not provide, advertise, or profess to engage in the provision of basic, advanced life support, or specialized emergency medical care and transportation that originates in Kentucky without having first obtained a certificate of need and a license from the cabinet.

(b) An ambulance service provider shall comply with local, state, and federal statutes and regulations.

(c) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

1. Identity and location of the base station;

2. Number and location of substations, if any, to be operated by the licensee;

3. Designation of the geographic area to be served by the licensee, allowing for a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area for all emergency calls. The service shall not be precluded from providing mutual aid in circumstances such as disaster assistance or nonemergency transfers from damaged or closed down facilities outside the geographic service area. A service

may respond to facilities outside of its geographic service area for the purposes of providing interfacility care to residents of its service area who are in facilities outside of its service area;

4. Designation of the levels of care which the ambulance service provider shall be authorized to provide (e.g., basic, advanced, specialized, etc.); and

5. Designation of the number of primary and back-up ambulances to be operated by the ambulance service provider.

(d) Upon application for initial licensing or renewal of the license, the applicant or licensee shall specify the number of ambulances to be operated and, as a minimum, provide the licensing agency with the ambulance serial and license tag numbers.

(e) The licensee shall:

1. Notify the licensing agency of any change in the number, type, or use of the ambulances to be operated; and

2. Meet the following requirements:

a. An ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that it meets the requirements of this administrative regulation. If the ambulance represents an expansion of service (e.g., an increase in the number of ambulances), the licensing agency shall verify that a certificate of need has been granted prior to the inspection. The addition of back-up vehicles shall not be considered an expansion of service. An ambulance provider shall be permitted one (1) back-up ambulance for every two (2) or fewer primary ambulances upon notification to the licensing agency; and

b. The licensing agency shall be notified, on the next licensing agency business day, following disposition of any prior approved ambulance operated by the ambulance service (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance service provider).

(f) The licensing agency procedures shall not preclude the ambulance service from utilizing a replacement ambulance on a temporary basis if a previously approved primary or back-up ambulance is out of service for maintenance. The following requirements shall apply:

1. The licensing agency shall be immediately notified (or on the next business day) by phone of the ambulance service's need to operate a temporary replacement unit. Within five (5) days, the ambulance service provider shall send the licensing agency:

a. Written notice of the make, model, license number, and vehicle identification number; and

b. Assurances that the temporary unit will be staffed and equipped in accordance with requirements of this administrative regulation;

2. If the ambulance service plans to utilize the replacement for more than thirty (30) days, the ambulance service shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

3. The licensing agency shall be notified if the replaced unit is back in service.

(g) The licensing agency shall maintain identifying records on all ambulances according to established procedures.

(2) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(3)(f);

(b) A vehicle serving as an ambulance during a major catastrophe;

(c) An ambulance operated by the United States government; and

(d) An ambulance from an out-of-state licensed ambulance service making a nonemergency run originating from a Kentucky facility for the purpose of returning a patient who is not a Kentucky resident to his state of residence.

Section 3. Ground Ambulance Management Requirements. An ambulance service provider shall:

(1) Establish lines of authority to include the designation of an:

(a) Administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(2) Maintain adequate records and reports at the ambulance service base station to be made available for review as deemed necessary by the cabinet, including:

(a) A complete Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report", as required by KRS 216B.410 and guidelines established by the cabinet. Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report", (2/91) is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.

1. The run report form shall be:

a. Maintained in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

b. Completed for all runs that originate in Kentucky.

2. The original, or a microfilm or similar copy procedure, may be utilized.

3. The third copy of the run form, or an electronic equivalent, shall be forwarded to the cabinet within thirty (30) days following the end of the month in which the run occurred.

(b) Personnel files on each ambulance driver and attendant.

1. Personnel files shall be maintained for:

a. A minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

b. Five (5) years following the demise of the employee.

2. Individual ambulance driver and attendant personnel files shall, as a minimum, contain evidence of training, experience, current credentials, and health records to include:

a. Written evidence of a preemployment health assessment having been conducted by a physician; and

b. Health records which at a minimum meet the requirements of KRS 216B.410(3).

(3) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the ambulance service in order to assess their effectiveness. The policies and procedures shall be developed to include the minimum areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Ambulance service mutual aid agreements and agreements with other ambulance service providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, ambulance, equipment, and its staff if called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for quality assessment of patient care and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

1. Ambulance response;

2. Transport limitations; and

3. Patient destination.

Section 4. Ground Ambulance Operating Requirements. (1) An ambulance service provider shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week, basis. This provision may be met through a call system or by a written mutual aid agreement with another licensed ambulance service provider.

(2) If a licensed ambulance service provider also makes nonemergency runs, a minimum of one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the licensee's geographic service area. The licensee may enter into a written mutual aid agreement with another licensed ambulance service provider as a means to meet this requirement if the licensee's only remaining ambulance is called upon for an emergency response within or outside its geographic service area.

(3) Ambulances used in the provision of ground ambulance services shall:

(a) Be designed to provide for the medical care and transportation of patients;

(b) Comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances" (GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification. "Federal Specifications for Ambulances", KKK-A-1822 C (1/90), General Services Administration, Federal Supply Service, Washington, D.C. 20406, is incorporated by reference, and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday; and

(c) Comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(4)(a) The ambulance service provider shall require that a certification decal or sticker be supplied by the manufacturer of newly purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(b) The ambulance service provider shall require, for units that are later modified, the conversion company supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(5) In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

(b) The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

(c) The name of the ambulance service provider shall appear on the exterior surface of the ambulance.

(6)(a) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(b) Documentation shall be maintained by the ambulance service provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(7) The interior of the ambulance and its equipment shall be cleaned after each use, unless precluded by emergency conditions.

(8) A communications system shall be developed, coordinated, and maintained by each ambulance service provider. The communication system shall meet the following requirements:

(a) If a local or regional dispatch center or 911 arrangement exists for all or part of an ambulance service provider's service area, the ambulance service provider shall have a signed affiliation agreement with the dispatch center for receipt or coordination of emergency calls;

(b) Ambulances shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting the ambulance dispatch center and the receiving hospital;

(c) A minimum of one (1) portable communication device per ambulance, on the ambulance radio frequency, shall be provided for personnel if away from the ambulance;

(d) An ambulance service provider shall have an acceptable plan to assure that all calls are routinely answered, and runs are dispatched in an expedient manner in accordance with subsection (1) of this section; and

(e) An ambulance service provider shall provide orientation to all drivers and attendants related to communication protocols that have been established by the service.

(9)(a) In accordance with an ambulance service provider's policies and procedures concerning patient destination and ambulance response and transport limitations, a patient shall be transported to:

1. The hospital emergency room of the patient's choice; or

2. The hospital emergency room chosen by the patient's physician.

(b) Nothing in this subsection shall preclude ambulance service personnel from transporting a patient to:

1. A hospital emergency room other than the one chosen by the patient or his doctor, or an appropriate emergency medical facility chosen by the attendant, if the attendant determines that it shall be necessary in order to save the patient's life or limb.

2. A hospital emergency room or emergency medical facility other than the one chosen by the patient or his physician if the ambulance service is operating under an approved local or regional diversion plan or medical triage protocols developed in conjunction with a consortium of physicians, hospitals, and ambulance service providers, and which has been approved by the Kentucky Emergency Medical Services Council under KRS 211.952.

(c) The Kentucky emergency medical service ambulance run report form (EHS-8A) shall require ambulance service personnel to state:

1. The name and city of the hospital to which the patient was transported; and

2. If the destination was chosen by the:

a. Patient;

b. Patient's physician; or

c. Medical service personnel. If the destination was chosen by the medical service personnel, the attendant shall document the medical necessity on the form's case narrative section.

Section 5. Basic Life Support Personnel. (1) Number of personnel.

(a) An ambulance service shall be staffed to provide, as a minimum, two (2) attendants for each run involving emergency care and transportation or nonemergency runs. One (1) attendant shall remain with the patient at all times during transport;

(b) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation; and

(c) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(2) Qualifications of personnel.

(a) As a minimum, the driver on each emergency care ambulance run shall:

1. Be at least eighteen (18) years of age, with current motor vehicle operator's license;

2. Have at least two (2) years of licensed driver/operator experience;

3. Complete a defensive driving training program that is developed by the ambulance service or in conjunction with another agency or organization.

a. As a minimum, the training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

b. Documentation shall be available to support training in at least the following areas:

(i) Review of KRS 189.910 through 189.950 regarding emergency vehicles.

(ii) Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

(iii) Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

4. Be capable of performing assigned duties.

(b) One (1) ambulance attendant on each prehospital emergency or nonemergency ambulance run shall be certified or licensed for one (1) of the following levels:

1. Emergency medical technician (EMT);
2. Paramedic;
3. Registered nurse; or
4. Physician.

(c) The second ambulance attendant, who may also be the driver, as a minimum shall have certification or licensing for one (1) of the following levels:

1. EMT- first responder;
2. EMT;
3. Paramedic;
4. Registered nurse; or
5. Physician.

(d) Personnel who on occasion may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

1. Serve as drivers only in a three (3) person crew; and
2. Do not render any type of first aid or medical treatment; or
3. Serve as attendants only.

(e) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports shall be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

Section 6. Equipment and Supplies. A ground ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain, in full operational order, the following minimum equipment and supplies:

(1) Suction, ventilation, and blood pressure equipment.

(a) Suction apparatus (fixed and portable);

(b) Hand operated bag mask ventilation unit with adult and child size masks (capable of use with oxygen);

(c) Hand operated infant bag-mask ventilation unit with infant size masks (capable of use with oxygen);

(d) Oropharyngeal airways (adult, child, and infant sizes); and

(e) Adult, obese adult, and pediatric sphygmomanometer cuffs and stethoscope (permanently mounted sphygmomanometer shall not satisfy this requirement).

(2) Oxygen equipment.

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier attachment for use on the fixed oxygen tank;

(d) Adaptor and tubing;

(e) Transparent masks (adult and child); and

(f) Nasal cannulas.

(3) Bandages and tape.

(a) Minimum of two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) Minimum of twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) Minimum of ten (10) soft roller self-adhering bandages, various sizes;

(d) Minimum of four (4) rolls of adhesive tape, minimum of two (2) sizes;

(e) Minimum of ten (10) triangular bandages with large safety pins; and

(f) Minimum of two (2) sterile burn sheets.

(4) Miscellaneous supplies.

(a) Eye protector pads and shields;

(b) Minimum of one (1) roll of aluminum foil, or an occlusive substitute approved by the licensing agency;

(c) Shears for bandages;

(d) Flashlight;

(e) Minimum of one (1) thermometer;

(f) Minimum of two (2) sterile obstetrical kits;

(g) A poison kit to contain at least one (1) bottle of syrup of ipecac (with current expiration date) and one (1) bottle of activated charcoal (if in suspension, shall have current expiration date); and

(h) Sterile irrigation fluids if stocked on the ambulance shall be obtained and maintained according to local, state, and federal statutes and regulations.

(5) Splints and immobilization devices.

(a) Lower extremity traction splint, or equivalent as approved by the cabinet, for use in EMT training;

(b) Splints for arm, leg, and foot (e.g., inflatable air splints, padded boards, or ladder splints);

(c) Immobilization devices.

1. Short spine board or other acceptable extrication device, as determined by the cabinet; and

2. Long spine board with cervical immobilization accessories and an orthopedic "scoop" stretcher or other full-body immobilization device as determined by the cabinet.

(d) Rigid, stiff cervical collars in large, medium, small adult, and pediatric sizes;

(e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.

(6) Safety supplies and equipment.

(a) Minimum of two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;

(b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;

(c) Minimum of one (1) pocket mask with oxygen inlet and isolation valve per patient attendant;

(d) Minimum of one (1) clean scrub gown (or substitute, such as disposable coveralls), disposable mask, and gloves per patient attendant;

(e) Minimum of one (1) particulate filter face mask per patient attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;

(f) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towelettes;

(g) Hospital type disinfectants;

(h) Plastic bags for disposal of waste materials;

(i) Puncture resistant containers for disposal of sharp objects, if sharps are carried;

(j) A minimum of two (2) clean blankets, sheets, and pillowcases;

(k) Tissues and an emesis container.

(7) Additional medical supplies and equipment desired for storage in the ambulance for authorized persons responding to the scene who are licensed or certified to provide medical skills that require training beyond the authorized EMT level may be considered for approval by the cabinet. For eligibility, the ambulance service provider shall include documentation to assure a system of accountability for the storage and handling of the additional medical supplies and equipment. The cabinet shall have the authority to deny approval of the arrangement if it is determined that the arrangement shall not be in the best interest of quality patient medical care or safety of the patient and personnel.

Section 7. Extrication Equipment. (1) For response to trauma scenes, a ground ambulance service shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance:

(a) Minimum of two (2) pairs of eye protection goggles;

(b) Minimum of two (2) pairs of heavy work gloves;

(c) Minimum of two (2) hard hats;

(d) Minimum of one (1) spring loaded window punch or acceptable substitute; and

(e) Minimum of six (6) flares.

(2)(a) For response to trauma scenes, a ground ambulance service provider shall, as a minimum, provide one (1) vehicle, which need not be an ambulance, equipped with the following fully operational, more extensive access and extrication equipment:

1. Minimum of two (2) fifty (50) foot long seven-sixteenths (7/16) or one-half (1/2) inch static or dynamic nylon ropes;

2. Minimum of one (1) pair of pliers, vise grip;

3. Minimum of one (1) wrench, with adjustable, stable open end;

4. Minimum of one (1) set of screw drivers, four (4) sizes, regular blade;

5. Minimum of one (1) set of screw drivers, four (4) sizes, Phillips type;

6. Minimum of one (1) double action tin snip;

7. Minimum of one (1) crow bar with pinch point;

8. Minimum of one (1) hacksaw with twelve (12) blades; and

9. Minimum of one (1) hammer, three (3) pound size;

10. Minimum of one (1) fire axe;

11. Minimum of one (1) wrecking bar;

12. Minimum of one (1) bolt cutter, with a minimum of one and one-fourth (1 1/4) inch jaw opening;

13. Minimum of one (1) four (4) ton porta-power jack and spreader tool;

14. Minimum of one (1) shovel, short handle, with pointed blade;

15. Minimum of one (1) shovel, long handle, with pointed blade;

16. Minimum of one (1) come-along tool; and

17. Minimum of two (2) fire blankets.

(b) Ground ambulance services providers that have written agreements for this provision by rescue squads, fire departments, or an emergency service agency that meets the requirement established by the cabinet, shall not be required to provide the more extensive access and extrication equipment on the ambulance.

Section 8. Advanced Life Support (ALS) Service Providers. An ALS service provider shall meet the requirements of Sections 1 through 7 of this administrative regulation. It shall also meet the following additional requirements:

(1) Evidence shall be on file to verify that the ALS written medical protocols have been reviewed by the Kentucky Board of Medical Licensure.

(2) Advanced life support services shall be provided on a twenty-four (24) hour, seven (7) days a week, basis. This provision may be met through a call system or by a written mutual aid agreement with another licensed ALS service provider.

(3) An ALS service provider shall have an written agreement with a physician medical director who shall:

(a) Assume responsibilities in accordance with 201 KAR 9:171, Sections 2(1) and (2);

(b) Provide medical consultation and supervision of the medical personnel employed by the ALS service provider in accordance with the written agreement between the ambulance service and the medical director;

(c) Grant authority for medical personnel employed by the service to perform skills and procedures according to standing orders delegating a practice of medicine as an extension of the medical director's license;

(d) Exercise authority to limit, suspend, or terminate approval of ALS service provider medical personnel to perform skills and procedures under the license of the physician medical director;

(e) Approve or transfer authority for a supervising physician to temporarily act on behalf of the absent ALS service provider medical director;

(f) Participate in the continuing education of the ALS service provider medical personnel;

(g) Participate in the development and implementation of quality improvement plan for the ALS service provider;

(h) Meet the qualifications specified in 201 KAR 9:171, Section 2(6). Evidence shall be on file to verify that the qualification of the medical director have been reviewed by Kentucky Board of Medical Licensure to assure compliance with 201 KAR 9:171, Section 2(6); and

(i) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or shall be a physician who holds, or is in the process of completing, certification in advanced cardiac life support, and certification in advanced trauma life support or basic trauma life support, or shall have on file, written approval from the Kentucky Board of Medical Licensure.

(4) At the point of patient contact and transportation, the ALS service provider shall:

(a) Carry on each vehicle, and maintain in full operational order, the supplies and equipment as provided for in protocols established in subsection (2) of this section, as required in 201 KAR 9:171, Section 7; and

(b) Stock and maintain drugs and medications as provided for in:

1. Protocols established in accordance with subsection (2) of this section; and

2. Local, state, and federal statutes and regulations;

(c) Store controlled drugs in a locked compartment or equivalent approved by the cabinet. An ambulance service which stores and utilizes controlled substances shall have protocols approved by the cabinet's Drug Control Branch; and

(d) Carry and maintain in full operational order the minimum equipment and supplies required by Section 6 of this administrative regulation.

(e) Operate ambulances staffed according to the requirements of 201 KAR 9:171, Section 5.

(5) If tiered response emergency medical service vehicles are utilized by the ALS service provider, the vehicles shall:

(a) Be staffed by a minimum of one (1) person who has minimum training and current certification as a paramedic.

(b) Have available the minimum equipment and supplies required by Section 6 of this administrative regulation. This may be accomplished through the coordinated response of an ambulance from a separate ambulance service under the provisions of a written mutual aid agreement on file with both services.

Section 9. Specialized Emergency Care Service. (1) A BLS service which complies with Sections 1 through 7 of this administrative regulation, and an ALS service which complies with Section 8 of this administrative regulation, may be allowed variances approved by the licensing agency. If an ALS or BLS service provider operates with approved variances, it may be licensed as a specialized emergency

care service.

(2) A specialized license shall specify the limitations of the service provider approved by the cabinet;

(3) In reference to Section 5(1) of this administrative regulation, a specialized emergency care service shall not be required to provide emergency care and ambulance transportation on a twenty-four (24) hour, seven (7) days a week, basis;

(4)(a) A BLS specialized emergency care service shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6 and 7 of this administrative regulation, with certain variations as approved by the cabinet.

(b) An ALS specialized emergency care service shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6, 7, and 8 of this administrative regulation, with certain variations as approved by the cabinet.

(c) A specialized emergency care service desiring variations in equipment, supplies, or personnel shall submit the requests in writing for consideration and approval by the cabinet.

Section 10. 902 KAR 20:117 is hereby repealed.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: March 1, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 280 ground ambulance services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this administrative regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet. Regulatory activities currently carried out by the Office of the Inspector General will be transferred to the Department for Health Services as required by HB 646 as passed by the 1994 General Assembly. The department will assign necessary staff and funding within previously approved levels.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for ground ambulance services. This fee income and general funds will be utilized for implementation of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will not create any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation complies with the specific legislative mandate passed by the 1994 General Assembly to establish a single lead EMS agency. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services in Kentucky by reducing or eliminating overlapping authority for EMS personnel and providers at the state level.

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

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed administrative regulation if in conflict:

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

(10) Any additional information or comments: The purpose of this emergency administrative regulation is to comply with HB 646 passed by the 1994 General Assembly.

(11) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies to all ground ambulance services in Kentucky regardless of location; all Kentuckians, whether urban or rural, are equally served and protected by this administrative regulation of ground ambulance providers.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect a local government or part or division of that local government if it operates an ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not affect a local government in any additional manner. It merely moves the licensing and regulatory functions for emergency medical services from the Office of the Inspector General to the Department of Health Services.

STATEMENT OF EMERGENCY
902 KAR 14:090E

This emergency administrative regulation, 902 KAR 14:090E, is necessary in order to comply with KRS 211.952, as passed during the last regular session of the General Assembly, which mandated that a single lead agency be established under the supervision and

direction of the Commissioner of Health to license, inspect and regulate ambulance service providers. This emergency administrative regulation is needed to act in a timely manner to transfer authority for regulating air ambulance service providers from the cabinet's Office of Inspector General, Division of Licensing and Regulation to the lead agency within the Department for Health Services and to meet the legislative requirements of KRS 216B.042 and 216B.105 mandating the cabinet to regulate health facilities and service. The previous emergency administrative regulation expired because of an inadvertent failure to meet the filing deadline required for the Statement of Consideration. 902 KAR 14:090E meets the requirements for filing an emergency administrative regulation governing the same subject matter in that it is not identical to 902 KAR 14:050E because the previous emergency administrative regulation required that, if the air ambulance service was operating as an advanced life support unit, the patient attendant had to be a certified paramedic. This new emergency administrative regulation sets the minimum certification for a patient attendant on an air ambulance service operating as an advanced life support unit as a paramedic, but also provides that the patient attendant may be a registered nurse or a licensed physician. A Notice of Intent to promulgate an ordinary administrative regulation to replace this emergency administrative regulation will be filed with the Regulations Compiler on or before March 15, 1995.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Health Systems Development

902 KAR 14:090E. Air ambulance service providers.

RELATES TO: KRS 211.950 to 211.958, 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 211.952, 216B.042, 216B.105

EFFECTIVE: March 1, 1995

NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. KRS 211.952 transferred responsibility for licensing, inspecting, and regulating ambulance providers defined in KRS 211.950 from the Division of Licensing and Regulations, Office of Inspector General, to a single lead agency under the supervision and direction of the Commissioner of Health. This administrative regulation sets forth the licensure and operation requirements for air ambulance service providers.

Section 1. Definitions. (1) "Air ambulance service" is defined in 902 KAR 14:030.

(2) "FAA" means the Federal Aviation Administration.

(3) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

Section 2. Air Ambulance Licensing. A person shall not provide air ambulance services without having first obtained a certificate of need from the Kentucky Health Policy Board (referred to as the board) and a license from the licensing agency.

(1) The license shall designate the Kentucky geographic area to be served.

(2) The licensee shall designate the number of aircraft to be operated and provide the licensing agency with identifying information such as:

(a) Type of aircraft;

(b) Serial number; and

(c) Aircraft identification.

(3) Additional aircraft shall not be operated until the licensing agency has been notified and has verified that the aircraft meets the requirements of this administrative regulation. The service shall not be precluded from utilizing a similarly equipped aircraft on a temporary basis without notifying the licensing agency if the primary aircraft is out of service for maintenance.

(4) The licensee shall inform the licensing agency of:

(a) Arrangements for securing aircraft for temporary use, if necessary, prior to initial licensure; and

(b) Changes which occur after initial licensure, such as change of service directors or location where aircraft shall be based.

Section 3. Standards for the Operation of an Air Ambulance Service. An air ambulance service shall comply with the following standards:

(1) The operator of the air ambulance service shall have a valid air taxi/commercial operators certificate issued by the FAA.

(2) The air ambulance service shall be under the medical direction of a licensed physician who shall be qualified to provide emergency services for the patient being transported and whose responsibilities shall include:

(a) Advising the medical flight attendant of precautions to be taken prior to and during the flight;

(b) Developing staffing requirements for air ambulance transports based on the patient's condition;

(c) Assuring that adequate supplies and equipment shall be on board to care for the patient being transferred;

(d) Developing patient care protocols;

(e) Monitoring and evaluating the quality of patient care;

(f) Providing individual consultation to air ambulance personnel; and

(g) Developing a continuing education program for all medical flight attendants.

Section 4. Air Ambulance Transportation Personnel. (1) If an air ambulance service is transporting a patient, the service shall be staffed by at least one (1) pilot with a valid commercial operator's certificate and one (1) medical flight attendant per patient.

(a) A medical flight attendant shall be:

1. A certified emergency medical technician;

2. A certified paramedic;

3. A registered nurse; or

4. A licensed physician.

(b) An attendant shall remain with the patient at all times during transport.

(2) If the air ambulance service transporting a patient is operating as an advanced life support unit, the medical attendant for each patient shall be:

(a) A certified paramedic;

(b) A registered nurse; or

(c) A licensed physician.

Section 5. Air Ambulance Equipment and Communication. (1) An air ambulance service shall provide emergency care equipment as required by 902 KAR 14:040, Section 6. The equipment shall be stored on board or in modular prepackaged form to be available for rapid loading and easy access aboard the aircraft at the time of response to a call.

(2) There shall be a means of securing the litter and attached patient.

(3)(a) The vehicle used by the service shall have radio capability to communicate:

1. Ground-to-air;

2. Air-to-air; and

3. Air-to-ground.

(b) The radio capability shall include two (2) way radio communication equipment:

1. Compatible with the statewide ambulance to hospital emergency radio communications system; and

2. Capable of communicating with:

a. Ground personnel to properly coordinate the landing;

b. Physicians directing patient management; and

c. Primary medical responders on the ground who may be caring for the patient.

(4) If the air ambulance service is operating as an advanced life support unit, the service shall also:

(a) Meet the requirements of:

1. 201 KAR 9:161, Section 3(6); and

2. 201 KAR 9:171, Section 7.

(b) Store controlled drugs in a locked compartment or equivalent approved by the cabinet. An air ambulance service which utilizes controlled substances shall have protocols approved by the cabinet's Drug Control Branch.

(5) If the flight attendant referred to in Section 4(1)(a) of this administrative regulation is a registered nurse or physician, the flight attendant shall follow the medical director's protocols relating to:

(a) Authorized procedures and drugs in addition to those referred to in subsection (4)(a)1 of this section; and

(b) Equipment and supplies in addition to those referred to in subsection (4)(a)2 of this section.

Section 6. Air Ambulance Records and Reports. (1) An air ambulance service provider shall keep accurate records and reports concerning the transportation of an emergency patient which shall be maintained at the headquarters of the licensee and shall be available for periodic review as deemed necessary by the licensing agency.

(2) The service shall provide a full record to the receiving facility of any treatment administered at the pickup location or during transit. Required records and reports shall include:

(a) The "Kentucky Emergency Medical Service Ambulance Run Report", Form EHS-8A, as incorporated by reference in 902 KAR 14:040, or equivalent provider specific transport record acceptable to the licensing agency. The record shall be completed and forwarded to the Cabinet for Human Resources in accordance with submission dates established by the cabinet;

(b) Employee records including:

1. A resume of an employee's training and experience; and

2. Evidence of current certification.

Section 7. 902 KAR 20:155 is hereby repealed.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: March 1, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Thirteen currently licensed air ambulance services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this administrative regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet. Regulatory activities currently carried out by the Office of the Inspector General will be transferred to the Department for Health Services as required by HB 646 as passed by the 1994 General Assembly. The department will assign necessary staff and funding within previously approved levels.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for air ambulance services. This fee income and general funds will be utilized for implementation of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will not create any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation complies with the specific legislative mandate passed by the 1994 General Assembly to establish a single lead EMS agency. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services in Kentucky by reducing or eliminating overlapping authority for EMS personnel and providers at the state level.

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

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed administrative regulation if in conflict:

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

(10) Any additional information or comments: The purpose of this administrative regulation is to comply with HB 646 passed by the 1994 General Assembly.

(11) TIERING: Is tiering applied? Tiering was not applied because the administrative regulation applies to all ambulance services in Kentucky regardless of location; all Kentuckians, whether urban or rural, are equally served and protected by this administrative regulation of ambulance providers.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local

government or only a part or division of the local government. This administrative regulation will affect a local government or part or division of that local government if it operates an air ambulance service. At this time, no local governments operate an air ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any air ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not affect a local government in any additional manner. It merely moves the licensing and regulatory functions for emergency medical services from the Office of the Inspector General to the Department of Health Services.

STATEMENT OF EMERGENCY
903 KAR 5:290E

Under KRS Chapter 13A, the administrative body is required to implement this administrative regulation in order to have sufficient authority to establish 1995 contribution rates for Kentucky employers under the Unemployment Insurance Program. These rates are spelled out in 903 KAR 5:290 and per KRS 341.270, and predicated on the trust fund balance as of December 31 of any calendar year. An emergency administrative regulation is needed because this information is necessary in assigning rates for 1st quarter, 1995 contribution reports. These reports are due before promulgation of administrative regulation through the normal process could occur. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance

903 KAR 5:290E. Employer contribution rates.

RELATES TO: KRS 341.270
STATUTORY AUTHORITY: KRS 194.050, 341.270
EFFECTIVE: March 15, 1995
NECESSITY AND FUNCTION: KRS 341.270 requires the Secretary for Human Resources to determine the rate schedule for employer's contributions. The rate schedule in effect for each calendar year shall be determined by the "trust fund balance" as of December 31, of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1994 [~~1993~~], was $418,365,150.84 [~~401,310,854.86~~].

(2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1994 [~~1993~~].

Section 2. Rate Schedule. On the basis of the findings in Section 1 of this administrative regulation, and in accordance with KRS 341.270(3), Schedule A of Table A shall be in effect for calendar year 1995 [~~1994~~], because the "trust fund balance" equals or exceeds $350,000,000, on December 31, 1994 [~~1993~~]. Rates listed in Schedule A of Table A are listed below.

Employer Reserve Ratio	Rate Schedule
8.0% and over	0.30%
7.0% but under 8.0%	0.40%
6.0% but under 7.0%	0.50%
5.0% but under 6.0%	0.70%
4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%
3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%
-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%
-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than 8.0%	9.00%

TREVA B. WRIGHT-DONNELL, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: March 3, 1995
FILED WITH LRC: March 15, 1995 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: 77,107 Kentucky employers.

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

(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: 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 comment 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 cost or savings: None

1. First year: None
2. Continuing cost or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Possible increase in UI trust fund receipts due only to natural wage increases and increased number of employers.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal funds (FCAA).

(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: 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: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All taxpaying employers are treated equally.

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. Either all or part of a local government could be affected. Entities such as county health departments, water districts, libraries, etc., could be affected based upon their independent exercise of unemployment reporting options.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects the unemployment tax assessed based on the payroll of those local governments which have elected to make quarterly unemployment tax payments.

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: The great majority of local governments have elected to reimburse any unemployment benefits attributable to their employment. However, approximately 700 governmental entities have elected to pay quarterly unemployment taxes. By specifying the tax rate schedule in effect for 1995, this regulation determines in part the amount of tax which will be due from these tax paying entities. The tax rate schedule set forth in this regulation remains the same as the previous year.

STATEMENT OF EMERGENCY
904 KAR 3:050E

This emergency administrative regulation implements the federal law that requires states to implement provisions of the food stamp recipient claims collection test of federal employee salary offset procedures. This emergency administrative regulation also clarifies, without change, existing food stamp policy regarding the procedures for establishing and collecting food stamp claims. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation is being filed concurrently with this emergency regulation for February 15, 1995 filing. The ordinary administrative regulation will be filed once the procedures for filing the notice of intent have been completed.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 3:050E. Claims and additional administrative provisions.

RELATES TO: [~~KRS 194.050,~~] 7 CFR 272.1, 272.5, 273.16, 273.17, 273.18, 273.18(d)(4)(iii), 26 CFR 301.6402-6 et seq., 31 CFR 5.23 et seq., 56 FR 41325-31, 57 FR 39176-77, 59 FR 44400-05

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer a Food Stamp Program as prescribed under 7 USC 2011 to 2029. 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 additional provisions used by the cabinet in the administration of the Food Stamp Program.

Section 1. Civil Rights Compliance. The cabinet shall not discriminate against any applicant or participant in any aspect of program administration for reasons of age, race, color, sex, disability, [~~handicap,~~] religious creed, national origin, or political beliefs.

Section 2. Restoration of Lost Benefits. (1) Benefits shall be restored to a household if a household has lost benefits:

(a) Due to an administrative error;

(b) By an administrative disqualification for intentional program violation that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from:

(a) The date the agency receives a request for restoration; or

(b) If no request is received, the date a fair hearing action is initiated.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claims the household may have.

Section 3. Program Informational Activities. (1) Low-income or disadvantaged households shall be informed of the availability of the program, program rights and responsibilities through program informational activities including posters and pamphlets from the Food and Consumer [~~Nutrition~~] Service (FCS).

(2) Other programs that households shall be encouraged to use are the:

(a) Special Supplemental Food Program for Women, Infants and Children (WIC); and

(b) Expanded Food and Nutrition Education Program (EFNEP).

Section 4. Identification of Claims Against Households. (1) All adult household members shall be jointly and severely liable for the value of any overissuance of benefits to the household.

(2) The cabinet shall establish a claim against a household that:

(a) Has received [~~receives~~] more food stamp benefits than it is entitled to receive; or

(b) Contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

Section 5. Classification and Establishment of Claims. Claims shall be classified as:

(1) Inadvertent household error (IHE) claims. Overissuance was due to:

(a) The household unintentionally failed to provide the state agency with correct or complete information; [~~A misunderstanding or~~

~~unintended error on the part of the household;~~]

(b) An action, or failure to take action, by the Social Security Administration, that results in the household improperly receiving Supplemental Security Income (SSI); or

(c) A misunderstanding or unintended error on the part of a categorically eligible household, as defined in 904 KAR 3:030, Section 7 [~~6~~], that receives food stamps solely because of categorical eligibility, and is subsequently determined ineligible for either Aid to Families with Dependent Children (AFDC) [~~PA~~] or SSI or both;

(d) The household unintentionally failed to report to the cabinet changes in its household's circumstances;

(e) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to the benefits.

(2) Administrative error (AE) claims. Overissuance was due to the agency:

(a) Failing to take action on a change reported by the household;

(b) Incorrectly computing household income or deductions or otherwise issuing an incorrect allotment;

(c) Issuing duplicate benefits; [~~or~~]

(d) Continuing to issue benefits after the certification period expired without a reapplication determination; or

(e) Taking an action or failing to take an appropriate action, which resulted in the household improperly receiving AFDC.

(3) Intentional program violation (IPV) claims.

(a) Overissuance was due to an act of intentional program violation on the part of the household by:

1. Making a false or misleading statement, or misrepresenting, concealing or withholding facts; or

2. Committing a violation of 7 USC 2011-2029, 904 KAR Chapter 3, or any state statute relating to the Food Stamp Program, relating to the:

a. Use;

b. Presentation;

c. Transfer;

d. Acquisition;

e. Receipt; or

f. Possession of food stamp coupons.

(b) The act of intentional program violation is determined by:

1. An administrative disqualification hearing official;

2. A federal, state or local court [~~of appropriate jurisdiction~~];

3. An individual signing [~~either~~] a waiver of his right to an administrative disqualification hearing; or

4. An individual signing a disqualification consent agreement in cases referred for prosecution.

(4) Neither an AE claim nor an IHE claim shall be established if an overissuance occurred as a result of the cabinet failing to insure that a household fulfilled the following procedural requirements:

(a) Sign the application form;

(b) Complete the registration of an individual who is required to register for work in accordance with 904 KAR 3:041; or

(c) Certify the household in the correct county in which they reside.

Section 6. Calculating the Amount of Claims. (1) IHE and AE claims.

(a) For each month that a household received an overissuance due to an IHE or AE, the cabinet shall determine the correct amount of food stamp benefits the household was entitled to receive.

(b) The amount of the IHE or AE error claim shall be calculated based on the amount of overissuance which occurred during the twenty-four (24) months preceding the date that the overissuance was discovered.

(c) In cases involving reported changes, the cabinet shall determine the month the overissuance initially occurred as follows:

1. For IHE claims, if the household failed to report a change in its circumstances within the required time frames:

a. The first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been timely reported.

b. In no event shall the cabinet determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred.

2. For AE claims, if the household timely reported a change, but the cabinet did not act on the change within the required time frames:

a. The first month affected by the cabinet's failure to act shall be the first month the cabinet would have made the change effective had it timely acted.

b. In no event shall the cabinet determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred.

c. If a notice of action was required but was not provided, the cabinet shall assume for the purpose of calculating the claim that the household would have been allowed the maximum advance notice period to expire without the household requesting a fair hearing including:

(i) Ten (10) days to report the change;

(ii) Ten (10) days for the caseworker to act on the change; and

(iii) Ten (10) days for the client to respond to the notice of action.

(d) If the household received a larger allotment than it was entitled to receive, the cabinet shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(e) For a categorically eligible household as specified in 904 KAR 3:020, Section 4(2), a claim shall only be determined when it can be computed on the basis of changed household net income and household size.

(f) After calculating the amount of the IHE or AE claim:

1. The cabinet shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with Section 2 of this administrative regulation.

2. The cabinet shall then initiate collection action for the remaining balance, if any.

(2) IPV claims.

(a) For each month that a household received an overissuance due to an IPV, the cabinet shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive.

1. The amount of the IPV claim shall be calculated back to the month the act of IPV occurred but back no more than six (6) years from the date the overissuance was discovered.

2. If the household member is determined to have committed IPV by intentionally failing to report a change in its household's circumstances, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported.

3. In no event shall the cabinet determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred.

(b) If the household received a larger allotment than it was entitled to receive:

1. The cabinet shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received;

2. When determining the amount of benefits the household should have received, the cabinet shall not apply the twenty (20) percent earned income deduction to that portion of earned income which the household intentionally failed to report.

(c) Once the amount of the IPV claim is established, the cabinet shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with Section 2 of

this administrative regulation.

Section 7. [6.] Collecting Claims Against Households. The cabinet shall initiate collection action against households with an established claim in accordance with the following criteria:

(1) All claims identified in Section 5 of this administrative regulation, as inadvertent household and administrative error claims, shall have collection action initiated unless the:

(a) Claim is collected through offset;

(b) Claim is less than thirty-five (35) dollars and cannot be recovered by coupon reduction; or

(c) Department has documentation that the household cannot be located.

(2) A household member found to have committed [~~claim identified in Section 5 of this administrative regulation, as~~] an intentional program violation, in accordance with Section 5(3) of this administrative regulation [~~claim~~], shall have collection action initiated against the individual's household unless:

(a) The household has repaid the overissuance;

(b) The department has documentation that the household cannot be located; or

(c) Collection action would prejudice the case against a household member referred for prosecution.

(3) Payments for claims against the household shall be collected as follows:

(a) Lump sum payments.

1. If the household states it is financially able to pay the entire amount of the claim at one (1) time, either as cash payment or food stamp coupons, the cabinet shall collect a [~~by~~] lump sum payment; however

2. The household shall not be required to liquidate all of its resources to make this lump sum payment.

3. If the household states it is financially unable to pay the entire amount of the claim at one (1) time and prefers to make a lump sum payment of cash or food stamp coupons as partial payment of the claim, the cabinet shall accept this method of repayment.

(b) Installments. [~~as negotiated with the household either as cash payment or food stamp coupons; or~~]

1. The cabinet shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment.

a. The minimum monthly payment must be equal to the amount which would be received through coupon reduction outlined in subsection (3)(c) of this section.

b. Payment shall be accepted by the cabinet in regular installments and shall be paid to the cabinet no later than the tenth of the month.

c. The household may use food stamp coupons as full or partial payment of any installment.

d. If the full claim or remaining amount of the claim cannot be liquidated in thirty-six (36) months, the cabinet may compromise the amount of the claim by reducing it to an amount that will allow the household to pay the claim in thirty-six (36) months.

e. The cabinet shall use the full amount of the claim, including any amount compromised, to offset benefits in accordance with Section 2 of this administrative regulation.

2. If the household fails to make a payment in accordance with the established repayment schedule, either a lesser amount or no payment, the cabinet shall allow the household an opportunity to renegotiate the payment schedule.

(c) Reduction in the food stamp allotment. For participating households, the cabinet shall collect payments for claims, unless a repayment schedule has been otherwise negotiated, by reducing the household's food stamp allotments in accordance with the following criteria:

1. For inadvertent household error claims, the amount of reduction shall be the greater of:

a. Ten (10) percent of the household's monthly allotment; or

b. Ten (10) dollars per month;

2. For administrative error claims:

a. The amount of reduction shall be negotiated with the household; and

b. Coupon reduction shall only be imposed if the household prefers to use this method.

3. For intentional program violation error claims, the amount of reduction shall be the greater of:

a. Twenty (20) percent of the household's monthly entitlement; or

b. Ten (10) dollars per month.

(d) Federal salary offset procedures.

1. The cabinet shall offset the salary of a federal and United States Postal Service (USPS) employee who owes an:

a. IHE claim; or

b. IPV claim; unless

(i) The claim has been paid;

(ii) The claim is being paid under a current payment agreement; or

(iii) The claim is not collectible.

2. Prior to salary offset, the cabinet shall provide each federal or USPS employee verified as owing a IHE or IPV claim with an advance notice of salary offset which includes an opportunity to enter into a voluntary repayment agreement.

3. The federal or USPS employee shall avoid referral for salary offset if within thirty (30) days of the date of advance notice:

a. Payment of the claim is received in full; or

b. The first installment of fifty (50) dollars or more is received by the cabinet and the debtor continues to pay installment payments of fifty (50) dollars or more by the tenth day of each subsequent month until the claim is paid in full.

4. If any monthly installment of at least fifty (50) dollars is not received by the tenth day of each subsequent month, the claim will be referred for salary offset with no further right to enter into a voluntary repayment agreement;

5. If a federal or USPS employee believes that he is not responsible for the claim or that the claim has been paid, he may submit documentation to the cabinet, including, but not limited to:

a. Payment records; or

b. Legal bars to collection of claims.

6. Unless the documentation clearly shows that the claim has been paid or is not legally collectible, the cabinet shall refer the claim for collection from the debtor's salary.

7. Debtors have the right to a formal appeal to the FCS.

8. The advance notice to federal employees is incorporated into this administrative regulation by reference.

(4) An individual who has defaulted on repayment of his debt shall have the debt offset through intercept of his:

(a) State income tax return if his claim is identified as:

1. Noncourt established intentional program violation as described in Section 5(3)(b)1, 3, or 4 of this administrative regulation; or

2. An inadvertent household error as described in Section 5(1) of this administrative regulation; and

(b) Federal income tax return if his claim is identified as:

1. Court established fraud as described in Section 5(3)(b)2 of this administrative regulation;

2. Noncourt established intentional program violation as described in Section 5(3)(b)1, 3, or 4 of this administrative regulation; or

3. An inadvertent household error as described in Section 5(1) of this administrative regulation.

(5) Disqualification from the Food Stamp Program shall be imposed on an individual with intentional program violation [~~error~~] claims in accordance with 904 KAR 3:060, Section 10. [~~The individual shall be ineligible to participate in the program:~~

~~(a) For the first violation, six (6) months;~~

~~(b) For the second violation, twelve (12) months; and~~

~~(c) For the third violation, permanently.~~]

(6) Cabinet forms necessary to collect overpayments are incorporated into this administrative regulation by reference.

Section 8. [7.] Disclosure of Information. Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted to the following individuals:

(1) Persons directly connected with the administration or enforcement of the provisions of:

(a) 7 USC 2011-2029;

(b) Other federal assistance programs; or

(c) Federally aided state programs which provide assistance, on a means-tested basis, to low income households;

(2) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(3) Local, state or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of 7 USC 2011-2029 or regulations. The written request shall include:

(a) The identity of the person requesting the information and his authority to do so;

(b) The nature of the violation being investigated; and

(c) The identity of the person about whom the information is requested.

Section 9. [8.] General Program Information. 904 KAR Chapter 3 shall be maintained in the central and local office for examination by members of the public on regular workdays during regular office hours. Copies of administrative regulations may be obtained from the cabinet. Federal laws and regulations shall be maintained by the central office and the FCS [FNS] and shall be available for inspection and copying.

Section 10. [9.] Retention of Records. (1) The cabinet shall retain all program records in an orderly fashion, for audit and review purposes, for a period of three (3) years from the month of origin of each record.

(2) The cabinet shall retain fiscal records and accountable documents for three (3) years from the date of fiscal or administrative closure.

Section 11. [10.] Disaster Certification. The cabinet shall distribute emergency coupon allotments to a household within a food stamp county determined to be a disaster area:

(1) In accordance with 42 USC 5122, authorized by the FCS [Food and Nutrition Service] of the United States Department of Agriculture as a result of a major disaster that is determined by the President of the United States; or

(2) In accordance with 7 USC 2011-2029, authorized by the FCS [Food and Nutrition Service] as a result of a lesser disaster, if:

(a) The emergency has resulted either from a natural or human occurrence which disrupted the commercial channels of food distribution; and

(b) The Food Stamp Program is operational.

Section 12. Material Incorporated by Reference. (1) Forms necessary for the establishment and collection of claims against households, are incorporated effective January 1, 1995. These forms include:

(a) Advance Notice to Federal Employees, revised 1/95;

(b) FS-410, revised 3/92;

(c) FS-412, revised 1/93;

(d) FS-413, revised 6/91; and

(e) FS-415, revised 1/93.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: January 26, 1995
FILED WITH LRC: February 17, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The provision to offset the salary of federal, including United States Postal Service, employee's salary to repay food stamp claims will affect a minimal number of food stamp recipients. In order for the offset procedure to take place, the food stamp household must be inactive. The household will be afforded the opportunity to pay off the claim or to provide documentation that the claim is not valid prior to offsetting his salary. There is no way of determining how many unpaid claims for inactive households are owed by current federal employees.

(2) Direct and indirect cost or savings to those affected: Due to the minimal number of affected individuals, it is impossible to determine the cost to the individual. However, we anticipate that the cost will be insignificant.

(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: To be determined after publication of the notice of intent.

(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: To be determined after publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings: Insignificant. No additional staff will be required to implement the salary offset procedure. The additional cost was anticipated in the budget.

1. First year: Additional costs of notifying affected households of potential salary offsetting to accommodate the federal mandate will be minimal and were anticipated in the departmental budget.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(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 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:

(a) Geographical area in which administrative regulation will be implemented: To be determined after publication of the notice of intent.

(b) Kentucky: To be determined after publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by state and federal 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: 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 governmental

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) The federal statute at 7 USC 2014(b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 59 FR 44400-05

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provision of salary offsetting of federal employees to repay their recipient claim is consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by 59 FR 44400-05.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

STATEMENT OF EMERGENCY
904 KAR 3:060E

This emergency administrative regulation incorporates the new federal requirements which mandate that the cabinet implement increased penalties for the improper use of food stamps for drugs and firearms. This emergency administrative regulation deletes duplicate information contained in 904 KAR 3:050E and makes appropriate references to that administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation following normal procedures for filing a notice of intent. The notice of intent shall be filed February 15, 1995 and the ordinary administrative regulation will be filed following the hearing for the notice of intent.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 3:060E. Administrative disqualification hearings and penalties.

RELATES TO: [~~KRS 194.050,~~] 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82), 59 FR 44343-47

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

EFFECTIVE: February 17, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall [~~is required to~~] administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties which shall be applied.

Section 1. Administrative Disqualification Hearings. (1) An administrative disqualification hearing shall be initiated by the cabinet whenever it has documented evidence to prove that a household member has committed an act of intentional program violation, as defined by 904 KAR 3:050, Section 5(3).

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of the individual.

[~~(3) An act of intentional program violation shall consist of having intentionally:~~

~~(a) Made a false or misleading statement;~~
~~(b) Misrepresented facts;~~
~~(c) Concealed facts;~~
~~(d) Withheld facts; or~~
~~(e) Committed any act that constitutes a violation of:~~
~~1. 7 USC 2011 to 2029;~~
~~2. 904 KAR Chapter 3; or~~
~~3. Any state statute relating to:~~
~~a. The use;~~
~~b. Presentation;~~
~~c. Transfer;~~
~~d. Acquisition;~~
~~e. Receipt; or~~
~~f. Possession of:~~
~~(i) Food stamp coupons; or~~
~~(ii) An authorization to participate card (ATP).~~]

Section 2. Disqualification Hearing Procedures. (1) The cabinet shall provide state level administrative disqualification hearings which shall be heard by a fair hearing official.

(2) A hearing shall be conducted by an impartial official who:

(a) Did not have any personal stake or involvement in the case;

(b) Was not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Was not the immediate supervisor of the case worker who took the action.

(3) The powers and duties of the hearing official shall be the same as those specified in 904 KAR 3:070, Section 13.

(4) The household's rights during the hearing shall be the same as those specified in 904 KAR 3:070, Section 14.

(5) The hearing decision shall comply with provisions specified in 904 KAR 3:070, Section 15.

(6) At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall:

(a) Conduct the hearing;

(b) Arrive at a decision; and

(c) Notify the household member of the decision.

(8) Provided that the request is made at least ten (10) days in advance of the date of the scheduled hearing, the household member or representative is entitled to one (1) postponement not to exceed thirty (30) days.

(9) If a hearing is postponed, the time limits specified in subsection (7) of this section shall be extended for as many days as the

hearing is postponed.

Section 3. Advance Notice of Disqualification Hearing. (1) The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a hearing initiated by the cabinet has been scheduled.

(2) The notice shall be sent certified mail - addressee only - return receipt requested and shall contain:

(a) The date, time, and place of the hearing;

(b) The charge against the household member;

(c) A summary of the evidence;

(d) How and where the evidence may be examined;

(e) A warning that the decision shall be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(f) A statement that the household member or representative shall have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(g) A warning that a determination of intentional program violation shall result in disqualification penalties as described in Section 10 of this administrative regulation, and [:

~~1. A six (6) month disqualification for the first violation;~~

~~2. A twelve (12) month disqualification for a second violation; and~~

~~3. Permanent disqualification for the third violation; and~~

~~4.~~] a statement of which penalty is applicable to the case scheduled for a hearing;

(h) A listing of the household member's rights as contained in 904 KAR 3:070, Section 14;

(i) A statement that the hearing shall not preclude the state or federal government from:

1. Prosecuting the household member for intentional program violation in a civil or criminal court action; or

2. Collecting the overissuance; and

(j) If there is an individual or organization available that provides free legal representation, a statement of the availability of this service.

Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(2) If the applicant, recipient and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) A party who wishes to introduce a document or written material into the record at the hearing shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing.

(4) Failure to provide both the hearing officer and the opposing party with a copy of such evidence may result in the exclusion of this evidence from the record.

(5) If the household member or its representative does not appear for a face-to-face or telephonic hearing, the state agency shall determine whether proper advance notice was received by the household member.

(a) If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted.

(b) The hearing process is again initiated when the household member is located and another notice can be provided to that member.

(c) If the agency has sufficient evidence to verify that the household member either received or refused the notice, the hearing shall be conducted.

(6) Even if the household member is not represented, the hearing official is required to:

1. Carefully consider the evidence; and

2. Determine if intentional program violation was committed based on clear and convincing evidence.

(7) If the household member is found to have committed an intentional program violation but, a hearing official later determined that the household member or representative had good cause, as defined in 904 KAR 3:070, Section 10, for not appearing:

(a) The previous decision shall not remain valid;

(b) The cabinet shall conduct a new hearing; and

(c) The hearing official who originally ruled on the case may conduct the new hearing.

(8) The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear.

(9) A hearing official shall enter the good cause decision into the record.

Section 5. Participation While Awaiting a Disqualification Hearing. (1) A pending hearing shall not affect the individual's or the household's right to be certified and participate in the program.

(2) The cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household until:

(a) The hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation;

(b) The individual has signed a waiver of right to an administrative disqualification hearing; or

(c) The individual has signed a disqualification consent agreement; and

(d) The cabinet disqualifies the household member for intentional program violation.

Section 6. Disqualification Hearing Decision. (1) The hearing official shall base the determination of intentional program violation on clear and convincing evidence that demonstrates that the household member committed and intended to commit intentional program violation as specified in Section 1 of this administrative regulation.

(2) The decision of the hearing official shall:

(a) Specify the reasons for the decision;

(b) Identify:

1. The supporting evidence;

2. The state administrative regulations; and

3. Corresponding federal regulation; and

(c) Respond to reasoned arguments made by the household member or representative.

(3) An official report shall be retained by the cabinet.

(a) The report shall contain:

1. The substance of what transpired at the hearing;

2. All papers and requests filed in the hearing proceeding.

(b) This record shall be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of a Disqualification Hearing Decision. (1) The cabinet shall notify the household member in writing of:

(a) The hearing decision; and

(b) His rights.

(2) If the hearing finds that the household member committed intentional program violation, the notice shall:

(a) Be provided prior to disqualification;

(b) Inform the household member of the disqualification; and

(c) Advise the household member when the disqualification will take effect.

(3) If the individual is no longer participating, the notice shall inform the individual that the period of disqualification shall be deferred until the individual:

(a) Applies for food stamps; and

(b) Is determined eligible for program benefits.

(4) A notice shall be provided to the remaining household

members, if any, informing them of:

(a) The allotment they will receive during the disqualification period; or

(b) That they may reapply because their certification period has expired.

(5) A written demand letter shall be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. (1) An individual accused of intentional program violation shall be allowed to waive his rights to an administrative disqualification hearing.

(2) The cabinet shall:

(a) Ensure that:

1. The appropriate field services supervisor or designated agency representative reviews the evidence against the household member suspected of the IPV; and

2. A decision is obtained that the evidence warrants scheduling a disqualification hearing.

(b) Provide written notification to the household member suspected of IPV that the member can waive his right to an administrative disqualification hearing.

Section 9. Deferred Adjudication. (1) An individual accused of intentional program violation shall be allowed to sign a disqualification consent agreement in a case of deferred adjudication.

(2) The cabinet shall use a disqualification consent agreement for a case in which a determination of guilt is not obtained from a court because the accessed individual:

(a) Met the terms of a court order; or

(b) Is not prosecuted because he met the terms of an agreement with the prosecutor.

Section 10. Intentional Program Violation Disqualification Penalties. (1) An individual found to have committed an intentional program violation in accordance with 904 KAR 3:050, Section 5(3)(b) shall be ineligible to participate in the Food Stamp Program:

(a) For a period of six (6) months for the first intentional program violation, except as provided by subsections (2) and (3) of this section;

(b) For a period of twelve (12) months upon the second occasion of any intentional program violation, except as provided by subsections (2) and (3) of this section; and

(c) Permanently for the third occasion of any intentional program violation.

(2) An individual found by a federal, state or local court to have used or received coupons in a transaction involving the sale of a controlled substance, as defined by 21 USC 802, shall be ineligible to participate in the program:

(a) For a period of twelve (12) months upon the first occasion of the violation; and

(b) Permanently upon the second occasion of the violation.

(3) An individual found by a federal, state or local court to have used or received coupons in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of the violation.

(4) The penalties in subsections (2) and (3) of this section shall also apply in cases of deferred adjudication, as described in Section 9 of this administrative regulation, where the court makes a finding that the individual engaged in the conduct described in subsections (2) and (3) of this section.

(5) If a court fails to impose a disqualification period for any intentional program violation, the cabinet shall impose the appropriate disqualification penalty specified in subsections (1), (2) or (3) of this section, unless it is contrary to the court order.

(6) Regardless of when an action taken by an individual which caused an intentional program violation to occur, the disqualification periods specified in subsections (2) and (3) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(7) The cabinet shall not disqualify everyone in the household from participating in the Food Stamp Program but shall disqualify only the individual who:

(a) Is found to have committed the intentional program violation; or

(b) Signed the waiver of the right to an administrative disqualification hearing; or

(c) Signed the disqualification consent agreement in cases referred for prosecution.

(8) The cabinet shall disqualify only the individual from participating in the Food Stamp Program but the remaining household members are responsible for making restitution for the amount of any overpayment, in accordance with 904 KAR 3:050.

~~[(1) A penalty is assessed for an individual:~~

~~(a) Found by an administrative disqualification hearing to have committed an intentional program violation; or~~

~~(b) Who has signed a waiver of the right to an administrative disqualification hearing; or~~

~~(c) Who has signed a disqualification consent agreement; or~~

~~(d) Found guilty by a court of appropriate jurisdiction.~~

~~(2) An individual listed in subsection (1) of this section shall be ineligible to participate for:~~

~~(a) Six (6) months for the first violation;~~

~~(b) Twelve (12) months for the second violation; or~~

~~(c) Permanently for the third violation.~~

~~(3) The disqualification period for a nonparticipant shall be deferred until he applies for and is determined eligible for program benefits.~~

~~(4) Once a disqualification period is imposed, it shall continue uninterrupted, regardless of any subsequent determinations of eligibility/ineligibility of the disqualified member's household.~~

~~(5) A court ordered disqualification may be imposed separate and apart from any action taken by the cabinet.~~

~~(a) An individual found guilty of intentional program violation by a court of appropriate jurisdiction shall be disqualified for the period of time specified by that court.~~

~~(b) If the court fails to specify or address a disqualification period for the intentional program violation, the cabinet shall impose a disqualification period consistent with the time periods set forth in this section.~~]

(9) [~~(6)~~] If the cabinet's determination of intentional program violation is reversed by a court, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) Restore any benefits that were lost as a result of the disqualification.

~~[(7) The cabinet shall disqualify only the individual convicted of intentional program violation and not the entire household.~~

~~(a) The remaining household members shall agree to make restitution in accordance with the procedures set forth in 904 KAR 3:050, Section 4.~~

~~(b) Allotment reduction shall be imposed on the household's monthly allotment if:~~

~~1. The household does not agree to make restitution; or~~

~~2. After having agreed to make restitution fails to do so.~~]

(10) [~~(8)~~] The cabinet shall inform the household in writing of the disqualification penalties for committing intentional program violation at each time it applies for benefits.

Section 11. Appeal Rights of the Household. (1) No further administrative appeal procedure shall exist after an administrative disqualification hearing finds that:

(a) An intentional program violation was committed; or

(b) An individual has waived his right to an administrative disqualification hearing.

(2) The determination of intentional program violation made by a

disqualification hearing official shall not be reversed by a subsequent fair hearing decision.

(3) The household member who is subject to subsection (2) of this section is entitled to seek relief in a court having appropriate jurisdiction.

(4) The period of disqualification may be subject to stay by:

(a) A court of appropriate jurisdiction; or

(b) Other injunctive remedy.

Section 12. Material Incorporated by Reference. (1) Form FS-80, revised 9/94 [~~1/93~~], is necessary:

(a) To provide an individual suspected of committing an intentional program violation with information regarding his claim;

(b) To inform an individual of his rights to an administrative disqualification hearing.

(2) Form FS-80, Supplement A (revised 1/93), is necessary to permit an individual the opportunity to waive his right to an administrative disqualification hearing.

(3) Form FS-111, revised 9/94 [~~6-91~~], is necessary to defer adjudication of an individual suspected of intentional program violation.

(4) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

JOHN H. CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: January 21, 1995
FILED WITH LRC: February 17, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The number of people convicted by a federal, state or local court for using food stamps to purchase drugs or firearms are extremely minimal.

(2) Direct and indirect cost or savings to those affected: Under the increased penalties, the cost to those affected will be the permanent loss of food stamp coupons.

(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: To be determined after publication of the notice of intent.

(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: To be determined after publication of the notice of intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings: None. The savings will be in food stamp benefits which are 100 percent federally funded.

1. First year: None
2. Continuing cost or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(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 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:

(a) Geographical area in which administrative regulation will be implemented: To be determined after publication of the notice of intent.

(b) Kentucky: To be determined after publication of the notice of intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by federal 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: 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 governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? The federal statute at 7 USC 2014(b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 59 FR 44343-47

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provision mandating disqualification penalties is consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by 59 FR 44343-47.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

STATEMENT OF EMERGENCY
905 KAR 7:250E

These emergency administrative regulations and Notice of Intent were promulgated to establish the Kentucky Educational Collaborative for State Agency Children to enhance educational services to state agency children through the development of a dynamic educational and social service partnership directed at meeting the needs of children of school age committed to or in the custody of the Cabinet for Human Resources and placed in a cabinet operated or contracted institution, facility or day treatment program, or placed or financed through the cabinet in a private facility pursuant to a chid care agreement other than those for foster care, and those children of

school age in home and community based services provided as an alternative to intermediate care facility services. It is necessary to promulgate an emergency administrative regulation to implement the guidelines for the operation of the Kentucky Educational Collaborative for State Agency Children pursuant to KRS 605.110. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation shall be filed with the Regulations Compiler on or about April 15, 1995.

BRERETON C. JONES, Governor
MASTEN CHILDERS II, Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 7:250E. Kentucky Educational Collaborative for State Agency Children.

RELATES TO: KRS Chapters 158, 161, 605, 610, 630, 635, 640, 645

STATUTORY AUTHORITY: KRS 158.135, 194.050, 605.110

EFFECTIVE: February 17, 1995

NECESSITY AND FUNCTION: KRS 605.110 requires that children maintained in a facility or program operated by the Cabinet for Human Resources shall so far as possible maintain a common school education. This administrative regulation sets forth policies for complying with KRS 158.135 and 605.110 in Department for Social Services (DSS), Division of Youth Services (DYS), residential, day treatment programs, and group homes; other programs operated, contracted, or financed through the Cabinet for Human Resources serving committed youth, private child caring agencies serving committed children and children, other than foster children, who are in placements financed through the Cabinet for Human Resources.

Section 1. Definitions. (1) "Cabinet for Human Resources programs" means both state-operated and state-contracted or financed programs.

(2) "Department" means the Department for Social Services (DSS), Cabinet for Human Resources.

(3) "Educational administrative staff" means a principal, assistant principal, supervisor, coordinator, director, pupil personnel worker or guidance counselor employed or contracted by the Kentucky Educational Collaborative for State Agency Children to provide educational services.

(4) "Head teacher" means the lead teacher, principal, or lead educator designated by the local district or by the Kentucky Educational Collaborative for State Agency Children (KECSAC) to be responsible for the operation of the daily education program. The program director may also be the head teacher in some facilities, if they have appropriate educational certification.

(5) "Individual education program (IEP)" means the instructional program required for state agency children identified as having educational disabilities as governed by 707 KAR 1:210.

(6) "Individual plan of instruction (IPI)" means the instructional plan required for state agency children not identified as having educational disabilities.

(7) "Individual treatment plan (ITP)" means a social and behavioral intervention plan, including the plan for educational instruction, that is developed for each state agency child being served by a treatment institution or facility.

(8) "Instructional calendar" means the yearly schedule of educational events, including instructional, recreational, and teacher professional development days, holidays and noninstructional days.

(9) "KDE" means the Kentucky Department of Education.

(10) "KECSAC" means the Kentucky Educational Collaborative for State Agency Children.

(11) "KERA" means Kentucky Education Reform Act.

(12) "Local school district" means the school district where state agency children are provided educational services.

(13) "On-site state agency school program" means a school program operated on the campus of a state residential facility or day treatment program. Other private facilities may apply to KECSAC for status as an on-site state agency school program.

(14) "Program director" means the administrator at a state-operated or contracted institution or day treatment facility or administrator of a private child care agency that is responsible for the safety and security of youth and staff and the operation of the treatment facility.

(15) "Private child care agency" means a private, not state operated program, which provides care or treatment for committed children on a per child contractual or financed basis.

(16) "SAEC" means State Agency Education Council that functions as the school based decision making body for state agency children at on-site state agency school programs.

(17) "School" means the site where the educational program for state agency children is provided.

(18) "State agency children" means those children of school age committed to or in the custody of the Cabinet for Human Resources and placed in a Cabinet for Human Resources operated or contracted institution, facility or day treatment program, or placed or financed through the Cabinet for Human Resources in a private facility pursuant to child care agreements other than those for foster care; and those children of school age in home and community based services provided as an alternative to intermediate care facility services for mentally retarded as governed by KRS 158.135(1)(a).

(19) "State agency children's fund" means appropriations to support KRS 158.135 previously known as out-of-district funds.

(20) "Treatment" means the total array of services utilized to produce a positive change in children served by the treatment facility.

Section 2. Governance. (1) An advisory board for the Kentucky Educational Collaborative for State Agency Children (KECSAC) composed of twelve (12) members appointed by the Governor shall provide recommendations in policy development. The advisory board shall meet at a minimum biannually.

(2) Contracting procedures.

(a) The department shall contract with a university training resource center for the establishment of the KECSAC. The KECSAC shall be responsible for the oversight or administration of state and federal education funding and the provision of educational services to state agency children. The KECSAC shall be financed by the state agency children's fund. The KECSAC shall have knowledge and experience in the following:

1. Kentucky Education Reform Act (KERA), and Kentucky's system of schools;

2. State and federal statutes pertaining to youth with educational disabilities, e.g. Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act;

3. Kentucky Unified Juvenile Code and the operation of agency programs for juvenile offenders, status offenders and dependent children; and

4. Research regarding the education of at-risk, incarcerated and difficult to motivate youth.

(b) KECSAC shall cooperatively plan programs and state agency children's fund budgets with the department, KDE, State Agency Education Councils (SAEC) and local school districts providing programs to state agency children. Local school districts shall be notified of projected funding levels by KECSAC by February, for the following school year.

(c) The KECSAC application to the department shall contain educational goals and objectives for the biennium for which funding is requested. The goals and objectives shall be consistent with KERA mandates, and the mandates of the Individuals with Disabilities Education Act. The educational goals and objectives shall be

compatible with and complementary to the treatment goals for state agency children.

(d) The KECSAC with the cooperation of the department and KDE shall develop written procedures for the operation of the statewide education system for state agency children.

(3) Staffing.

(a) Teachers and other educational staff shall be employed or contracted with through the local school district where the treatment facility is located.

1. If the local school district is not able or willing to provide the educational personnel for the state agency children's treatment facility, the KECSAC:

a. Shall be notified in writing no later than January 1 prior to the start of the school year;

b. May contract with another school district for educational staff; or

c. Contract to employ teachers or educational staff.

2. When filling a teacher vacancy in a state-operated or contracted facility the local school district or KECSAC shall provide the state agency program director an opportunity to interview prospective new teachers for the on-site state agency school program. The state agency program director shall provide the local school district with interview results regarding the applicants suitability for teaching in the on-site state agency school program.

(b) Educational administrative staff, supervisors and teachers employed or contracted by the KECSAC shall meet Kentucky education certification requirements and shall be annually evaluated. Educational staff employed by school districts shall be evaluated in accordance with local school district policy. The KECSAC shall develop procedures for evaluating staff employed directly by the KECSAC.

(c) Each on-site state agency school program shall designate a head teacher.

(d) Education staff directly employed by the KECSAC shall be compensated at rates at least commensurate with public school employees with comparable qualifications, experience and assignments in the school district where the treatment facility is located. Statewide KECSAC positions shall be compensated at rates comparable to the average of education positions with similar responsibilities, credentials and experience providing education to state agency children.

(e) On-site state agency children programs shall have a minimum of one (1) certified special education teacher on staff by the 1995-96 school year. The employment of special education certified teachers shall reach at least one-half (1/2) of the total instructional teachers (excluding Chapter I teachers) employed in each state agency program by the school year 1996-97. If the on-site state agency school program has children appropriately identified as having educational disabilities the teacher's certification shall be appropriate for the children served. Exceptions shall be made only with the agreement of the agency treatment facility, the local school district, the Division of Exceptional Children's Services in KDE and KECSAC.

(f) Other specific services identified in an IEP by the admission and release committee as needed for a youth with educational disabilities may be accessed by KECSAC contracting for appropriate services. The KECSAC shall comply with the administrative regulations relating to youth with disabilities as provided in 707 KAR Chapter 1.

(4) State Agency Education Council (SAEC). Pursuant to KERA requirements related to school-based decision making councils, state agency education programs may, upon a two-thirds (2/3) majority vote of the site's teachers, establish a state agency education council through an agreement with the KECSAC and the local school district.

(5) Policy application. Interagency agreements shall be developed between each local school district and residential agency regarding their mutual responsibility for education and care of state agency children. If a conflict arises between the local agencies regarding the development or fulfillment of the interagency agreement by either party, it shall be resolved by the KECSAC.

(6) Student eligibility. If a specific activity (e.g., football, debate, etc.) is not provided to youth in a state or private contracted agency program, the youth shall not lose eligibility to participate based on the requirements in 702 KAR 7:070. Eligibility shall be figured on a month-to-month basis (e.g., nine (9) months in a DSS facility without a formal football program leaves nine (9) months of eligibility in a local school district). The eligibility period shall not exceed one (1) additional year. Other eligibility criteria however, shall be met by the youth.

Section 3. Finance. (1) The amount of funds generated by state agency children under the Support Education Excellence in Kentucky (SEEK) Program as specified in KRS 157.360 for the guaranteed SEEK base and adjustments shall be sent to the school district providing education for state agency children to be used pursuant to contracts negotiated with the KECSAC.

(2) Distribution of state agency children's funds shall be as follows:

(a) State agency children's funds shall be used to fund the contract for the KECSAC.

(b) State agency children's funds shall be used to provide the local school district portion of the calculated base SEEK funding per child for children in residential placements.

(c) State agency children's funds may be used for educational services which benefit state agency programs in a collective manner.

(d) State agency children's funds may be used as matching funds if the match shall increase the amount of funds available to educate state agency children.

(e) After paragraphs (a), (b), (c) and (d) of this subsection have been funded the remainder of the state agency children's fund appropriation shall be divided by the total number of state agency children to be educated. The resulting per pupil amount shall be allocated for each state agency child. A state agency child identified with a disability shall have a weighted allocation in accordance with the SEEK add-on for exceptional children as governed by 702 KAR 3:270.

(f) If the state agency children's fund is appropriated with separate funds designated for state-operated and private child care programs the funds shall be averaged separately.

(3) The KECSAC shall contract with local school districts where state agency programs are located. If KECSAC provides educational services to state agency children, the KDE shall annually deduct the SEEK base and adjustments for children in day treatment programs, or the SEEK base plus adjustments less the local portion for children in residential and group homes from the school district that chose not to provide services. This amount shall be used by the KECSAC to provide educational services to state agency children.

(4) The KECSAC shall be considered the same as a school district for the generation, application, distribution and accountability of state and federal funds, other than SEEK, available to educate on-site state agency school children.

(5) An annual contract or memorandum of agreement shall be negotiated between the KECSAC and each school district providing education to state agency children. Funds shall be audited annually. An itemized budget shall be part of the contract. State agency children's funds shall be based upon average daily membership (ADM). Each state agency children's program shall be assigned a biennium maximum rated capacity by the Cabinet for Human Resources which shall provide the basis for the generation of funds, identified in KRS 605.110, for the projected education budget.

(6) The State Agency Children's Fund as specified in KRS 158.135 shall be sent to the local school district from KDE upon approval the KECSAC and the Cabinet for Human Resources. Budgeting procedures utilized for the school year 1993-94 shall be utilized as part of the 1994-96 biennial plan for allocation of funds. By

the 1996-1998 biennium, the KECSAC shall design and phase in an equitable system to distribute these funds.

(7) The KECSAC as part of the contract with each local school district shall ensure the development of a plan for professional development of certified staff. If the local school district has chosen not to provide the educational services to state agency children, the KECSAC with the State Agency Education Council, if established, shall develop and present to the KDE a plan for professional development.

(8) The KECSAC may submit to the KDE a master technology plan for on-site state agency children's programs. The KECSAC shall receive a direct allocation of technology funds which shall be matched by state agency children's funds.

(9) Pursuant to KRS 157.190, 157.110, and 160.330 the KECSAC staff shall, as part of the biennial budget plan, make a request to the Commissioner of KDE for the textbook needs of state agency children. The State Agency Educational Councils, if established, shall provide the KECSAC with projected textbook needs for the children in their specific state agency program.

(10) The KECSAC shall obtain information from the Kentucky Department of Education and the Workforce Development Cabinet regarding all discretionary and entitlement state, federal and miscellaneous funding opportunities available to local school districts and file applications or reports necessary to procure and use funds for the education of state agency children.

(11) If the Cabinet for Human Resources is opening or contracting for a new program or expanding an existing program for treatment services, the Cabinet for Human Resources shall notify KDE and KECSAC prior to the biennial budget submission regarding the projected number of youth to be educated in the new or expanded program. The education budget for the new program shall be based on rated capacity for the first year.

(12) The KECSAC shall submit an application for adult education services for youth age sixteen (16) years and above who are committed to the Cabinet for Human Resources and shall use funds received to provide adult basic education services to eligible youth. These funds shall not be used concurrently during the six (6) hour base school day funded by SEEK and state agency children's funds.

(13) If youth age sixteen (16) years through twenty (20) enter with or receive a GED while attending a state agency program as permitted by an agreement with adult education that youth may continue in the state agency program for further KERA mandated academic and vocational training and if so continue to generate SEEK funds if still working toward a high school diploma.

(14) By June 30, 1995 and annually thereafter, the Cabinet for Human Resources, Departments for Social Services and Mental Health and Mental Retardation and Medicaid, the Kentucky Department of Education, the Workforce Cabinet and other appropriate agencies shall develop an interagency agreement defining services and financial responsibilities of each state and local agency providing educational services for state agency children. The agreement shall include procedures for resolving interagency disputes.

Section 4. Operations. (1) School options for state agency children with an IEP shall be planned, when not restricted by treatment needs, using the least restrictive alternative continuum plan based on specific child needs. Additional days beyond the school year may take place either at the local public school or on the state agency program site. If the state agency child is not restricted to the treatment site for security purposes, the continuum from least restrictive to most restrictive alternatives are as follows:

(a) A program for state agency children may send all of its children to be educated in the local public school where children in the local public school district are assigned or where their IEP indicates placement.

(b) A program for state agency children may send some of its children to be educated in the local public school as in paragraph (a) of this subsection and have on-site state agency school option for other children.

(c) A program for state agency children may have an on-site state agency school for all children due to reasons necessary for the conditions of placement in the state agency program.

(2) Assessments.

(a) KECSAC shall develop procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas and utilize health data obtained in the state agency program in order to determine educational objectives for the individual education and treatment plans. Educational goals and objectives shall be consistent with goals specified in each youth's individual treatment plan.

(b) If the youth is suspected to have an educational disability as governed by 707 KAR 1:180 and 1:190 an assessment shall be administered, following required due process procedures.

(c) School psychologists may be employed or contracted by the KECSAC for purposes of identifying educational, psychological or behavioral problems.

(3) In school districts providing educational services, the KECSAC staff and local school district staff shall coordinate the completion of required individual education plan pursuant to 707 KAR 1:180 and 1:190.

(4) Instructional services.

(a) The teacher pupil ratio for on-site state agency school programs serving state agency children shall be no more than ten (10) students to one (1) teacher without a classroom aide and fifteen (15) students to one (1) teacher with a classroom aide or comply with 707 KAR 1:230 relating to students with educational disabilities.

(b) An Individual plan of instruction shall be developed for state agency children with goals and objectives that relate to the education goals set out in KRS 158.6451. The individual plan of instruction shall be developed in coordination with the ITP. If a youth is determined to have an educational disability the IEP requirements as governed by 707 KAR 1:180 shall apply.

(c) A 230 day school calendar year shall be in operation unless specified otherwise in the youth's ITP. The head teacher in consultation with the local school district and program director shall submit a 230 day school calendar to the KECSAC with the annual contract for services. The calendar shall specify instructional, professional development, holiday and vacation days for the school year beginning July 1 of the contract year.

(d) State agency children who are fourteen (14) years of age or older who do not have an identified educational disability with an IEP and who do not read at a sixth grade level as measured by a standardized achievement test, shall be provided developmental reading, listening and writing instruction.

(5) Accountability.

(a) State agency children shall have the same assessments administered as other public school youth in A-5 and A-6 schools as specified in 703 KAR 4:080. The average daily attendance data for day treatment programs and the results of the assessments shall be included in the accountability index of the last A-1 school the youth attended prior to admittance to a state agency program or the A-1 school the youth would have attended if the youth had remained in that local school district.

(b) State agency children shall develop portfolios consistent with the content requirements of the state's assessment program. A youth's portfolio shall be sent to the receiving school as part of the educational records when youth transition from the state agency program.

(c) An accountability system shall be designed by the KECSAC for state agency school programs.

(d) State agency children's school programs shall be in compliance with accreditation standards of the American Correctional Association and the Correctional Educational Association, if appropriate and if consistent with the KECSAC mission and school goals set

out in KRS 158.6451.

(6) Transition.

(a) The KECSAC shall develop transition procedures for state agency children moving from the state agency education program to the next instructional or vocational setting. The transition procedures shall address responsible staff, timelines, format of information to be transmitted, support systems necessary and follow-up schedules.

(b) The transition planning to post school settings shall comply with the transition plan and service requirements of Individuals with Disabilities Education Act (IDEA) for students with educational disabilities and 707 KAR 1:220.

(c) The KECSAC shall design and implement a system to collect school follow-up data.

(d) The last school or school district a state agency youth attends prior to placement in a state agency program shall be responsible for forwarding the educational records to the state agency program within five (5) school days of receipt of the request. Upon receipt of the school records, the state agency program shall notify the sending school district office of the pupil personnel director, that the child is now in school attendance and not a drop out.

(e) The head teacher shall insure that the educational records of state agency children be forwarded to the receiving school within five (5) school days following the release of the youth from the treatment facility.

PEGGY WALLACE, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: February 13, 1995
FILED WITH LRC: February 17, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected include nearly 4,000 court-committed and diverted youth who are served in 48 programs including residential facilities, group homes, day-treatment centers, and re-education programs operated or contracted by the Cabinet for Human Resources to serve as juvenile corrections for Kentucky and the 23 local educational agencies providing services to state agency children statewide as well as other local school districts that may be added in the effort to serve state agency children. In addition, some of these youth are served in private child care programs and Department of MH/MR operated or contracted programs.

(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: Direct and indirect costs or savings to those affected include the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education; the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates; the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children; and the provision that all state and federal educational funds available to school districts are also available to educate state agency children. A Notice of Intent has been filed that may result in additional public comment.

(b) Cost of doing business in the geographical are in which the administrative regulation will be implemented, to the extent available from the public comment received: Additional factors increasing or decreasing the costs of services to state agency children include the number of youth committed to the cabinet and their specific educational and treatment goals, the number of local educational agencies participating and the continued implementation of KERA requirements for school districts. There may be additional cost of doing business for the local school district providing services to state agency children as identified in HB 826 enacted by the 1994 General Assembly. A Notice of Intent has been filed that may result in additional public comment.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: With the establishment of the KECSAC there will be some additional reporting and paperwork requirements for all affected entities as the KECSAC develops procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas, transitions from the treatment programs to the next instruction or vocational setting, collection of follow-up school data, and the development of programs and budget requests for each school year. Additional paperwork and reporting requirements may be imposed as the KECSAC in cooperation with the Department for Social Services and Kentucky Department of Education develop written procedures for the operation of the statewide education system for state agency children. Reporting and paperwork requirements will be consistent in collection and utilization efforts.

2. Second and subsequent years: During the second and subsequent years there may a decrease in the compliance, reporting and paperwork requirements as the KECSAC, the local school district, DSS and KDE develop written procedures for the operation of the statewide education system for state agency children. Reporting and paperwork requirements will be consistent in collection and utilization efforts.

(3) Effects on the promulgating administrative body: The effect on the promulgating agency is in the development of a contract with the KECSAC that with collaboration of the Kentucky Department of Education will include the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education; the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates; the availability of funds to educate state agency children equal to funds available to local school districts; and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children. The accomplishment of these goals will ensure the Department for Social Services meets statutory mandates pursuant to KRS 605.110 and 620.145.

(a) Direct and indirect costs or savings: Direct and indirect costs or savings to the agency include the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education, the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates, educational funds will be available so CHR treatment funds are not diverted for educational purposes, and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

1. First year: First year direct and indirect costs or savings include the development of the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education, the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates, educational funds will be available so CHR treatment funds are not diverted for educational purposes, and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

2. Continuing costs or savings: Continuing direct and indirect costs or savings to the agency include the provision of a high quality

educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education, the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates, and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

3. Additional factors increasing or decreasing costs: Additional factors increasing or decreasing the costs of services to state agency children include the number of youth committed to the cabinet and their specific educational and treatment goals, the number of local educational agencies participating and the continued implementation of KERA requirements for school districts. Using educational funds for educational purposes negates the use of treatment funds to educate state agency children.

(b) Reporting and paperwork requirements: With the establishment of the KECSAC there will be some additional reporting and paperwork requirements for all affected entities and the agency as the KECSAC develops procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas, transitions from the treatment programs to the next instruction or vocational setting, collection of follow-up school data, and the development of programs and budget requests for each school year. Additional paperwork and reporting requirements may be imposed as the KECSAC in cooperation with the Department for Social Services and Kentucky Department of Education develop written procedures for the operation of the statewide education system for state agency children. The reporting will be consistent in format and collection which will enable staff to analyze the data for the development of programs and budget request.

(4) Assessment of anticipated effect on state and local revenues: The anticipated effect on local revenues is that the local school district may experience increased or decreased costs based upon the number of youth committed to the cabinet and their specific education and treatment goals, the continued implementation of KERA requirements and the implementation of HB 826 which expands the definition of state agency children to include those children placed or financed through the cabinet in a private facility pursuant to a child care agreement and those children of school age in home and community based services provided as an alternative to intermediate care facility services for persons with mental disabilities as governed by KRS 1589.135(1)(a).

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation includes funds generated by state agency children under the SEEK program, pursuant to KRS 157.360, for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs; a per pupil distribution of professional development funds, pursuant to KRS 156.0951; a per pupil distribution of technology funds, pursuant to KRS 156.670; a per pupil distribution of textbook funds, pursuant to KRS 157.100 and 157.190; funding for school services for state agency children authorized by KRS 158.135 and other available grants and entitlements.

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

(a) Geographical area in which administrative regulation will be implemented: A Notice of Intent to Promulgate has been filed with this emergency administrative regulation which will provide for public comment.

(b) Kentucky: A Notice of Intent to Promulgate has been filed with this emergency administrative regulation which will provide for public comment.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods of financing the KECSAC were considered including flowing the funds through the Cabinet for Human Resources in order to provide a more flexible program that could be adapted to the educational needs of the state agency children. This alternative method would have enabled the cabinet to do collective or regional educational programming to benefit state agency children (i.e., sharing of specialists such as psychologists, art and music teachers etc.) which is not possible when all funds are forwarded directly to the local school district. This alternative method was not accepted as it would have exceeded statutory authority as both statute and budget bill language provide for the flow of SEEK and out-of-district funds to go directly from KDE to the local school district.

(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 on the public health and environmental welfare of the geographical areas but the expected benefits include: the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education; the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates; the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children; and the provision that all state and federal educational funds available to school districts are also available to educate state agency children.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect on the environment and public health if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: There would be on detrimental effect on the environment and public health if this administrative regulation is not implemented.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed administrative regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed administrative regulation.

(10) Any additional information or comments: The cabinet will monitor the contract with the KECSAC to ensure that funds generated by state agency children will be used by the districts to provide needed educational services to state agency children. Alternative methods of financing the KECSAC may be considered including flowing the funds through the Cabinet for Human Resources in order to provide a more flexible program that could be adapted to the educational needs of the state agency children. This alternative method may enable the cabinet to do collective or regional educational programming to benefit state agency children (i.e., sharing of specialists such as psychologists, art and music teachers, etc.) which is not possible when all funds are forwarded directly to the local school district. There are no additional information or comments of which were are aware.

(11) TIERING: Is tiering applied? No. Tiering was not applied as this administrative regulation establishes the KECSAC which will coordinate the development of written procedures for the operation of the statewide education system for state agency children.

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. The unit or division of local government affected by this administrative regulation is the local school board.

3. State the aspect or service of local government to which this administrative regulation relates. KRS 605.110 establishes provisions relating to the education of state agency children and the responsibilities of both the Kentucky Educational Collaborative and the participating local school district. This administrative regulation implements the provisions of KRS 605.110(e) authorizing the Cabinet for Human Resources, with the assistance of the Kentucky Department of Education and the recommendation of the State Board of Elementary and Secondary Education, to promulgate administrative regulations relating to governance curriculum and other topics necessary to educate state agency children as governed by KRS 158.135.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is in effect.

Revenues:

Expenditures: The department is unable to fully estimate the effect of this administrative regulation on the expenditures of the local school districts as there are a number of factors that may increase or decrease the cost to the local school district including the number of youth committed to the cabinet and their specific educational and treatment goals, the number of local educational agencies participating and the continued implementation of KERA requirements for school districts. Additionally there may be additional cost to the local school district providing services to state agency children as identified in HB 826 enacted by the 1994 General Assembly.

Other Explanation: This administrative regulation was promulgated to establish, through the guidelines, goals of the KECSAC to provide: high quality educational support services through a collaborative delivery system involving local educational agencies, the KDE and the DSS, administrative services and leadership in an efficient and cost-effective manner, that are in compliance with the Kentucky Education Reform Act and other state and federal mandates; and a comprehensive evaluation of the effectiveness of the delivery of educational services to SAC, including the administrative process, service delivery and outcome.

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. The definition of Type III hospitals (state designated teaching hospitals) is being changed effective February 20, 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 differs from the emergency administrative regulation filed on December 29, 1994 by providing for the change in definition of Type III 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 Chapter 47, Part I.G.52.b.2, 205.520, 205.575[~~, 1992 Ky. Acts ch. 462,~~]

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: February 17, 1995

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 February 20, 1995 [~~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 by:

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 shall [are] not be 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 shall be [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 and ending on February 9, 1995 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. 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, 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. The disproportionate share hospital payments for the period beginning February 20, 1995 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 if the hospitals have made a request to the Department for Medicaid Services for status as a Type III hospital with the request subsequently approved by the department. An application for Type III status shall be approved if the hospital agrees, as a part of its request for Type III status, to forego any local or state governmental contributions for charity care and to provide up to 100 percent of the state matching funds necessary to secure federal financial participation for Medicaid disproportionate share hospital payments to be made to the hospital during the period of time the hospital is classed as a Type III hospital.

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 plus the amount of any disproportionate share hospital payments made to the state university teaching hospitals for the period of July 1, 1994 through December 30, 1994; 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.

5. 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 be subject to the payment limit specified in subparagraph 4f of this paragraph.

6. [~~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 February 20, 1995. [~~November 29, 1993.~~]

MASTEN CHILDERS II, Commissioner and Secretary
APPROVED BY AGENCY: February 15, 1995
FILED WITH LRC: February 17, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(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 administrative regulation if in conflict:

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

(10) Any additional information or comments:

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

ADMINISTRATIVE REGULATION AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

KENTUCKY REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research
(As Amended)

103 KAR 15:090. Computing the amortization deduction for intangible assets.

RELATES TO: KRS 141.010
STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)
NECESSITY AND FUNCTION: This administrative regulation explains the provisions of income tax law pertaining to the allowable amortization deduction for intangible assets.

Section 1. ~~[Definitions. Definitions of terms used in this administrative regulation shall be the same as those contained in Internal Revenue Code (IRC) Section 197, unless defined differently in KRS Chapter 141.~~

~~Section 2.~~] Intangible Asset Amortization Rules. (1) **Internal Revenue Code** [~~IRC~~] Section 197, contained in the 1993 Federal Revenue Reconciliation Act, provides that specified intangible assets shall be amortized over a fifteen (15) year period. For federal income tax purposes, **Internal Revenue Code** [~~IRC~~] Section 197 is effective for intangible assets acquired after August 10, 1993. It also allows for retroactive application to intangible assets acquired after July 25, 1991.

(2) Kentucky adopted the provisions of **Internal Revenue code** [~~IRC~~] Section 197 for taxable years beginning on or after January 1, 1994. Kentucky did not adopt the retroactive provisions of **Internal Revenue Code** [~~IRC~~] Section 197. Therefore, the Kentucky amortization deduction for 1991, 1992, and 1993 shall be determined in accordance with the **Internal Revenue Code** [~~IRC~~] in effect December 31, 1989 or December 31, 1991 depending upon the year of acquisition of the intangible asset. For any Section 197 asset acquired prior to January 1, 1994, the following Kentucky and federal differences exist:

(a) The amount of amortization deductions claimed in taxable years beginning before January 1, 1994;

(b) The amount of accumulated amortization;

(c) The amount of adjusted bases; and

(d) The number of years amortized.

(3) For taxable years beginning after December 31, 1993, the Kentucky amortization deduction for Section 197 assets for the taxable year shall be the same amount as determined under **Internal Revenue Code** [~~IRC~~] Section 197, limited to 100 percent of the cost of the asset. It is possible to fully amortize a Section 197 asset for Kentucky income tax purposes earlier than for federal income tax purposes or have a Kentucky adjusted basis that is not fully amortized. Differences in federal and Kentucky adjusted bases are recognized when calculating the gain or loss upon disposition of the intangible asset.

Section **2.** [~~3.~~] Examples. (1) A calendar year taxpayer acquires goodwill in August of 1991 and in 1993 elects for federal income tax purposes to retroactively treat the goodwill as a Section 197 intangible asset. The allowable amortization deduction is claimed on amended federal returns for 1991 and 1992 and the original federal return for 1993. The amortization deduction is not allowable for Kentucky purposes prior to 1994. Therefore, there is no need to amend the Kentucky returns for 1991 and 1992, and the 1993 Kentucky return reflects no amortization deduction. Beginning with the calendar year 1994, the taxpayer shall deduct the same amount of amortization for Kentucky purposes as for federal purposes for the remainder of the fifteen (15) year amortization period provided by **Internal Revenue Code** [~~IRC~~] Section 197. When the asset is fully amortized for federal purposes, the Kentucky deduction ceases even though an adjusted Kentucky basis remains. If the asset is disposed of, the difference in the adjusted Kentucky basis and the adjusted federal basis shall be recovered in the amount of gain or loss reported for Kentucky purposes.

(2) A calendar year taxpayer acquires a trademark in August of 1991 and in 1993 elects for federal income tax purposes to retroactively treat the trademark as a Section 197 intangible asset subject to the fifteen (15) year amortization rules. Prior to the Federal Revenue Reconciliation Act of 1993, trademark and trade name expenditures were amortized over sixty (60) months for both federal and Kentucky income tax purposes. Amended federal returns are filed for 1991 and 1992 reflecting the new **Internal Revenue Code** Section 197 treatment. The original 1993 federal return is also filed reflecting the new **Internal Revenue Code** Section 197 treatment. The amended federal returns reduce the previously claimed amortization deductions from five (5) year amortization amounts to fifteen (15) year amounts. Amended Kentucky returns are not needed for 1991 and 1992 because the Kentucky amortization amount does not change. The five (5) year amortization period continues to apply for the 1993 Kentucky return. Beginning with the calendar year 1994, the Kentucky deduction is the same amount as the federal deduction, until the adjusted Kentucky basis is reduced to zero. If the asset is disposed of before the adjusted federal basis is reduced to zero, the difference in the adjusted Kentucky basis and the adjusted federal basis will result in a difference in the calculated gain or loss for Kentucky and federal purposes.

KIM BURSE, Secretary
APPROVED BY AGENCY: November 11, 1994
FILED WITH LRC: November 14, 1994 at 2 p.m.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Podiatry
(As Amended)

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.

Section 3. (1) "Application for Examination" (1994) is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky State Board of Podiatry, 110 North Hubbard Lane, Louisville, Kentucky 40207, Monday through Friday, 8 a.m. to 4:30 p.m.

JOSEPH P. LEONE, President

APPROVED BY AGENCY: November 10, 1994

FILED WITH LRC: January 4, 1995 at 2 p.m.

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

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 **worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.** [~~do not meet these requirements.~~]

(c) [~~(4)~~] Waterfowl hunters **shall be** [~~are~~] exempt from **the** [~~those~~] 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 **shall be** [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.~~

~~(c) 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 **shall be** 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 **shall** [~~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.

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

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 **shall be** [~~is~~] closed during the modern gun deer season.

(2) Rabbits and quail: November 1 through January 31. The season **shall be** [~~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 **shall not be a** [~~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 **shall not be a** [~~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 **shall not be** [~~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.

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

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; **and**
(2) Carry this card, along with other proof of identity, while hunting or fishing.

Section 2. To verify their exempt status, **Kentucky residents**:
(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.~~]
(4) [~~(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.

Section 4. Incorporation by Reference. (1) "Disability Workers Compensation Exemption Form", January 1, 1995 edition, is incorporated by reference.
(2) It may be inspected, copied, or obtained at the Department of Fish and Wildlife Resources, Division of Fiscal Control, #1 Game Farm Road, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman
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GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(As Amended)

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 administrative 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 viscerаltrophic 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 administrative 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 **the** [~~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" **means** [~~are~~] animals without a common owner, consignor or herd of origin brought together during transportation to market and commingled in a common enclosure.

(29) "Cull pig" means a pig that does not pass a veterinary inspection for health.

ED LOGSDON, Chairman
APPROVED BY AGENCY: January 4, 1995
FILED WITH LRC: January 5, 1995 at noon

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(As Amended)

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 **except as provided in 302 KAR 20:065**.

(b) Approved [~~health~~] Certificates of Veterinary Inspection or permits **shall be** required for all movements of livestock except equine prior to movement.

(c) **A certificate of veterinary inspection shall specify the herd:**

1. Certification

2. Accreditation;
3. Qualification;
4. Validation number, if applicable; and
5. Date of the last herd test. [~~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) A certificate of veterinary inspection shall contain the following information:
1. The name and address of the consignor and consignee;
2. The herd status;
3. An accurate description of the livestock;
4. An accurate method of identifying the livestock;
5. A statement certifying that the animals are free from evidence of infection or exposure to any contagious, communicable or parasitic disease. [~~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) A certificate of veterinary inspection stipulating vaccination shall include the:
1. Date of vaccination;
2. Name of vaccine;
3. Serial number of vaccine; and
4. Expiration date of the biologic or agent used. [~~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 chief livestock health official and shall include the:
1. Number of livestock;
2. Description of the livestock;
3. Identification of the livestock;
4. Farm or other place of origin;
5. Farm or other place of destination;
6. Arrival date of the livestock;
7. Name of the consignor and consignee; and
8. Any special restrictions relating to the movement of the livestock.

(b) Livestock, animals and poultry entering the Commonwealth under permit shall be:
1. Consigned to a natural person who is a resident of the state; or
2. Consigned to a legal entity authorized to do business within the state. [~~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 administrative 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 administrative 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)(a) All required tests and vaccinations, including brucellosis and tuberculosis, shall be performed by:
1. A licensed, accredited veterinarian; or
2. An authorized representative of the chief livestock health official; or
3. An authorized representative of the federal government.

(b) All required vaccinations, branding, testing, individual animal identification and other animal health procedures shall be performed using standards approved by the Chief Livestock Sanitary Official.

(8)(a) Except as otherwise set out in 302 KAR 20:065, and 302 KAR 20:070, the seller shall be responsible for all vaccinations, testing branding, individual animal identification and other animal health procedures prior to sale.

(b) No livestock shall be moved from the seller's premises until the requirements of paragraph 1(8)(a) of this subsection have been completed. [~~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.

Section 2. Cleaning and Disinfection of Conveyances Used to Transport Livestock. [~~(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

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(As Amended)

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 aminals shall be accompanied by a certificate of veterinary inspection unless otherwise provided in this administrative regulation.** [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) A permit may be obtained by calling (502) 564-3956, Monday through Friday, 8 a.m. through 4:30 p.m.**

(b) Requests for permits made after 4:30 p.m., Monday through Friday, and on weekends and holidays shall be telephonically recorded.

(c) Permits requested pursuant to paragraph (b) of this subsection shall not be issued for certain species designated by the chief livestock health official.

(d) Permit numbers obtained pursuant to this subsection shall be recorded on the certificate of veterinary inspection. [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 **shall be** [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. 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 the cattle:

a. Originate directly from a brucellosis certified free herd;

b. Are official calfhood vaccinates of the dairy breed, less than twenty (20) months of age;

c. Are official calfhood vaccinates of the beef breeds less than twenty-four (24) months of age; or

d. Are open heifers less than eighteen (18) months of age designated for feeding purposes.

2. Diversion of "feeder" heifers for use as breeding animals without meeting applicable test requirements shall be a violation of this administrative regulation.

3. Heavy springers and cows postpartum shall be test eligible regardless of age.

4. Heifers for exhibition in carcass classes shall be officially identified but shall not be required to be brucellosis tested if accompanied by a certificate of veterinary inspection.

5. Bison shall meet the same requirements as cattle. [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. **The cattle** originate directly from a tuberculosis [~~1.~~] accredited free herd; or

b. **The cattle** 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 for 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 for sale. The Certificate of Veterinary Inspection shall document the flock is in compliance with the USDA VSFC Program.

2. Entry for 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

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(As Amended)

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 **shall** [~~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 **shall** [~~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 **shall** [~~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 **may** [~~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)**(a) 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 the cattle:**

1. Originate directly from a brucellosis certified free herd;

2. Are official calfhood vaccinates of the dairy breed, less than twenty (20) months of age;

3. Are official calfhood vaccinates of the beef breeds less than twenty-four (24) months of age;

4. Are open heifers less than eighteen (18) months of age designated for feeding purposes; or

5. Are identified with an "S" brand and moving directly to recognized slaughter facilities or to designated quarantined feedlots in states approving this movement.

(b) Diversion of "feeder" heifers for use as breeding animals without meeting applicable test requirements shall be a violation of this administrative regulation. [~~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 these 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 these 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 **shall** [~~will~~] be approved by the Department of Agriculture and be designated only for cattle assemblage. Vaccination, testing [~~and~~/]or branding requirements **shall** [~~must~~] be met prior [~~upon entry~~] to release of animals from these facilities, and records of state and farm of origins **shall** [~~must~~] be kept by the operators. Animals imported into Kentucky and remaining in Kentucky after entering an approved livestock assembly facility **shall** [~~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

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(As Amended)

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)**(a) All animals offered for sale or exhibition in the Commonwealth shall be accompanied by a certificate of veterinary inspection, unless otherwise provided in 302 KAR 20:070 and this administrative regulation.**

(b) A certificate of veterinary inspection shall be void:

1. 150 days after issuance for purposes of exhibition; and

2. Thirty (30) days after issuance for purposes of sale.

(2) All required testing shall be conducted by a state and federally approved laboratory. [~~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.~~]

(3) [~~(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~~], the certificate of veterinary inspection [~~health certificate~~] shall document [~~show~~] the accreditation and certification number with date of last herd test for tuberculosis and brucellosis.

(b) [~~(c)~~] Blood tests for brucellosis **shall** [~~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.

1. Beef and dairy breeding animals 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 the cattle:

a. Originate directly from a certified herd;

b. Are official calfhood vaccinates of the dairy breed, less than twenty (20) months of age; or

c. Are official calfhood vaccinates of the beef breeds less than twenty-four (24) months of age.

2. Heavy springers and cows postpartum shall be test eligible regardless of age.

3.The seller shall:

a. Be responsible for testing pursuant to subparagraph 1 of this paragraph; and

b. Not move the cattle until negative test results are obtained.

(b) Exhibition.

1. Animals twelve (12) months of age or older shall be negative to an official test for brucellosis within 150 days prior to date of exhibition, unless the cattle:

a. Originate directly from a certified herd;

b. Are official calfhood vaccinates of the dairy breed, less than twenty (20) months of age; or

c. Are official calfhood vaccinates of the beef breeds less than twenty-four (24) months of age.

2. Heavy springers and cows postpartum shall be test eligible regardless of age.

3.a. Steers and spayed heifers shall be accompanied by a certificate of veterinary inspection; and

b. The certificate shall show the individual identification of each animal.

c. No brucellosis test shall be required for steers and spayed heifers that comply with this subparagraph.

[~~(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 these 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. **No test shall be required.** [~~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. **No test shall be required.** [~~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

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(As Amended)

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 **at the** [~~in said~~] sales point to carry out the provisions of this administrative regulation.

(a) A licensed, accredited veterinarian seeking approval by the board to be designated official market veterinarian shall make application and state that he **shall** [~~(she) will~~] comply with this and all associated administrative 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. **The** [~~Said~~] pens are to be permanently identified as "bangs" pens and the word is to be spelled out on the gates to **the** [~~such~~] pens. The pens shall be constructed so as to facilitate easy cleaning and disinfecting after each use. The pens **shall** [~~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. **The** [~~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 **shall** [~~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 administrative 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 **shall** [~~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 **shall** [~~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 **shall** [~~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. The [~~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 the [~~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 **shall** [~~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 **shall** [~~must~~] use separate bleeding needles and syringes for each animal bled. He **shall** [~~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 **shall** [~~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 **shall** [~~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 **shall** [~~must~~] be placed in pens separate and apart from slaughter swine. All swine designated for slaughter **shall** [~~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 **shall** [~~will~~] not be used by other swine until cleaning and disinfecting have been accomplished. Further, cull swine **shall** [~~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 and federal slaughter establishment.

(d) Slaughter class of swine for home consumption may be purchased from a state and federal stockyard approved to handle slaughter swine only, but shall move directly to a state and 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 and 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

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(As Amended)

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~~] means 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~~] means 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~~] means 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~~] means a swine breeding herd that has been sampled and was negative to an official pseudorabies test during the last twelve (12) months **pursuant to Section 2 of this administrative regulation.** [~~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~~] means 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~~] means 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~~] means 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~~] means 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. Testing Requirements for a Swine Breeding Herd to Qualify as a Pseudorabies Monitored Feeder Pig Herd. (1) To qualify as a pseudorabies monitored feeder pig herd the following testing requirements shall apply:

(a) If the size of the swine breeding herd is ten (10) animals or less, then all animals shall be tested;

(b) If the size of the swine breeding herd is eleven (11) to thirty-five (35) animals, then ten (10) animals shall be tested; and

(c) If the size of the swine breeding herd is thirty-six (36) or more animals, then thirty (30) percent or thirty (30) animals, whichever is less, shall be tested.

(2) Tested breeding swine shall be selected at random from all age groups, including herd boars.

(3) All animal groups to be tested shall be proportionately represented.

(4) A pseudorabies monitored feeder pig herd may also be classified as a swine breeding herd that is not known to be infected in a Stage III, Stage IV, or Stage V state or area.

Section 3. [~~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 4. [~~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 5. [~~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 6. [~~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 7. [~~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

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Animal Health
(As Amended)

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 **pursuant to Section 2 of this administrative regulation.** ~~[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. Testing Requirements for a Swine Breeding Herd to Qualify as a Pseudorabies Monitored Feeder Pig Herd. (1) To qualify as a pseudorabies monitored feeder pig herd the following testing requirements shall apply:

(a) If the size of the swine breeding herd is ten (10) animals or less, then all animals shall be tested;

(b) If the size of the swine breeding herd is eleven (11) to thirty-five (35) animals, then ten (10) animals shall be tested; and

(c) If the size of the swine breeding herd is thirty-six (36) or more animals, then thirty (30) percent or thirty (30) animals, whichever is less, shall be tested.

(2) Tested breeding swine shall be selected at random from all age groups, including herd boars.

(3) All animal groups to be tested shall be proportionately represented.

(4) A pseudorabies monitored feeder pig herd may also be classified as a swine breeding herd that is not known to be infected in a Stage III, Stage IV, or Stage V state or area.

Section 3. [~~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 4. [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 administrative regulation by a fee basis contract or agreement with a veterinary practitioner accredited and licensed in Kentucky.

Section 5. [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 6. [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 7. [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 administrative 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 8. [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

JUSTICE CABINET
Division of Charitable Gaming
(As Amended)

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) If [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:

1. Manufacturer - $500.
2. Distributor - $250.
3. Charitable gaming facility - $2,500.
4. Charitable gaming organization with gross receipts not in excess of $100,000 - $100.
5. Charitable gaming organization with gross receipts over $100,000, but not in excess of $250,000 - $200.
6. Charitable gaming organization with gross receipts 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 **form specified in Section 5(1) of this administrative regulation,** [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 **shall not** [may] continue after the expiration date on the license, and the licensee shall cease **the** [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.

JUSTICE CABINET
Division of Charitable Gaming
(As Amended)

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**es** 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 **shall [~~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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Bureau of Learning Results Services
(As Amended)

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 LEVELS ONE (1) TO FIFTY-ONE (51)

Reward Level	Reward Criteria	Reward Index	Amount
One	One point above threshold	38.00	50% of maximum
Two	One point above threshold plus 2% of difference between threshold and baseline	38.14	51% of maximum
Three	One point above threshold plus 4% of difference between threshold and baseline	38.28	52% of maximum
Four	One point above threshold plus 6% of difference between threshold and baseline	38.42	53% of maximum
Five	One point above threshold plus 8% of difference between threshold and baseline	38.56	54% of maximum
Six	One point above threshold plus 10% of difference between threshold and baseline	38.70	55% of maximum
Seven	One point above threshold plus 12% of difference between threshold and baseline	38.84	56% of maximum
Eight	One point above threshold plus 14% of difference between threshold and baseline	38.98	57% of maximum
Nine	One point above threshold plus 16% of difference between threshold and baseline	39.12	58% of maximum
Ten	One point above threshold plus 18% of difference between threshold and baseline	39.26	59% of maximum
Eleven	One point above threshold plus 20% of difference between threshold and baseline	39.40	60% of maximum
Twelve	One point above threshold plus 22% of difference between threshold and baseline	39.54	61% of maximum
Thirteen	One point above threshold plus 24% of difference between threshold and baseline	39.68	62% of maximum
Fourteen	One point above threshold plus 26% of difference between threshold and baseline	39.82	63% of maximum
Fifteen	One point above threshold plus 28% of difference between threshold and baseline	39.96	64% of maximum
Sixteen	One point above threshold plus 30% of difference between threshold and baseline	40.10	65% of maximum
Seventeen	One point above threshold plus 32% of difference between threshold and baseline	40.24	66% of maximum
Eighteen	One point above threshold plus 34% of difference between threshold and baseline	40.38	67% of maximum
Nineteen	One point above threshold plus 36% of difference between threshold and baseline	40.52	68% of maximum
Twenty	One point above threshold plus 38% of difference between threshold and baseline	40.66	69% of maximum
Twenty-one	One point above threshold plus 40% of difference between threshold and baseline	40.80	70% of maximum
Twenty-two	One point above threshold plus 42% of difference between threshold and baseline	40.94	71% of maximum
Twenty-three	One point above threshold plus 44% of	41.08	72% of maximum

	difference between threshold and baseline		
Twenty-four	One point above threshold plus 46% of difference between threshold and baseline	41.22	73% of maximum
Twenty-five	One point above threshold plus 48% of difference between threshold and baseline	41.36	74% of maximum
Twenty-six	One point above threshold plus 50% of difference between threshold and baseline	41.50	75% of maximum
Twenty-seven	One point above threshold plus 52% of difference between threshold and baseline	41.64	76% of maximum
Twenty-eight	One point above threshold plus 54% of difference between threshold and baseline	41.78	77% of maximum
Twenty-nine	One point above threshold plus 56% of difference between threshold and baseline	41.92	78% of maximum
Thirty	One point above threshold plus 58% of difference between threshold and baseline	42.06	79% of maximum
Thirty-one	One point above threshold plus 60% of difference between threshold and baseline	42.20	80% of maximum
Thirty-two	One point above threshold plus 62% of difference between threshold and baseline	42.34	81% of maximum
Thirty-three	One point above threshold plus 64% of difference between threshold and baseline	42.48	82% of maximum
Thirty-four	One point above threshold plus 66% of difference between threshold and baseline	42.62	83% of maximum
Thirty-five	One point above threshold plus 68% of difference between threshold and baseline	42.76	84% of maximum
Thirty-six	One point above threshold plus 70% of difference between threshold and baseline	42.90	85% of maximum
Thirty-seven	One point above threshold plus 72% of difference between threshold and baseline	43.04	86% of maximum
Thirty-eight	One point above threshold plus 74% of difference between threshold and baseline	43.18	87% of maximum
Thirty-nine	One point above threshold plus 76% of difference between threshold and baseline	43.32	88% of maximum
Forty	One point above threshold plus 78% of difference between threshold and baseline	43.46	89% of maximum
Forty-one	One point above threshold plus 80% of difference between threshold and baseline	43.60	90% of maximum
Forty-two	One point above threshold plus 82% of difference between threshold and baseline	43.74	91% of maximum
Forty-three	One point above threshold plus 84% of difference between threshold and baseline	43.88	92% of maximum
Forty-four	One point above threshold plus 86% of difference between threshold and baseline	44.02	93% of maximum
Forty-five	One point above threshold plus 88% of difference between threshold and baseline	44.16	94% of maximum
Forty-six	One point above threshold plus 90% of difference between threshold and baseline	44.30	95% of maximum
Forty-seven	One point above threshold plus 92% of difference between threshold and baseline	44.44	96% of maximum
Forty-eight	One point above threshold plus 94% of difference between threshold and baseline	44.58	97% of rnaximum
Forty-nine	One point above threshold plus 96% of difference between threshold and baseline	44.72	98% of maximum
Fifty	One point above threshold plus 98% of difference between threshold and baseline	44.86	99% of maximum
Fifty-one	One point above threshold plus 100% of difference between threshold and baseline	45.00	100% of maximum

~~[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 53% of maximum~~

~~the difference between threshold and baseline~~

~~Fifty one 45 One point above 100% of maximum threshold plus 100% of the difference between threshold and baseline goal]~~

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

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(As Amended)

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 **who has a physical disability** [~~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 **shall be** [~~is~~] initiated.

(2) Conciliation **shall be** [~~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 **shall be** [~~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 **shall be** [~~are~~] imposed as follows:

(a) If the nonprimary wage earner (non-PWE) fails to comply with ET, the individual **shall be** [~~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 **shall be** [~~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 **shall be** [~~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 **shall be** [~~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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

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

401 KAR 50:038. Air [~~Title V~~] emissions fee.

RELATES TO: KRS 224.10-100, 224.10-230, 224.20-050[~~(10)~~], 224.20-100, 224.20-130, 40 CFR Part 70, 42 USC 7401-7671q, et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-230, 224.20-050[~~(10)~~], 224.20-100, 224.20-130, 40 CFR Part 70, 42 USC 7401-7671q, et seq.

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the assessment of fees necessary to fund the state [~~operating~~] permit program **as defined in Section 1(8) of this administrative regulation.** [~~, including those program elements required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations promulgated by the U.S. EPA at 40 CFR Part 70, as published in the Federal Register, 57 FR 32250, on July 21, 1992.~~]

Section 1. Definitions. As used in this administrative regulation, **terms defined in this section shall have the following meanings.** All terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Act," "Clean Air Act," or "CAA" means 42 USC 7401 through 7671q.

(2) "Actual emissions" means the amount of a pollutant actually emitted in the calendar year immediately preceding the fiscal year during which an emissions fee is assessed, as recorded by the Kentucky Emissions Inventory System (KyEIS).

(3) "Designated representative" means a responsible person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program.

(4) "Emissions fee" means the amount of money assessed by the cabinet to **fund** [~~recover~~] the cost of administering the operating permit program.

(5) "Fiscal year" means the period beginning July 1 and ending the following June 30.

(6) "Hazardous air pollutant" means a pollutant listed in 401 KAR 57:061.

(7) "Kentucky emissions inventory system" or "KyEIS" means a database used by the cabinet to record, among other information, emissions of air pollutants from Kentucky sources.

(8) "[~~Operating~~] Permit program" means the **issuance and enforcement of permits for all sources subject to this administrative regulation.**

(a) Permit program includes:

1. The review of permit applications and exemptions;

2. The issuance of permits to air pollution sources;

3. Inspections of air pollution sources;

4. Enforcement activities other than prosecutions in a court of law or administrative hearings;

5. Air quality and emissions monitoring, including quality assurance;

6. The preparation of generally applicable reports, plans, administrative regulations, and statutes;

7. Responses to inquiries;

8. Preparing inventories and tracking emissions;

9. The preparation and maintenance of records, including computerized data bases;

10. Air quality modeling, analyses, and demonstrations; and

11. Providing direct and indirect support through a small business technical assistance program.

(b) Permit program does not include:

1. The control of asbestos emissions from renovations or demolitions, or any activities required under the Asbestos Hazard Emergency Response Act (AHERA);

2. The issuance of permits or the enforcement of permit conditions required only by 401 KAR 63:020, 63:021, or 63:022, or any other applicable requirement, as defined in 401 KAR 50:035, that is not required to be federally enforceable; or

3. The control and enforcement of any activity not required to be permitted, and the enforcement of applicable requirements at any source not required to have a permit. [~~state [operating] permit program, including those program elements required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations promulgated by the U.S. EPA at 40 CFR Part 70, as published in the Federal Register, 57 FR 32250, on July 21, 1992. This includes but is not limited to the review of permit applications and exemptions; the issuance of permits to air pollution sources; inspections of air pollution sources; enforcement activities other than prosecutions in a court of law or administrative hearing; air quality and emissions monitoring, including quality assurance; the preparation of reports, plans, regulations, and statutes; responses to inquiries; preparing inventories and tracking emissions; the preparation and maintenance of records, including computerized data bases; air quality modeling, analyses, and demonstrations; and providing direct and indirect support through a small business technical assistance program. The [operating] permit program does not mean activities directly related to the control of asbestos emissions from renovations or demolitions, the Asbestos Hazard Emergency Response Act, or costs directly related to vehicle inspection and maintenance or other vehicle requirements.~~]

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

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

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

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

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For affected sources, if requested by the source, the designated representative.

(10) "Subject emissions" means actual emissions, as recorded in the Kentucky emissions inventory system, of sulfur dioxide, oxides of

nitrogen, PM_{10}, lead, volatile organic compounds, hazardous air pollutants listed in 401 KAR 57:061 for which a standard applies, or a pollutant subject to a standard contained in Section 111 of the Act, from an air pollution source subject to this administrative regulation, except that actual emissions in excess of 4,000 tons of a single pollutant from a source shall not be subject emissions. Pollutants subject only to 42 USC 7412r (Section 112(r) of the Act), and pollutants that are class I or class II substances under 42 USC 7671 through 7671q and which are not otherwise regulated shall not be subject emissions.

Section 2. Applicability. (1) This administrative regulation shall apply to **all major sources as defined in 401 KAR 50:035, and to the following minor sources unless a final rule exempting the minor source category from the permitting requirements of 42 USC 7661 through 7661f (Title V of the Act) has been published by the U.S. EPA:**

(a) Minor sources subject to a standard, federal regulation, or state administrative regulation promulgated pursuant to 42 USC 7411 or 7412 (Section 111 or 112 of the Act);

(b) Minor sources required to have a permit pursuant to 42 USC 7470 through 7515 (Part C or D of Title I of the Act); and

(c) Any other minor stationary source in a category required by the U.S. EPA to obtain a permit pursuant to 42 USC 7661 through 7661f (Title V of the Act). [~~each air pollution source which is a major source as defined in 401 KAR 50:035, Section 1(22) [(20)] or which is subject to 42 USC 7411, 7412, 7470 through 7492, or 7501 through 7515 (Section 111, Section 112, Part C, or Part D of the Act) required to have a permit issued by the cabinet and for which a final rule exempting the source from the permitting requirements of 40 CFR Part 70 has not been published by the U.S. EPA.~~]

(2) This administrative regulation shall not apply to:

(a) Mobile sources;

(b) Sources located in an air pollution control district granted concurrent jurisdiction by the cabinet under KRS 224.20-130;

(c) An electric utility unit exempted by 42 USC 7651g, unless a substitute unit has been approved by the administrator of the U.S. EPA pursuant to 42 USC 7651c; or

(d) A substitute unit approved by the U.S. EPA pursuant to 42 USC 7651c, if the cabinet has been notified in writing at least thirty (30) days prior to the fee assessment established in Section 3(1) of this administrative regulation.

Section 3. Fee Assessment. (1) On or about July 1, 1994, and on or about July 1 of each succeeding year, the division for air quality shall calculate and assess an annual emissions fee based on subject emissions for each air pollution source subject to this administrative regulation and shall provide written notification to the source of the amount of fee due. If a pollutant qualifies as more than one (1) of the subject emissions listed in Section 1(10) of this administrative regulation, it shall be assessed as a single subject emission.

(2) Determining subject emissions. At least four (4) months but not more than twelve (12) months prior to assessing the emissions fee, the cabinet shall provide each source subject to the emissions fee a written copy of the KyEIS containing the most recent information appropriate to that source. Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its subject emissions. The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information. Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the subject emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.

(3) Fee assessment. At least sixty (60) days prior to assessing the fee, the cabinet shall determine the subject emissions for each source, based on the information provided by the source and on other information available to the cabinet. The cabinet shall notify the source of its determination for subject emissions at least forty-five (45) days prior to assessing the fee. Assessment of the subject emissions shall be a final determination by the cabinet. If the source fails to notify the cabinet of an error in the determination of subject emissions within thirty (30) days after the date the determination is mailed by the cabinet, the source shall be assessed a fee based on the cabinet's determination. If the source notifies the cabinet in a timely manner that there is an error in the determination of its subject emissions, and the cabinet disagrees with the assessment by the source, the cabinet shall notify the source, in writing, specifying the reasons for rejecting the error notification.

(4) Computation of emissions fee. The cabinet shall compute the emissions fee as follows:

(a) For fiscal year 1995 the emissions fee shall be $5,505,200 [~~5,924,900~~], and for fiscal year 1996 the emissions fee shall be $6,594,700 [~~7,085,400~~]. The cost per ton of the subject emissions shall be the emissions fee, minus $150 times the number of sources subject to subsection (5)(b) of this section, divided by the total number of tons of subject emissions from all sources subject to this administrative regulation which emit twenty-five (25) tons or more of subject emissions.

(b) Except as provided in paragraph (c) of this subsection, the emissions fee for each succeeding fiscal year shall be $6,594,700 [~~7,085,400~~] adjusted annually using the method provided in 40 CFR 70.9(b)(2)(iv). The cost per ton of subject emissions shall be determined as prescribed in paragraph (a) of this subsection.

(c) Notwithstanding the provisions of paragraph (b) of this subsection the emissions fee for a fiscal year may be increased by an amount greater than that calculated pursuant to 40 CFR 70.9(b)(2)(iv), may be left unchanged from the previous fiscal year, or may be decreased from the previous fiscal year if the cabinet determines after public hearing and after approval by the U.S. EPA that the increase is necessary, or the same or lesser amount is adequate, to cover all reasonable costs of administering the [~~operating~~] permit program.

(5) Payment of fees.

(a) A source subject to this administrative regulation which emitted twenty-five (25) tons or more of subject emissions shall pay a portion of the emissions fee which shall be determined by multiplying the subject emissions from the source, expressed in tons to the nearest ton, by the cost per ton of subject emissions, and subtracting from that amount any portion of unexpended emissions fees which are carried forward from the previous year in an amount proportional to that paid by the source during the previous year. The source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the **fee invoice is mailed** [~~cabinet mails to the source the written notification of the amount of fee due~~] [~~, except that a source shall not be required to pay a fee prior to approval of the state permit program by the U.S. EPA~~].

(b) A source subject to this administrative regulation which emitted less than twenty-five (25) tons of subject emissions shall pay an annual fee of $150. The source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the **fee invoice is mailed** [~~cabinet mails to the source the written notification of the amount of fee due~~] [~~, except that a source shall not be required to pay a fee prior to approval of the state permit program by the U.S. EPA~~].

(c) The fee invoice shall be mailed to the permit holder of record as of the date the invoice is mailed, and the permit holder shall be responsible for payment.

(6) Enforcement.

(a) Each day after the deadline for payment of the source's portion of the emissions fee during which the source fails to pay the fee shall be a separate violation of this administrative regulation.

(b) Failure to pay the fee within ninety (90) days after the date on which the cabinet notifies the source of the amount of fee due shall result in:

1. An increase in the fee of an additional fifty (50) percent of the original amount due, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of federal taxes); and

2. Suspension of the source's permit [~~to operate~~] until the fee is paid or until the cabinet has approved a schedule of payment.

Section 4. Use of Fees. All fees collected pursuant to this administrative regulation shall be deposited in a trust and agency account and shall be used solely for funding the [~~operating~~] permit program.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: March 14, 1995
FILED WITH LRC: March 15, 1995 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(Amended After Hearing)

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. Mistakenly Issued Brands. (1) When a certificate of title is branded due to an error by the county clerk or the Department of Vehicle Regulation, an application for an updated or corrected title may be submitted to the county clerk in accordance with KRS 186A.180.

(2) The application for an updated or corrected certificate of title shall consist of the following documents:

(a) A newly completed form required by KRS 186A.060, Vehicle Transaction Record;

(b) The certificate of title; and

(c) An affidavit from the owner or statement from the county clerk which sets forth the nature of the error.

(3) Production of a corrected certificate of title shall be carried out under procedures similar to those applicable to production of an original certificate of title pursuant to KRS Chapter 186A.

Section **8.** ~~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 **9.** ~~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: March 9, 1995
FILED WITH LRC: March 10, 1995 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Amended After Hearing)

806 KAR 39:080. Reporting requirements for ~~of automobile~~ insurers of motor vehicles 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 **August 15** ~~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 **August 15** ~~July 31~~, 1996, and shall cover the time period beginning July 15, 1995, and ending July 14, 1996.

(3) The **report** ~~data~~ required by this administrative regulation shall be submitted ~~to the department~~ in writing and ~~the report~~ shall be entitled "Personal Injury Payment Report". **The report shall be delivered to the following address: Property and Casualty Division, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.**

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: March 8, 1995
FILED WITH LRC: March 8, 1995 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Amended After Hearing)

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 **met eligibility requirements for participation in the DOP.** [~~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 **center** services;
(j) Rural health clinic services;
(k) **Dental services** [~~Nurse-midwife services~~];
(l) Advanced registered nurse practitioner services;
(m) **Certified registered** nurse anesthetists services;
(n) Pharmacy services;
(o) Community mental health **center** 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 **facility** [~~center~~] services for individuals under age twenty-one (21);
(v) [~~(w)~~] Inpatient psychiatric hospital services for individuals age sixty-five (65) or over or under age twenty-one (21) meeting patient status criteria;
(w) [~~(x)~~] Targeted case management services;
(x) [~~(y)~~] Home and community based services;
(y) [~~(z)~~] Preventive health care services **through health departments**; and
(z) Early and periodic [~~(aa)~~] screening**, diagnosis and treatment** 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) **If an individual who has recently obtained employment has not received a pay check or full month's pay, consider the anticipated monthly earnings.**

(d) 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).

(e) [~~(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.

(f) [~~(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) **Estimated monthly income pursuant to subsection (6)(b) of this section shall be verified by using information obtained from the employer which best indicates ongoing income.**

(e) Anticipated monthly income determined for newly obtained employment pursuant to subsection (6)(c) of this section shall be computed by using the hourly rate and the estimated number of hours to be worked during a pay period as verified by the employer.

(f) 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.

(d) The applicant shall provide verification of insurance information.

(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. **(1) Within five (5) working days from the date of a signed application, the applicant may provide verification of:**

(a) Gross income;

(b) Liquid assets;

(c) Health insurance information; and

(d) If questionable, residency.

(2) 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 **receipt of the requested information [~~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**, pursuant to subsection (5) of this section,** 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;

a. 907 KAR 1:102 sets forth the provisions relating to this service;

b. 907 KAR 1:104 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:476 incorporates by reference the manual used to implement this service;

2. Dental services;

a. 907 KAR 1:026 sets forth the provisions relating to this service and incorporates by reference the manual used to implement this service; and

b. 907 KAR 1:626 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement;

3. Durable medical equipment;

a. 907 KAR 1:470 sets forth the provisions relating to this service;

b. 907 KAR 1:472 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:474 incorporates by reference the manual used to implement this service;

4. Family planning services;

a. 907 KAR 1:048 sets forth the provisions relating to this service;

b. 907 KAR 1:049 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:434 incorporates by reference the manual used to implement this service;

5. Hearing services;

a. 907 KAR 1:038 sets forth the provisions relating to this service;

b. 907 KAR 1:039 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:390 incorporates by reference the manual used to implement this service;

6. Hospice services;

a. 907 KAR 1:330 sets forth the provisions relating to this service;

b. 907 KAR 1:340 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:436 incorporates by reference the manual used to implement this service;

7. Laboratory services;

a. 907 KAR 1:028 sets forth the provisions relating to this service;

b. 907 KAR 1:029 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:404 incorporates by reference the Independent Laboratory Services Manual;

8. Local health department services **as set forth in 907 KAR 1:360**;

9. Nurse anesthetists services;

a. 907 KAR 1:200 sets forth the provisions relating to this service;

b. 907 KAR 1:210 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:406 incorporates by reference the manual used to implement this service;

10. **[~~Nurse midwife services;~~**

~~11.~~] Physician services;

a. 907 KAR 1:009 sets forth the provisions relating to this service and incorporates by reference the manual used to implement this service; and

b. 907 KAR 1:010 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement;

11. [~~12.~~] Podiatry services;

a. 907 KAR 1:270 sets forth the provisions relating to this service;

b. 907 KAR 1:280 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:412 incorporates by reference the manual used to implement this service;

12. [~~13.~~] Psychiatric residential treatment facility services;

a. 907 KAR 1:505 sets forth the provisions relating to this service;

b. 907 KAR 1:510 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:512 incorporates by reference the manual used to implement this service;

13. [14.] Radiology services;

a. 907 KAR 1:028 sets forth the provisions relating to this service; and

b. 907 KAR 1:029 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement;

14. [15.] Renal dialysis services as set forth in 907 KAR 1:400 which provides for:

a. The provisions relating to this service;

b. The method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. Incorporates by reference the manual used to implement this service;

15. [16.] Transportation services;

a. 907 KAR 1:060 sets forth the provisions relating to this service; and

b. 907 KAR 1:061 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement.

16. [17.] Vision services; or

a. 907 KAR 1:038 sets forth the provisions relating to this service and incorporates by reference the manual used to implement this service; and

b. 907 KAR 1:631 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement;

(b) The following rate for a cost based reimbursed service or item for:

1. [For] Home health services, the established interim rate per provider;

a. 907 KAR 1:030 sets forth the provisions relating to this service and incorporates by reference the manual used to implement this service; and

b. 907 KAR 1:031 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement;

2. [For] Inpatient hospital services, the established per diem rate;

a. 907 KAR 1:012 sets forth the provisions relating to this service;

b. 907 KAR 1:013 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:376 incorporates by reference the manual used to implement this service;

3. [For] Outpatient hospital services, the established interim rate;

a. 907 KAR 1:014 sets forth the provisions relating to this service;

b. 907 KAR 1:015 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:376 incorporates by reference the manual used to implement this service;

4. [For] Community mental health center services, the established rate per provider;

a. 907 KAR 1:044 sets forth the provisions relating to this service and incorporates by reference the manual used to implement this service; and

b. 907 KAR 1:045 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement;

5. [For] Inpatient psychiatric hospital services, the established per diem rate;

a. 907 KAR 1:016 sets forth the provisions relating to this service; and

b. 907 KAR 1:013 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement;

6. [For] Primary care centers and rural health clinic services, the fee-for-service rate per procedure;

a. 907 KAR 1:054 and 907 KAR 1:082 set forth the provisions relating to this service;

b. 907 KAR 1:055 and 907 KAR 1:080 set forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:418 incorporates by reference the Rural Health Clinic Services Manual;

7. [For] Targeted case management services, the established interim rate per provider;

a. 907 KAR 1:515 and 907 KAR 1:525 set forth the provisions relating to this service;

b. 907 KAR 1:520 and 907 KAR 1:530 set forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:550 and 907 KAR 1:555 incorporate by reference the manual used to implement this service;

8. [For Alternative] Home and community based services for the mentally retarded, the established interim rate per provider;

a. 907 KAR 1:140 sets forth the provisions relating to this service;

b. 907 KAR 1:150 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:425 incorporates by reference the manual used to implement this service;

9. [For] Home and community based services, the established interim rate per provider; [or]

a. 907 KAR 1:160 sets forth the provisions relating to this service;

b. 907 KAR 1:170 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:432 incorporates by reference the manual used to implement this service; or

(c) The following rate for other types of reimbursed services or items for:

1. [For] Ambulatory surgical center services, a rate of sixty-five (65) percent of charges; [or]

a. 907 KAR 1:008 sets forth the provisions relating to this service and the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

b. 907 KAR 1:380 incorporates by reference the manual used to implement this service; 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;

a. 907 KAR 1:019 sets forth the provisions relating to this service;

b. 907 KAR 1:021 sets forth the method for determining amounts payable by the cabinet for Medicaid reimbursement; and

c. 907 KAR 1:416 incorporates by reference the manual used to implement this service.

(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) **Providers may follow established practices when collecting payment. For discount option program individuals, providers may request payment before services or items are rendered; and** [~~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, **pursuant to Section 9 of this administrative regulation. Reference to provider manuals appear in clause c under the services listed in Section 9 of this administrative regulation unless the manual has been incorporated in the service administrative regulation appearing in clause a under the services listed in Section 9 of this administrative regulation**.

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 **who is suspected of committing fraud shall be referred to the Attorney General's Office for investigation and possible prosecution.** [~~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 **May 1, 1995** [~~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: March 9, 1995
FILED WITH LRC: March 15, 1995 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MARCH 15, 1995

EXECUTIVE BRANCH ETHICS COMMISSION
(Proposed Amendment)

9 KAR 1:020. Complaints.

RELATES TO: KRS 11A.080
STATUTORY AUTHORITY: KRS 11A.080
NECESSITY AND FUNCTION: KRS 11A.080 establishes procedures relating to review and resolution of complaints. This administrative regulation implements KRS 11A.080 by establishing specific requirements and methods which are not set forth in KRS Chapter 11A.

Section 1. Complaint. (1) A complaint shall state:
(a) The full name and address of:
1. The complainant;
2. The complainant's attorney, if an attorney has been retained; [~~and~~]
(b) [~~3.~~] The name[~~s~~] of each person[~~s~~] alleged to have violated KRS Chapter 11A; and
(c) The employment of each alleged violator, if known;
(d) The alleged facts that are the basis of the complaint; and
(e) [~~.~~
~~(b) In sufficient detail, the action that is the basis of the complaint; and~~
~~(c) If known,~~] The statute(s) alleged to have been violated, if known.
(2) A complaint shall be signed by the complainant [~~or complainant's attorney~~] under penalty of perjury.

Section 2. Answer. (1) Within ten (10) days of receiving a proper complaint, the commission shall initiate an inquiry into the allegations set out in the complaint.
(2) Within sixty (60) days of initiating a preliminary inquiry into the complaint, the commission shall mail a copy of the complaint, by certified mail, return receipt requested, to any person alleged to have committed a violation.
(3) Within twenty (20) days of receiving a copy of the complaint, a person against whom a complaint is filed shall file with the commission a written, signed response to the complaint and shall mail a copy of the response to the complainant.

Section 3. Commission-initiated Inquiry. When the commission initiates a preliminary inquiry on its own motion, it shall inform the person being investigated that he is the subject of a commission inquiry. This notice shall be conveyed in writing, within sixty (60) days of the commencement of the inquiry, and shall be mailed to the person being investigated by certified mail, return receipt requested. The commission shall specify the general nature of the inquiry and shall indicate the statutes and administrative regulations which may have been violated.

Section 4. Preadjudicatory Meeting. The person being investigated may request a meeting with the commission's attorney and the complainant, if any, at any time during the course of the commission's preliminary inquiry. He may have an attorney represent him at this meeting. The commission's attorney shall use reasonable efforts to schedule a meeting if one has been requested. Nothing in this section shall be construed to prohibit the commission's attorney or any investigator acting on behalf of the commission from initiating contact with the person being investigated.

Section 5. Probable Cause. The commission's purpose in investigating potential violations on its own motion or alleged violations contained in a complaint is to ascertain whether there is probable cause to believe the existence of one (1) or more violations. When in the opinion of the commission there is probable cause to believe a violation has occurred, the commission may confidentially reprimand the alleged violator or may initiate an adjudicatory proceeding against the alleged violator. To initiate an adjudicatory proceeding, the commission shall issue an initiating order. If the commission does not find probable cause of a violation, it shall terminate immediately the inquiry. The commission shall inform, in writing, the complainant, if any, and the person being investigated of the inquiry termination.

Section 6. Unless otherwise prohibited by law, the commission may waive any part of this administrative regulation upon good cause shown.

~~[Section 2. Within sixty (60) days of initiating a preliminary inquiry into the complaint, the commission shall forward a copy of the complaint to any person alleged to have committed a violation, and no later than twenty (20) days after being notified of a complaint, a person against whom a complaint is filed shall:~~
~~(1) File with the commission a written response to the complaint; and~~
~~(2) Serve a copy of the response on the complainant.]~~

LIVINGSTON TAYLOR, Chairman
APPROVED BY AGENCY: February 9, 1995
FILED WITH LRC: March 14, 1995 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 28, 1995, at 9 a.m., in Room 386 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comment on the proposed administrative regulation to the contact person.
CONTACT PERSON: Jill E. LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, 702 Capital Avenue, Frankfort, Kentucky 40601, (502) 564-7954.

REGULATORY IMPACT ANALYSIS

Contact person: Jill LeMaster
(1) Type and number of entities affected: This regulation applies to anyone who files a complaint with the Executive Branch Ethics Commission and anyone who is the subject of a complaint or a commission-initiated inquiry. We estimate the number of persons affected to be approximately 50 to 100 on an annual basis.
(2) Direct and indirect costs or savings on the: Not applicable.
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Not applicable.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Not applicable.
(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 only compliance costs are associated with writing a complaint or writing an answer; there are no filing fees.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body: Same as above; costs associated with inquiries and preadjudicatory meetings are existing.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None, except as stated above.

(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: Any cost would be paid for by the existing revenues budgeted to this agency.

(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: This method complies with KRS Chapter 11A.

(8) Assessment of expected benefits: No economic impact assessed.

(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: 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 applied; all provisions of the regulation apply to anyone who files a complaint or is the subject matter of a complaint or a commission-initiated inquiry. To apply tiering in this situation is unnecessary and could result in due process concerns.

EXECUTIVE BRANCH ETHICS COMMISSION
(Proposed Amendment)

9 KAR 1:030. Adjudicatory hearings.

RELATES TO: KRS 11A.100

STATUTORY AUTHORITY: KRS ~~[11A.080,]~~ 11A.100

NECESSITY AND FUNCTION: KRS 11A.080(4)(b) gives the commission the authority to initiate an adjudicatory hearing to determine whether there has been a violation.

Section 1. A party may represent himself or be represented by counsel.

Section 2. Presiding Officer. The presiding officer shall be:

(1) The chairman of the commission; or

(2) A person designated by the chairman to serve as the presiding officer. This person can be another member of the commission or a hearing officer appointed by the commission to preside over the hearing, conduct all prehearing activities, prepare findings of fact and conclusions of law at the direction of the commission, and provide legal advice to the commission.

(3) Adjudicatory hearings may be heard by one or more members of the commission, the commission's designated hearing officer, or both. In any event, one person shall be designated the presiding officer for each hearing.

Section 3. Disqualification of a Presiding Officer. (1) A presiding officer shall be disqualified:

(a) If he served as an investigator or prosecutor in the proceeding or in the preadjudicatory stages of the proceeding;

(b) If he participated in an ex parte communication which would prejudice the proceeding;

(c) If he has a pecuniary interest in the outcome of the proceeding; or

(d) If he has a personal bias toward any party to a proceeding which would cause a prejudgment of the proceeding.

(2)(a) A party may file a written motion to disqualify a presiding officer within twenty (20) days of the latter of:

1. Receipt of notice of the identity of the presiding officer; or

2. Discovery of facts establishing grounds for disqualification of the presiding officer.

(b) The motion shall state the facts or reasons supporting it.

(c) The commission shall state in writing the facts or reasons for its decision on the motion to disqualify.

Section 4. The hearing shall be governed by this administrative regulation and by the rules of evidence for civil proceedings in the Commonwealth of Kentucky. All testimony shall be made under oath or affirmation.

Section 5. Ex Parte Communications. The commission shall not, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law, except upon notice and opportunity for all parties to participate; provided, however, that any commission member may consult with other members of the commission, with the hearing officer, if any, and with commission staff.

Section 6. Separation of Functions. A person shall not serve as a presiding officer of a hearing, or assist or advise a presiding officer in a hearing, if he has served as an investigator with regard to the subject matter of the hearing. This section shall not be construed to prohibit a person from serving as a presiding officer of a hearing if he participated in the decision of the commission to initiate the adjudicatory proceeding based on probable cause of one (1) or more violations.

Section 7. Order of Proceeding. (1) The presiding officer shall call the hearing to order and shall identify the parties to the action and shall read the initiating order. The presiding officer shall then ask the parties to state any objections or motions, and shall rule upon any objections or motions. Opening statements shall then be made, with the attorney for the commission proceeding first. Either party may waive opening statement.

(2) The taking of proof shall commence with the calling of witnesses on behalf of the commission. Such witnesses shall be examined first by the attorney for the commission, then by the respondent or that person's attorney, and finally by the presiding officer and any member of the commission hearing the case. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the commission, the respondent shall call his witnesses. Such witnesses shall be examined first by the respondent or that person's attorney, then by the attorney for the commission, and finally by the presiding officer and any member

of the commission who is hearing the case. Rebuttal examination of those witnesses shall proceed in the same order. Documents or other items may be introduced as appropriate.

(4) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(5) At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the commission always proceeding last. The presiding officer may impose reasonable time limitations upon the time allowed for opening and closing statements. Either party may waive his right to give a closing statement.

(6) If, at any time during the adjudicatory proceeding, a person's name is mentioned and that person so notifies the presiding officer or any member of the commission or its staff that he would like to make a verbal or written statement in opposition to such mention, the presiding officer shall determine whether that person may be adversely affected by the mention of his name. If the presiding officer determines the person may be adversely affected by the mention of his name during the adjudicatory proceeding, the presiding officer shall allow that person to appear personally before the commission on his own behalf, with or without an attorney, and give a statement in opposition to such adverse mention or file a written statement of such opposition for incorporation into the record of the proceeding.

Section 8. Record to be Maintained. (1) The hearing shall be transcribed by a court stenographer.

(2) A transcript of the testimony taken during the hearing shall be kept by the commission. A copy of that transcript shall be available to the respondent from the court stenographer, or, if the stenographer is unable to furnish a copy, from the commission upon request and payment of the appropriate fee. A copy of the transcript of the hearing shall be available to all commission members. Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the presiding officer.

Section 9. Continuances; Proceedings in Absentia. A request by the respondent for a continuance of the hearing may be considered by the presiding officer if the request was communicated to the presiding officer or to the commission's counsel reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the presiding officer. Failure to appear at the scheduled hearing for which a continuance has not been granted in advance may constitute a waiver of the respondent's right to appear and the hearing may be held as scheduled, in the discretion of the presiding officer.

Section 10. Unless otherwise prohibited by law, the commission may waive any part of this administrative regulation upon good cause shown.

~~[Section 1. Pleadings and Other Documents. (1) Material submitted to the commission shall be addressed to the Executive Branch Ethics Commission, Room 136, State Capitol, Frankfort, Kentucky 40601.~~

~~(2) A document that does not on its face comply with the provisions of this administrative regulation may be rejected for filing.~~

~~(3) Pleadings and other documents related to an adjudicatory hearing shall be printed or typewritten:~~

~~(a) On one (1) side of a page; and~~

~~(b) Double spaced.~~

~~(4) If a party is represented by an attorney:~~

~~(a) Party's attorney shall:~~

~~1. File a notice of appearance with the commission; and~~

~~2. Sign pleadings and other documents filed by that party;~~

~~(b) Service of pleadings and other documents upon party's attorney shall be deemed proper service upon the party.~~

~~(5) Unless a statute specifically provides otherwise, a pleading or other document shall not be required to be verified or accompanied by affidavit.~~

~~(6)(a) In order to be considered, a brief shall be filed within the time specified by the person conducting a hearing.~~

~~(b) A party may submit a written request for an extension of time in which to file a brief.~~

~~(7)(a) Briefs, motions and other pleadings, and petitions for rehearing shall be served upon all parties or their attorneys.~~

~~(b) Six (6) copies of a brief, motion, other pleading, or petition for rehearing shall be filed with the commission.~~

~~(8) For good cause shown, the commission may permit a party to amend a pleading or other document.~~

~~Section 2. Prehearing Conference. (1) Prior to a hearing, a party may request a prehearing conference.~~

~~(2) The chairman shall designate the person who will conduct the prehearing conference.~~

~~(3)(a) At the prehearing conference, parties may stipulate facts, issues, or other matters.~~

~~(b) The designated commission staff member shall prepare a prehearing order that incorporates matters stipulated at the prehearing conference.~~

~~(c) The prehearing order shall be submitted to the commission for consideration.~~

~~(d) If approved by the commission:~~

~~1. The parties shall be bound by the prehearing order; and~~

~~2. A copy of the prehearing order shall be mailed to the parties.~~

~~Section 3. Conduct of Hearing. (1) A hearing shall be conducted by:~~

~~(a) One (1) or more members of the commission; or~~

~~(b) A person designated by the commission.~~

~~(2) The person or persons conducting the hearing shall prepare and submit to the commission:~~

~~(a) Findings of fact and conclusions of law; and~~

~~(b) A recommended order.~~

~~(3) The commission may:~~

~~(a) Adopt the findings of fact, conclusions of law, and recommended order in whole or in part;~~

~~(b) Issue its own findings of fact, conclusions of law, and order;~~

~~(c) Remand the matter for additional hearings; or~~

~~(d) Take other action it deems necessary in order to reach a decision.~~

~~(4) A decision by the commission shall:~~

~~(a) Be in writing; and~~

~~(b) Contain a statement of its:~~

~~1. Findings of fact;~~

~~2. Conclusions of law; and~~

~~3. Order; and~~

~~4. Be mailed to all parties.~~

~~Section 4. Transcript of Hearing. A party may obtain a copy of the record of a hearing upon payment of the appropriate fees.]~~

LIVINGSTON TAYLOR, Chairman

APPROVED BY AGENCY: February 9, 1995

FILED WITH LRC: March 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 28, 1995, at 9 a.m., in Room 386 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comment on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jill E. LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, 702 Capital Avenue, Frankfort, Kentucky 40601, (502) 564-7954.

REGULATORY IMPACT ANALYSIS

Contact person: Jill LeMaster

(1) Type and number of entities affected: This regulation applies to anyone who participates in an adjudicatory hearing, including parties, their attorneys, witnesses, hearing officers and commission members. We estimate this regulation will affect 20 to 50 people per 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: Not applicable.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Not applicable.

(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 compliance costs are due to participating in an adjudicatory hearing, not the implementation of this regulation.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body: Same as above.

(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: Any cost would be paid for by the existing revenues budgeted to this agency.

(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: This regulation complies with KRS Chapter 11A and the Kentucky Rules of Evidence.

(8) Assessment of expected benefits: No economic impact assessed.

(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: 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 applied; all provisions of the regulation apply to anyone who participates in an adjudicatory hearing. To apply tiering in this situation is unnecessary and would result in due process concerns.

DEPARTMENT OF CORRECTIONS
(Proposed Amendments)

501 KAR 6:050. Luther Luckett 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 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised March 14, 1995 [~~July 13, 1994~~] are incorporated by reference and shall be referred to as Luther Luckett 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.

LLCC 01-12-01	Duty Officer Responsibilities
LLCC 01-13-01	Smoking: LLCC Facility
LLCC 02-01-02	Fiscal Management: Accounting Procedures
LLCC 02-01-03	Fiscal Management: Agency Funds
LLCC 02-01-04	Fiscal Management: Insurance
LLCC 02-03-01	Fiscal Management: Audits
LLCC 08-01-01	Offender Records
LLCC 08-04-01	Storage of Expunged Records
LLCC 08-05-01	Psychological and Psychiatric Reports
LLCC 11-09-01	Rules and Regulations of the Unit [~~(Amended 7/13/94)~~]
LLCC 11-13-01	Inmate Dress and Use of Access Areas
LLCC 11-18-02	Use of Monitor Telephone
LLCC 11-19-01	Unit Shakedowns/Control of Excess Property
LLCC 11-20-01	Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01	Special Management Inmates (Amended 3/14/95)
LLCC 12-01-02	Pretrial Contract Hold Status
LLCC 13-01-01	Dining Room Guidelines (Amended 3/14/95)
LLCC 13-04-01	Food Service: Meals (Amended 3/14/95)
LLCC 13-04-02	Food Service: Menu, Nutrition and Special Diets (Amended 3/14/95)
LLCC 13-05-02	Medical Screening of Food Handlers (Amended 3/14/95)
LLCC 13-06-01	Food Service: Inspections and Sanitation (Amended 3/14/95)
LLCC 13-07-01	Food Service: Purchasing[~~, Storage~~] and Farm Products (Amended 3/14/95)
LLCC 13-08-01	OJT Food Service Training Placement
LLCC 14-01-01	Sanitation, Living Condition Standards, and Clothing Issue (Amended 3/14/95)
LLCC 14-05-01	Institutional Inspections
LLCC 15-01-01	Health Maintenance Services; Sick Call and Pill Call
LLCC 15-03-01	Pharmacy
LLCC 15-03-02	Pharmacy Personnel
LLCC 15-03-03	Distribution, Procurement and Control (Amended 3/14/95)

LLCC 15-03-04	Inmate - Self Administration of Medication
LLCC 15-03-05	Use of Psychotropic Medications
LLCC 15-05-02	Licensure and Training Standards
LLCC 15-06-02	Specialized Health Services
LLCC 15-06-03	Emergency Medical/Dental Care Services
LLCC 15-06-04	First Aid/CPR Training Program
LLCC 15-06-05	Suicide Prevention and Intervention Program
LLCC 15-07-01	Health Records (Amended 3/14/95)
LLCC 15-08-01	Special Diets
LLCC 15-14-01	Informed Consent
LLCC 15-15-01	Medical Restraints
LLCC 15-16-01	Health Education/Special Health Programs
LLCC 15-17-01	Serious and Infectious Diseases
LLCC 16-01-01	Inmate Rights and Responsibilities
LLCC 16-03-01	Inmate Legal Services
LLCC 18-01-01	Inmate Correspondence [~~(Amended 7/13/94)~~]
LLCC 18-01-02	Inmate Privileged or Legal Mail Policy [~~(Added 7/13/94~~]
LLCC 18-01-03	Inmate Packages [~~(Added 7/13/94)~~]
LLCC 18-02-01	Inmate Visiting (Amended 3/14/95)
LLCC 18-02-03	Extended Visit and Furloughs
LLCC 18-02-04	Meritorious Visits
LLCC 18-03-01	Entry and Identification of Visitors for Inmate Visitation (Amended 3/14/95)
LLCC 18-03-03	Inmate Visiting Disciplinary Segregation Administrative Segregation
LLCC 18-03-04	Parole Hearings
LLCC 20-01-01	Personal Property Control [~~(Amended 7/13/94)~~]
LLCC 20-04-01	Inmate Canteen Committee (Amended 3/14/95)
LLCC 20-04-02	Inmate Canteen (Amended 3/14/95)
LLCC 20-04-03	Canteen Purchase Limits
LLCC 20-05-01	Inmate Control of Personal Funds (Amended 3/14/95)
LLCC 20-05-02	Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
LLCC 20-05-03	Theft of Inmate Personal Property
LLCC 20-06-01	Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01	Classification/Security Levels
LLCC 21-03-01	Classification Process
LLCC 23-01-01	Academic School
LLCC 26-01-01	Religious Services
LLCC 26-01-02	Prayer

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: March 14, 1995

FILED WITH LRC: March 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for April 24, 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, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 298 employees of the correctional institutions, 1,034 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 administrative regulation if in conflict: N/A

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

(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 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards 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 March 14, 1995 [~~November 14, 1994~~] are incorporated by reference and shall be referred to as Western Kentucky 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.

WKCC 01-02-01	Public Information and Media Communication (Added 3/14/95)
WKCC 02-01-01	Inmate Funds
WKCC 02-01-02	Inmate Canteen
WKCC 02-00-03	Invoice and Voucher Processing
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06	Purchasing Procedures
WKCC 02-01-01	Inmate Funds
WKCC 02-02-01	Agency Funds and Accounting Procedures
WKCC 02-08-01	Property Receipt and Inventory Procedures
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development
WKCC 04-04-01	Educational Assistance Program
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse and Alcohol Testing
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04	Food Service Security
WKCC 11-00-05	Food Service General Guidelines
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing (Amended 3/14/95) [~~(Amended 11/14/94)~~]
WKCC 13-00-01	Special Health Programs
WKCC 13-01-01	Use of Pharmaceutical Products [~~(Amended 11/14/94)~~]
WKCC 13-02-01	Health Care Services
WKCC 14-04-01	Legal Services Program
WKCC 14-06-01	Inmate Grievance Procedure
WKCC 15-01-01	Hair and Grooming Standards
WKCC 16-01-01	Visiting Policy and Procedures
WKCC 16-02-01	Inmate Correspondence
WKCC 16-03-01	Inmate Access to Telephones
WKCC 16-04-01	Inmate Packages
WKCC 17-01-01	Inmate Personal Property
WKCC 17-02-01	Inmate Reception and Orientation
WKCC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKCC 20-01-01	Education Program
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities
WKCC 22-00-02	Inmate Clubs and Organizations
WKCC 23-00-01	Religious Services
WKCC 25-02-01	Inmate Release Process
WKCC 25-03-01	Prerelease Programs

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: March 14, 1995

FILED WITH LRC: March 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for April 24, 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, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 143 employees of the correctional institution, 414 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 administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Office of Minority Affairs
(Proposed Amendment)

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.

RELATES TO: KRS Chapters 96A, 174, 176, 177, 183, 13 CFR 121.1-121.3, 49 CFR 23, 15 USC 637

STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 CFR 23

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program. It also sets forth the requirement that certified and prequalified DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.

Section 1. Definitions. (1) "Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification as a disadvantaged, minority or women business enterprise.

(2) "Approval" means that the applicant meets disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(3) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged, minority or women business enterprise or joint venture criteria.

(4) "Challenge" means an action of a third party which takes issue with the socially and economically disadvantaged status of certified disadvantaged business enterprise program participants or applicants for DBE certification.

(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet which certification has not expired, as a disadvantaged, minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged, minority or women business enterprise or joint venture.

(6) "Denial" means that the applicant does not meet disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(7) "Disadvantaged business enterprise" or "DBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations:

(a) Which is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged persons; or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

(8) "Joint venture" means an association of two (2) or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge.

(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)).

(10) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations (15 USC 637(a)), which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and

(b) Whose management and daily business operations are controlled by one (1) or more such individuals.

(11) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(12) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment.

(13) "Prequalified" means that the Transportation Cabinet has approved the firm or business enterprise to perform certain functions on behalf of the cabinet in accordance with KRS Chapter 45A, 600 KAR 1:101, or 603 KAR 2:015.

(14) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, United States Code Title 15 Section 637. The Transportation Cabinet shall have a rebuttable presumption that individuals listed in paragraphs (a) through (f) of this subsection are socially and economically disadvantaged[~~. The Transportation Cabinet also may determine, on a case-by-case basis, that individuals who are not a member of one (1) of the following groups are socially and economically disadvantaged:~~]

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(f) "Women."

(15) "Women business enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. Adoption of Governing Federal Material. (1) 49 CFR 23, effective June 1, 1992, is adopted without change. This federal regulation governs the federal Department of Transportation's and the

Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements which the Transportation Cabinet shall impose on firms desiring certification.

(2) "The Disadvantaged Business Enterprise Program Administration Participants Manual", Chapters I - VI, US Department of Transportation's Publication No. FHWA FHWA-CR-90-003 dated April, 1990 is incorporated by reference as a part of this administrative regulation. This manual shall be used by the Transportation Cabinet for guidance and direction in administering the DBE program.

(3) The manual incorporated by reference in this section can be viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502)564-3601. The office hours are 8 a.m. through 4:30 p.m., local prevailing time, on weekdays.

Section 3. Application Process. (1)(a) Application for certification or recertification as set forth in Section 6 of this administrative regulation as a DBE, MBE, or WBE shall be made to the Transportation Cabinet's Office of Minority Affairs on form TC 10-3.

(b) Each application form shall be completed in full.

(c) All documentation required by the application shall be attached to the completed application.

(d) The person signing the application shall be one (1) of the persons on whom the DBE, MBE, or WBE status is based and shall identify his position with the firm or business enterprise applying for certification.

(e) The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Transportation Cabinet, Office of Minority Affairs.

(3)(a) The Transportation Cabinet [~~Office of Minority Affairs~~] shall perform an on-site inspection of each [~~any~~] new applicant which is located within the boundary of Kentucky or, if in another jurisdiction, within seventy-five (75) miles (120.7 kilometers) of the boundary of Kentucky.

(b) The Transportation Cabinet may perform an on-site inspection of any firm previously certified which is applying for recertification pursuant to Section 6 of this administrative regulation.

(c) Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Transportation Cabinet [~~Office of Minority Affairs~~] to deny the application.

(4) An out-of-state applicant as a prerequisite to consideration of certification by the Transportation Cabinet [~~Office of Minority Affairs~~] shall be certified as a DBE, MBE, or WBE by the state transportation agency responsible for certifying firms under 49 CFR Part 23 in the state in which the firm has residence.

(5) The Transportation Cabinet [~~Office of Minority Affairs~~] may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Transportation Cabinet [~~Office of Minority Affairs~~] to deny the application.

(6) During the period prior to the formal submittal of the application, the Transportation Cabinet or its supportive services contractor shall:

(a) When requested by the applicant, provide technical advice needed by the applicant in completing the application form and the supporting documentation;

(b) When requested by the applicant, advise the applicant firm of any apparent existing structural, organizational, or financial impediments to the firm's certification; or

(c) Allow the applicant to make any structural, organizational, or financial changes to its organization necessary to bring the applicant into compliance with the requirements of this administrative regulation.

(7) The form TC 10-3, Application for Certification Schedule A, last revised in January, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained, viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. The [~~Its~~] telephone number is (502)564-3601.

Section 4. Evaluation of Application. (1)(a) The Transportation Cabinet[~~, Office of Minority Affairs~~] shall use the eligibility standards set forth in 49 CFR Part 23.53 to determine the eligibility of a firm to be certified or recertified as a MBE.

(b) The Transportation Cabinet [~~Office of Minority Affairs~~] shall use the eligibility standards set forth in 49 CFR Part 23.53; 49 CFR Part 23.62; 49 CFR Part 23, Subpart D, Appendix A, Appendix B and Appendix C to determine the eligibility of a firm to be certified or recertified as a DBE or WBE.

(c) To be certified a firm shall:

1. [~~Perform a commercially useful function as set forth in 49 CFR Part 23.47;~~

~~2.~~] Be operated with the intention of making a profit; and

2. Submit evidence of the firm's operational status prior to the date of the application which includes, but is not limited to the following:

a. A copy of a bid or quotation on a publicly or privately funded project;

b. A copy of an invoice, purchase order, or bill of lading;

c. Proof of gross receipts or receivables due; or

d. A copy of the current certificate of existence or authorization issued by the Kentucky Secretary of State pursuant to KRS 271B.1-280.

[~~3. Be operational and performing as an independent business concern prior to the date the application for certification was filed.~~]

(2) The Transportation Cabinet [~~Office of Minority Affairs~~] shall issue a written determination of eligibility for certification within ninety (90) days of receipt of a completed application provided that a challenge as set forth in Section 9 of this administrative regulation has not been received.

(3) The Transportation Cabinet also may determine, on a case-by-case basis, that individuals who are not a member of one (1) of the groups listed in Section 1(11) of this administrative regulation are socially and economically disadvantaged.

Section 5. Certification of Applicant Firm. (1) If an application for certification as a DBE, MBE, or WBE is approved by the Transportation Cabinet[~~, Office of Minority Affairs~~] and a challenge to the status of a firm from a third party as set forth in Section 9 of this administrative regulation is not received during the time the Transportation Cabinet [~~Office of Minority Affairs~~] is evaluating the application, the written notification required by Section 4(2) of this administrative regulation shall be the notice to the applicant firm of certification as a DBE, MBE, or WBE.

(2) Certification as a DBE, MBE, or WBE is valid for one (1) year from the date of notice of certification.

(3) Records of a certified firm shall be retained for a period of not less than five (5) years from the date of notice of certification.

(4) Certification of a firm or business enterprise shall expire immediately upon any change in ownership or control of the firm or business enterprise. The firm or business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control. If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 6. Recertification. (1) At least thirty (30) days prior to its certification expiration, a certified DBE, MBE, or WBE, that intends to continue its certification shall submit an application to the Transportation Cabinet, Office of Minority Affairs.

(a) Every other year the application shall be in the same form and require the same information as in Section 3 of this administrative regulation.

(b) In the alternate year, if there have been no changes since the last application was filed and the application form and attachments would be identical to the last one filed, the applicant may submit a written, sworn statement of "no change" to the Transportation Cabinet.

(c) [~~except that~~] Beginning with the application for recertification for the third year of certification, certified firms prequalified to engage in highway construction, design, or right-of-way activities, shall also submit evidence of participation in at least one (1) management development course as set forth in Section 14 of this administrative regulation.

(2) Certification of a DBE, MBE, or WBE which has requested recertification at least thirty (30) days prior to the date of certification expiration shall not expire unless the Transportation Cabinet [~~Office of Minority Affairs~~] denies the request for recertification as set forth in this section [~~Section 6 of this administrative regulation~~].

(3) If a firm is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, its request for recertification shall be denied effective thirty (30) days from the date of notification.

(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(5) If the Transportation Cabinet's [~~Office of Minority Affairs'~~] decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective on the latter of the following dates:

(a) Immediately upon the issuance of written notice by the Transportation Cabinet to the firm; or

(b) Thirty (30) days from the date of notification set forth in subsection (3) of this section.

(6) [~~immediately. However,~~] The firm may appeal that decision in accordance with Section 11 of this administrative regulation.

Section 7. Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, [~~Office of Minority Affairs,~~] the notification required by Section 4(2) of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 of this administrative regulation.

(3) An applicant firm shall [~~may~~] not reapply for certification for one (1) year from the effective date of denial.

(4) The effective date of denial shall be one (1) of the following dates:

(a) If the denial is not appealed, the date the notice is received or delivery is attempted; [~~if the denial is not appealed.~~]

(b) If the denial is appealed and the denial is upheld, [~~the effective date of the denial shall be~~] the date of the notice of final action on behalf of the Transportation Cabinet; or [~~.~~]

(c) If the denial is appealed and the appellant withdraws, cancels, or otherwise suspends the appeal, the date of the withdrawal, cancellation, or suspension of the appeal.

Section 8. Decertification. (1) The Transportation Cabinet[~~, Office of Minority Affairs~~] may perform periodic reviews or on-site inspections of a [~~each~~] certified DBE, MBE, or WBE during its certification period to verify continued eligibility of the firm. If the Transportation Cabinet [~~Office of Minority Affairs~~] finds noncompliance with the eligibility criteria or the certified firm fails to provide reasonable information requested by the Transportation Cabinet [~~Office of Minority Affairs~~] as a part of the periodic review, the cabinet [~~office~~] may initiate a decertification proceeding.

(2) The Transportation Cabinet [~~Office of Minority Affairs~~] shall notify the certified firm of the pending decertification. The notice shall specify the reasons for the pending decertification. The firm may request a predetermination meeting within ten (10) days of the date the notice is received or delivery is attempted. If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of this administrative regulation.

(4) If the Transportation Cabinet's [~~Office of Minority Affairs'~~] decision after the predetermination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 11 of this administrative regulation.

(5) The effective date of the decertification shall be [~~is~~] thirty (30) days after the date the notice of decertification is mailed to the firm providing the firm does not appeal the decertification to the Transportation Cabinet. If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation. Decertification shall be for a specific period of time but not less than one (1) year.

Section 9. Challenge of DBE Certification. (1) Any third party may challenge the socially and economically disadvantaged status of any individual, except an individual who has a current certification from the Small Business Administration issued pursuant to United States Code Title 15 Section 637, rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE. The challenge shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the challenging third party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The Transportation Cabinet [~~Office of Minority Affairs~~] shall determine, on the basis of the information provided by the challenging party, if there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

(4) If the Transportation Cabinet [~~Office of Minority Affairs~~] determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the office shall so inform the challenging party in writing. This shall terminate the proceeding.

(5) If the Transportation Cabinet [~~Office of Minority Affairs~~] determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the office shall notify the challenged party that his status as a socially and economically and disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the Office of Minority Affairs, within a specified reasonable time, information sufficient to evaluate his status as a socially and economically disadvantaged individual. Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the challenge proceedings shall be completed prior to completion of the certification.

(7) The Transportation Cabinet [~~Office of Minority Affairs~~] shall evaluate the information available and make a proposed determination of the social and economic disadvantage of the challenged party.

The office shall notify both parties of this proposed determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within ten (10) days of the date of the notice. If neither party requests a predetermination meeting within the ten (10) days, the proposed determination of the Transportation Cabinet [~~Office of Minority Affairs~~] shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 10 of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section and Section 10 of this administrative regulation as it relates to challenge, the Transportation Cabinet [~~Office of Minority Affairs~~] shall use the standards set forth in 49 CFR Part 23, Subpart D, Appendix C.

(11) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) The decision of the Transportation Cabinet [~~Office of Minority Affairs~~] in subsection (4) of this section or after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 CFR Part 23.55.

Section 10. Predetermination Meeting. (1) A predetermination meeting with the Transportation Cabinet [~~Office of Minority Affairs~~] may be requested by any party as set forth in Sections 6, 8, and 9 of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the date for the predetermination meeting to be between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority Affairs and all affected parties the meeting may be scheduled later than the ten (10) days.

(3) The Transportation Cabinet [~~Office of Minority Affairs~~] shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting shall provide the opportunity for the affected parties to present evidence or arguments, either written or oral, on the matter being considered by the Transportation Cabinet [~~Office of Minority Affairs~~]. The affected parties may be represented by legal counsel.

(5) The Transportation Cabinet [~~Office of Minority Affairs~~] shall render a written decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Transportation Cabinet [~~Office of Minority Affairs~~] shall use the standards set forth in Section 4 of this administrative regulation. The affected parties shall be notified of the decision of the Transportation Cabinet [~~Office of Minority Affairs~~].

Section 11. Appeal and Hearing. (1) Any party in Sections 6(2), 8(4) and 9(10) of this regulation adversely affected by a decision of the Transportation Cabinet[~~, Office of Minority Affairs~~] may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet.

(2)(a) The Transportation Cabinet shall schedule the date for the hearing on the appeal to be between fifteen (15) and thirty (30) days after the appeal is received unless otherwise agreed to by all parties.

(b) If an appeal hearing is rescheduled beyond the thirty (30) days from the date of the notification to deny certification at the request of the applicant firm and the firm is not currently certified, the firm's annual certification has expired, or the firm's request for recertification has been denied, the Office of Minority Affairs shall not approve as part of an established DBE goal any of the work contracted by the applicant.

[~~(c) A firm for which decertification proceedings has been started shall not be approved by the Office of Minority Affairs to meet established DBE goals.~~]

(3) The Transportation Cabinet shall provide written notice to the appellant of the date, time, and location of the hearing.

(4) At the hearing, the hearing officer appointed by the Transportation Cabinet[~~,~~] shall provide an opportunity for the appellant to call witnesses and present evidence and arguments, both written and oral as to why the decision of the Transportation Cabinet [~~Office of Minority Affairs~~] should be overturned.

(5) The Transportation Cabinet [~~Office of Minority Affairs~~] shall present evidence at the hearing on the reasons their decision was made. However, the burden of proof is on the appellant.

(6) The hearing officer appointed by the Transportation Cabinet has the authority to issue subpoenas to compel the appearance of witness or the production of other evidence.

(7) The Transportation Cabinet shall provide a stenographer to record all oral testimony at the hearing.

(8)(a) The hearing officer shall prepare a written report setting forth findings of fact, conclusions of law and a recommendation of final action within sixty (60) days of the hearing unless otherwise agreed to by all parties.

(b) The hearing officer's findings of fact shall be based on conditions existing at the time the on-site inspection or [~~and~~] owner interview was [~~were~~] conducted by the Transportation Cabinet [~~Office of Minority Affairs~~]. Changes made in an applicant's firm since the on-site inspection or owner interview shall not be considered by the Transportation Cabinet [~~Office of Minority Affairs~~] or a hearing examiner in determining the eligibility of the firm.

(c) The report shall be submitted to the Secretary of the Transportation Cabinet or his appointed designee.

(9) The Secretary shall render the final decision of the Transportation Cabinet within ten (10) days of receipt of the hearing officer's report. A copy of the decision shall be sent by certified mail to the appellant and the Office of Minority Affairs.

(10) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 CFR 23.55 and 49 CFR 23 Subpart D, Appendix A, Decertification Procedures.

Section 12. Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE, or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE, or WBE program. Application for certification shall be on Transportation Cabinet Form TC 10-5 which is incorporated by reference as a part of this administrative regulation. The application procedure, eligibility standards, and certification procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet as a joint venture eligible to participate in the DBE, MBE, or WBE program.

(3) If all firms involved in the joint venture are certified DBEs, MBEs, or WBEs, there shall not be a need for the joint venture to request certification as a joint venture eligible to participate in the DBE, MBE, or WBE program.

(4) The form TC 10-5, DBE/WBE Joint Venture Eligibility Application, Schedule B, last revised in February, 1992 is hereby incorporated by reference as a part of this administrative regulation. Copies may be obtained, viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. The [~~Its~~] telephone number is (502) 564-3601.

Section 13. Additional Program Guidelines. 13 CFR 121.1-121.3, effective April 22, 1994, is adopted without change. The federal regulation sets [~~forth the small business size~~] standards for the size of small businesses as established by the Small Business Administration. These size standards, when less than $15.37 million, are required by 49 CFR Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from the certification program, i.e., it is no longer considered to be a small business.

Section 14. Management Development Course. (1) Each owner of a Kentucky-based certified firm which is also prequalified by the Transportation Cabinet under the provisions of KRS 45A.825, 600 KAR 1:101, [~~Section 6 of Chapter 55 of the 1992 Acts of the Regular Session of the General Assembly~~] or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend at least one (1), one (1) week management development course prior to being recertified for its third year as a DBE.

(2) DBE certified firms not based in Kentucky, but which are within a seventy-five (75) mile (120.7 kilometer) proximity, may be required by the Office of Minority Affairs to attend at least one (1) management development course. This attendance requirement shall be based on an assessment of the firm's managerial and operational capability in relationship to the regulatory requirements determined during the conduct of the on-site inspection, personnel interviews, and evaluation of the firm's prequalification status.

(3) DBE certified firms which have previously attended a management development course and which have been cited for a violation of this administrative regulation or 600 KAR 4:020 may be required to attend an additional management development course.

(4) The management development course shall be offered free of charge by the Entrepreneurial Development Institute.

(5) All owners of firms required to attend a management development course shall attend the course.

(6) The owners of certified firms which are not required to attend the management development course may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

Section 15. Disadvantaged Business Enterprise Orientation Program. (1) The Transportation Cabinet shall offer a one (1) day orientation program for any certified DBE firm. The orientation program shall acquaint owners of DBE firms with the following:

(a) The organization, structure and expectations of the Transportation Cabinet;

(b) The requirements of the DBE program and with the provisions of the "Standard Specifications for Road and Bridge Construction" and "Standard Drawings"; and

(c) The supportive services and technical assistance available to the DBE.

(2) Each owner of a certified DBE firm which is also prequalified under KRS 45A.825, 600 KAR 1:101, [~~Section 6 of Chapter 55 of the 1992 Acts of the Regular Session of the General Assembly~~] or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend an orientation program prior to competing for a U.S. Department of Transportation assisted project.

(3) If the certified DBE firm is based out of Kentucky, the orientation program may be completed by telephone and mail.

(4) The owners of certified firms which are not required to attend the orientation program may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

MAURICE SWEENEY, Executive Director
J.M. YOWELL, P.E., State Highway Engineer
JERRY ANGLIN, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: February 14, 1995
FILED WITH LRC: March 10, 1995 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on April 27, 1995 at 9:30 a.m. local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by April 22, 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 April 22, 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 April 22, 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: All firms applying to be certified or recertified as a DBE, MBE, or WBE. Currently, there are 180 firms certified by the Transportation Cabinet. Of these 75 are prequalified under 603 KAR 2:015.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change as a result of the changes to the administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No changes as a result of the changes to the administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No effect as a result of the changes to this administrative regulation.

2. Second and subsequent years: The applicants for recertification will not have to file the entire form and back-up documentation more than every other year. While this will not impact competition, it will reduce the paperwork for those firms.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: By keeping the DBE program in compliance with the federal mandate, there will be no withholding of federal highway construction funds.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b)Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives

were rejected: The do-nothing alternative was rejected because the program was technically in noncompliance with the federal mandate and to prevent a loss of federal funds, immediate action had to be taken. In the change requiring the provision of the proof of operational status of a firm applying for certification, a more rigid standard was rejected pending the completion of a federal Notice of Proposed Rulemaking which is in process. If the U.S. Department of Transportation promulgates stricter standards, the Kentucky Transportation Cabinet will then follow suit. In addition, the cabinet felt that it had no choice but to incorporate the federal guidelines manual by reference since it is used extensively by staff in evaluating the status of an applicant.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: The Federal Highway Administration informed the Transportation Cabinet shortly after the effective date of the last change to the administrative regulation that the administrative regulation was out of compliance with the federal mandate. Due process was no longer afforded previously certified firms.

(11) TIERING: Is tiering applied? Yes. Tiering was applied in that the firms to be prequalified are required to meet different standards if they are prequalifying for different classifications.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 Code of Federal Regulations Part 23 contains the federal mandate for this certification program. The authorities for the federal regulation are Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978; Section 30 of the Airport and Airway Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Title 23 of the U.S. Code and Title VI of the Federal Rights Act of 1964.

2. State compliance standards. The same as the federal mandate on the certification of DBE, MBE or WBE firms. The primary change to this administrative regulation is needed to allow the Kentucky Transportation Cabinet to resume compliance with the federal mandate. The Federal Highway Administration determined that a change promulgated by the Cabinet in May, 1994 did not provide adequate due process.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate imposes on the state the requirement of setting the process of certification and managing the program. The Transportation Cabinet through this administrative regulation and 600 KAR 4:020 has set reasonable procedures for certification and managing the program including due process hearings. U.S. Department of Transportation has found the procedures to be consistent with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate does not address how the state is to manage the certification program. Rather, it requires the state to get federal approval of its management program. The change in the management program has received federal approval and brought Kentucky Transportation Cabinet back into compliance with the mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Office of Minority Affairs
(Proposed Amendment)

600 KAR 4:020. The disadvantaged, minority and women business enterprise program.

RELATES TO: KRS Chapters 96A, 174, 176, 177 183

STATUTORY AUTHORITY KRS 13A.120, 174.080, 49 CFR Part 23

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program of supporting the fullest possible participation of firms owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program that requires the participation of disadvantaged, minority, and women business enterprises in contracts financed in whole or in part with federal funds. This administrative regulation establishes the procedures to be followed by and requirements of contractors and subcontractors dealing with the Transportation Cabinet.

Section 1. Definitions. (1) "DBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a disadvantaged business enterprise.

(2) "MBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a minority business enterprise.

(3) "WBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a women business enterprise.

(4) "Good faith effort" means an attempt that can reasonably be expected to produce a level of disadvantaged, minority or women business enterprise participation sufficient to meet contract goals.

(5) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the firm's application for certification or bid documents.

(6) "Prime contractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that contracts with the Kentucky Transportation Cabinet for the performance of prescribed work.

(7) "Subcontractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that subcontracts any portion of a contract with the written consent of the Transportation Cabinet.

(8) "Suspension" means the action taken for cause by the Transportation Cabinet to disqualify for a specified period of time a person or firm from participating as a DBE, MBE, or WBE in Transportation Cabinet federal-aid projects.

(9) "Apparent successful competitor" means the bidder submitting the lowest and best bid in accordance with KRS 176.080 or Chapter A.

Section 2. Contract Goals. (1) Goals shall be established for DBE, MBE, or WBE participation in a portion of the Transportation Cabinet projects in which there is United States Department of Transportation funding.

(2) A project proposal may contain goals for participation of DBE, MBE, or WBE subcontractors who are certified in accordance with 600 KAR 4:010.

(3) Any contractor who bids on and is the apparent successful competitor for a project with established DBE participation goals shall be responsible for meeting the goals for participation of certified DBE, MBE, or WBE subcontractors which are set forth in the project proposal. The contractor shall submit to the Transportation Cabinet DBE, MBE, or WBE subcontractor participation information as specified in Sections 3(1) and 6 of this administrative regulation.

Section 3. Prime Contractor Guidelines. (1)(a) Before a prime contractor enters into a contractual agreement with the Transportation Cabinet on a project which contains goals for participation of DBE, MBE, or WBE subcontractors, he shall submit an original and two (2) copies of each agreement between the prime contractor and any DBE, MBE, or WBE to the Transportation Cabinet, Department of Highways.

(b) The agreement shall be signed and notarized by both parties to the agreement.

(c) The agreement shall set forth:

1. A description of the work the DBE, MBE, or WBE subcontractor is to perform or the materials or services to be supplied;

2. The unit price the DBE, MBE, or WBE subcontractor is to be paid for each item; and

3. The total dollar value of the subcontract.

(d) Contractual agreements shall be reviewed by the Transportation Cabinet, Office of Minority Affairs prior to the execution of the project contract to ensure that the project goal will be met and that the DBE, MBE, or WBE subcontractors are certified in Kentucky and have completed the orientation program required by 600 KAR 4:010, Section 15 and are eligible to act as a certified DBE, MBE, or WBE.

~~[(e) The Office of Minority Affairs shall not approve a subcontractor as a DBE, WBE, or MBE to fulfill a goal requirement on a project if the DBE, MBE, or WBE is related in the first or second degree by birth or marriage to the prime contractor. This prohibition shall include a subcontractor to a joint venture.]~~

(2) Toward the DBE, MBE, or WBE participation goal established for the project, the prime contractor may count expenditures for materials and supplies obtained from certified DBE, MBE, or WBE suppliers and manufacturers, provided the DBE, MBE, or WBE assumes actual and contractual responsibility for providing the materials and supplies as follows:

(a) The prime contractor may count its entire expenditure to a DBE, MBE, or WBE manufacturer who operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor; and

(b) The prime contractor may count sixty (60) percent of its expenditures to DBE, MBE, or WBE regular dealers who own, operate or maintain a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

(c) Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this administrative regulation.

(3) The prime contractor may count toward its MBE, DBE, or WBE goals the following expenditures to certified MBE, DBE, or WBE firms that are not manufacturers or regular dealers:

(a) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services; and

(c) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar service.

(4)(a) Toward the DBE, MBE, or WBE participation goal established for the project, the prime contractor may count only expenditures to certified DBEs, MBEs, or WBEs that perform a commercially useful function in the work of the specific ~~[a]~~ contract.

(b) A DBE, MBE, or WBE firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved.

(c) To determine if a DBE, MBE, or WBE is performing a commercially useful function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated.

(5) A prime contractor may count toward its certified DBE, MBE, or WBE goal a portion of the total dollar value of a subcontract with a joint venture certified under the provisions of 600 KAR 4:010 equal to the percentage of ownership and control of the DBE, MBE, or WBE partner in the joint venture.

(6) If the prime contractor fails to reach the goals of the project and fails to demonstrate sufficient good faith efforts as set forth in Section 5 of this administrative regulation, the Office of Minority Affairs shall in writing advise the Department of Highways that the contract agreement with the prime contractor shall not be executed because he has failed to reach the DBE, MBE, or WBE participation goals of the contract.

(7) If the prime contractor reaches the DBE, MBE, or WBE participation goals and the contractual agreement with the Transportation Cabinet is executed, the prime contractor is bound by the approved DBE, MBE, or WBE percentage participation of the contract.

(8)(a) If the prime contractor~~['s]~~ cancels the subcontract of a DBE, MBE, or WBE for any reason, ~~[is cancelled for nonperformance or because the subcontractor has lost its program certification,]~~ it shall make a good faith effort to replace the approved DBE, MBE, or WBE with another certified DBE, MBE, or WBE firm in the amount necessary to meet the project goal as originally established.

(b) An original and two (2) copies of the completed and executed agreement between the prime contractor and the new DBE, MBE, or WBE subcontractor shall be submitted to the Office of Minority Affairs.

(c) The agreement shall be reviewed by the Office of Minority Affairs as set forth in subsection (1) of this section prior to the replacement DBE, MBE, or WBE beginning work on the project.

(d) If the prime contractor is unable to replace the subcontractor with a certified DBE, MBE, or WBE he shall request a finding of good faith effort as set forth in Section 6 of this administrative regulation.

(9) If the prime contractor and DBE, MBE, or WBE subcontractor intend to amend their agreement which has previously been reviewed by the Office of Minority Affairs, the revision shall be submitted to the Office of Minority Affairs for review prior to the amendment being implemented to ensure that the DBE, MBE, or WBE participation goal will still be met.

(10) The prime contractor shall pay the DBE, MBE, or WBE subcontractor for work performed or materials furnished within seven (7) working days after receiving payment from the Transportation Cabinet.

(11) The prime contractor shall, upon request, make available to

the Office of Minority Affairs information related to the conduct of the project.

Section 4. Prime Contractor Failure. (1) The following shall be deemed failure of the prime contractor to meet the approved DBE, MBE, or WBE percentage participation of the contract and thus violation of his contract provisions:

(a) Failure to use the approved DBE, MBE, or WBE subcontractor;

(b) Use of the approved DBE, MBE, or WBE subcontractors to an extent that provides a percentage participation less than indicated in the contract agreement with the Transportation Cabinet; and

(c) Use of a DBE, MBE, or WBE subcontractor other than those named in the subcontract reviewed by the Office of Minority Affairs.

(2) The Office of Minority Affairs shall notify the prime contractor of his failure to meet the approved DBE, MBE, or WBE percentage participation of the contract. The notice shall contain the reasons for the failure and a time deadline for correction of the failure. The prime contractor in accordance with the provisions of Section 11 of 600 KAR 4:010 may file an appeal within the time deadline. If the firm fails to file an appeal and fails to meet the DBE, MBE, or WBE percentage participation of the contract, the Office of Minority Affairs shall in writing advise the Department of Highways of the violation of contract provisions.

Section 5. Good Faith Efforts. (1) If the apparent successful competitor for the project is unable to meet his DBE, MBE, or WBE goals but believes he has made a good faith effort toward the goal, he may in writing request a finding of good faith effort from the Office of Minority Affairs. The written request shall substantiate his claim that reasonable efforts were put forth to obtain the project goals. The Office of Minority Affairs shall consider the application for a finding of good faith effort and provide notice to the apparent successful competitor of its decision within ten (10) days of receipt of the application.

(2) The Office of Minority Affairs shall in writing advise the Department of Highways of its decision.

(3) The criteria used by the Office of Minority Affairs for determining if an apparent successful competitor has demonstrated good faith efforts shall include:

(a) The apparent successful competitor's attendance at the prebid meeting regarding the specific project;

(b) The apparent successful competitor's providing written announcement of project to a reasonable number of DBEs, MBEs or WBEs regarding subcontracting opportunities;

(c) The apparent successful competitor's allowing sufficient time for DBEs, MBEs or WBEs to respond to the written announcement of project;

(d) The apparent successful competitor's following up written announcement of project with telephone calls or personal contact;

(e) The apparent successful competitor's contacting the Transportation Cabinet's supportive services contractor for assistance in identifying DBE, MBE, or WBE firms. The supportive services contractor is a contractor that provides services to the Transportation Cabinet relating to DBE, MBE, or WBE;

(f) The apparent successful competitor's selecting items of work on the project that DBEs, MBEs, or WBEs are prequalified in accordance with 603 KAR 2:015 to perform;

(g) The apparent successful competitor's providing DBEs, MBEs, or WBEs with adequate information about the project when requesting quotations;

(h) The apparent successful competitor's making efforts to assist DBEs, MBEs, or WBEs in obtaining bonding, credit or insurance;

(i) The apparent successful competitor's advertising in general circulation, trade association and minority focus media for a reasonable time, preferably at least twenty (20) days, before bids or proposals are due;

(j) The location of the project;

(k) The size of the project;

(l) The type of work required by the project; and

(m) The availability of DBEs, MBEs, and WBEs.

(4) If the apparent successful competitor is unable to meet the DBE, MBE, or WBE participation goal and either did not request a finding of good faith effort or failed to satisfy the Office of Minority Affairs that he has substantiated his claim of good faith efforts, the Office of Minority Affairs shall notify the apparent successful competitor of the reasons why his claim of good faith efforts was not accepted and additional efforts he may make to meet the contract goal.

(5) The apparent successful competitor for the project may file an appeal with the Transportation Cabinet in accordance with the provisions of Section 11 of 600 KAR 4:010 within ten (10) days of the date of the notice. If the firm fails to file an appeal or successfully make the additional efforts within the ten (10) days, the Office of Minority Affairs shall in writing advise the Department of Highways that the firm has neither met the project goals nor made a good faith effort to meet the project goals.

(6) If the apparent successful competitor elects not to file an appeal under the provisions of 600 KAR 4:010, he may within the ten (10) days appeal to the Commissioner, Department of Highways as provided in Sections 9 and 10 of 603 KAR 2:015. However, instead of departmental construction engineers a representative of the Office of Minority Affairs shall be present at the hearing. The hearing examiner and the Commissioner of the Department of Highways shall use the criteria set forth in subsection (3) of this section to determine if the apparent successful competitor has demonstrated good faith efforts.

Section 6. Subcontractor's Guidelines. (1) Only a subcontractor who is certified and has attended a Transportation Cabinet orientation program under the provisions of 600 KAR 4:010 prior to the date of the bid letting for the project may issue a quote on a USDOT assisted project in order to meet a DBE, MBE, or WBE goal.

(2) At least fifty (50) percent of the work outlined in the subcontract shall be performed by the DBE, MBE, or WBE subcontractor's work force.

(3) Second tier subcontracting by a DBE, MBE, or WBE subcontractor may only be accomplished if the proposed second tier subcontractor is a certified DBE, MBE, or WBE and the Office of Minority Affairs has reviewed and approved the second tier DBE, MBE, or WBE subcontract prior to execution.

(4) A DBE, MBE, or WBE subcontractor shall designate in writing a project superintendent who supervises the subcontractor's work force daily. The project superintendent shall not be employed by any other contractor on the same project for the life of the project.

(5) If the subcontractor rents equipment from another contractor, the rental agreement shall be in writing and be approved by the Transportation Cabinet's resident engineer on the project.

Section 7. DBE, MBE, or WBE as Contractor. (1) The provisions of this administrative regulation shall not be construed so as to prohibit a DBE, MBE, or WBE from competing on a project in the role of prime contractor.

(2) If a DBE, MBE, or WBE is the prime contractor on a project which has participation goals established for the project pursuant to Section 2 of this administrative regulation, the work performed by the DBE, MBE, or WBE shall count toward the participation goal.

Section 8. DBE, MBE, or WBE Noncompliance. (1) If any certified DBE, MBE, or WBE is found to be in noncompliance with any of the requirements of this administrative regulation, the firm may have its certification suspended for a specified period of time. The Office of Minority Affairs shall notify the certified firm of the pending suspension. The notice shall specify the reasons for the pending suspension.

(2) The firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days it shall be suspended for a specified period of time.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 of 600 KAR 4:010.

(4) If the Transportation Cabinet's [~~, Office of Minority Affairs'~~] decision after the predetermination meeting is that the firm shall be suspended, the firm may appeal the decision in accordance with Section 11 of 600 KAR 4:010.

(5) The effective date of the suspension shall be thirty (30) days after the date the notice of suspension is mailed to the firm, providing the firm does not appeal the suspension to the Transportation Cabinet. If a firm appeals the suspension, the effective date of the suspension shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 of 600 KAR 4:010.

MAURICE SWEENEY, Executive Director
J.M. YOWELL, P.E., State Highway Engineer
JERRY ANGLIN, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: March 10, 1995 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on April 27, 1995 at 9:30 a.m. local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by April 22, 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 April 22, 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 April 27, 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: All firms applying to be certified or recertified as a DBE, MBE, or WBE. Currently, there are 180 firms certified by the Transportation Cabinet. Of these 75 are prequalified under 603 KAR 2:015.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change as a result of the changes to the administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No changes as a result of the changes to the administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None as a result of the changes to this administrative regulation.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: By keeping the DBE program in compliance with the federal mandate, there will be no withholding of federal highway construction funds.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because the program was technically in noncompliance with the federal mandate and to prevent a loss of federal funds, immediate action had to be taken. In the change requiring the provision of the proof of operational status of a firm applying for certification, a more rigid standard was rejected pending the completion of a federal Notice of Proposed Rulemaking which is in process. If the U.S. Department of Transportation promulgates stricter standards, the Kentucky Transportation Cabinet will then follow suit.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: The Federal Highway Administration informed the Transportation Cabinet shortly after the effective date of the last change to the administrative regulation that the administrative regulation was out of compliance with the federal mandate. Due process was no longer afforded previously certified firms.

(11) TIERING: Is tiering applied? Yes. There are differing requirements for a prime and sub-contractor. A prime contractor has more responsibilities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 Code of Federal Regulations Part 23 contains the federal mandate for this certification program. The authorities for the federal regulation are Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978; Section 30 of the Airport and Airway Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Title 23 of the U.S. Code and Title VI of the Federal Rights Act of 1964.

2. State compliance standards. The same as the federal mandate on the certification of DBE, MBE or WBE firms.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate imposes on the state the requirement of setting the process of certification and managing the program. The Transportation Cabinet through this administrative regulation and 600

KAR 4:020 has set reasonable procedures for certification and managing the program including due process hearings. U.S. Department of Transportation has found the procedures to be consistent with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate does not address how the state is to manage the certification program. Rather, it requires the state to get federal approval of its management program. This management program has received federal approval.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 156.0951, 158.070
STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070
NECESSITY AND FUNCTION: KRS 156.095 and 156.0951 authorize the State Board for Elementary and Secondary Education to establish, direct, and maintain a statewide program of professional development training, with the relevant purpose of such a program being the improvement of instruction in the public schools, [~~and mandate local school district consortia for professional development purposes;~~] and KRS 158.070 requires the state board to adopt administrative regulations setting forth guidelines and procedures to be followed for the approval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for professional development activities for the professional staff. This administrative regulation implements these duties and powers. It identifies the components of professional development planning and requires each school and [~~,~~] local district[~~, and consortium of districts~~] to submit annually professional development plans by which they are to be guided in providing suitable professional development training programs and in requiring all instructional leaders to participate in a [~~the~~] statewide training program implemented under KRS 156.101.

Section 1. Definitions. The following definitions shall apply to this administrative regulation:

(1) "Professional development" means those [~~activities and~~] experiences which systematically, over a sustained period of time, enable educators to acquire and apply knowledge, understanding, skills, and abilities to achieve personal, professional and organizational goals and [~~improve their skills and abilities or increase their understanding and knowledge~~] to [~~better~~] facilitate the learning of students [~~children, and which shall be determined by identified needs and related to the goals of the Kentucky Education Reform Act (KERA)~~].

(2) "Needs assessment" means the gathering, sorting, and analysis of data that lead to conclusions regarding the need for professional development in identified areas.

(3) "Professional development plan" means a product [~~an outline of a process to achieve defined standards, goals, or objectives~~] that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished relative to defined standards, goals, or objectives.

(4) "Professional development program" means a process of professional development that is measurable by indicators. It may be composed of several initiatives.

Section 2. Each local school and district shall develop a process for professional development. This process shall lead to a plan that describes training activities which the school and district will provide for its certified staff within the goals as established in KRS 158.6451 and local needs assessment. The local district and school plans shall be submitted to the Department of Education prior to the implementation of the plans.

Section 3. [~~2.~~] Each [~~professional development consortium,~~] school[~~,~~] and local district shall have on file with the State Department of Education a professional development plan that meets the following six (6) [~~seven (7)~~] standards:

(1) There is a clear statement of the school or district mission. [~~The goals, objectives, and sessions or experiences of plans are focused on the goals of KERA;~~]

(2) There is evidence of representation of all persons affected by the professional development program. [~~The plan was developed through active participation and input at the local school level;~~]

(3) Application of needs assessment analysis is evident. [~~The plan gives attention to professional growth needs at different stages of development (i.e., orientation, preparation, implementation, impact);~~]

(4) Professional development objectives are focused on the school or district mission and derived from needs assessment. [~~The plan provides sufficient opportunities for professional growth in designated KERA goals throughout the school year;~~]

(5) The professional development program and implementation strategies are designed to support school or district goals and objectives. [~~The plan provides professional development sessions, experiences, and activities that directly address the needs identified in the needs assessment;~~]

(6) A process for evaluating professional development experiences and improving professional development initiatives is incorporated in the plan. [~~The plan describes standards and a process that ensure the delivery of high quality professional development sessions, experiences, and activities; and~~

~~(7) The plan describes a structure and process for evaluating professional development sessions, experiences, and activities and for making subsequent improvements in the professional development program.~~

~~Section 3. The professional development plan shall include the following components:~~

~~(1) Name of consortium, district, or school;~~

~~(2) Persons involved in the planning process;~~

~~(3) Description of needs assessment, including a brief description of procedures implemented to determine how the professional development needs were assessed and the results of the assessment;~~

~~(4) Description of planning process;~~

~~(5) A description of specific professional development sessions, experiences, and activities planned to accomplish the goals and objectives; and~~

~~(6) A description of evaluation, including:~~

~~(a) An explanation of how professional development sessions, experiences, and activities implemented and operated at all levels shall be evaluated; and~~

~~(b) A description of how the professional development plan shall be evaluated.~~]

Section 4. (1) The professional development plan shall address any instructional improvement or training needs that are in accordance with the goals as established in KRS 158.6451. [~~of KERA.~~]

(2) Professional development activities shall be related to teachers' instructional assignments and administrators' professional responsibilities. Activities shall support the local school's instructional improvement goals and objectives identified in the professional development plan.

(3) Activities for professional development credit of classroom

teachers shall not supplant any of the six (6) hour instructional day.

(4) Professional development activities shall not occur on snow days. Districts may, however, report flexible professional development activities on snow days. This situation involves a calendar change only, and it shall not result in activities on snow days.

(5) Professional development experiences that relate to an individual professional growth plan may be used to satisfy the requirements for certification or renewal options as established by the Kentucky Education Professional Standards Board if approved by the university or college in which the individual is enrolled.

(6) Professional development credit shall not be awarded for college graduate courses that lead to a change in rank or certification status. Exceptions may be made by the local district for university courses that are clearly supportive of the professional development plan.

(7) [~~(6)~~] Professional development credit shall not be awarded for those activities that provide remuneration beyond travel, food and lodging.

(8) [~~(7)~~] Districts implementing a flexible professional development schedule shall award professional development credit for any given academic school year within the [~~date limitations of the~~] professional development plan.

(9) [~~(8)~~] Appropriate professional development [~~sessions,~~] experiences[~~, and activities~~] shall be those which address instructional improvement for the school district, an individual school or a group of teachers in accordance with [~~the~~] goals identified from the needs assessment [~~of KERA~~]. Activities which are not appropriate for professional development credit shall include the following: organizational business meetings, compiling class rosters, scheduling, textbook adoption committee meetings, writing lesson plans, housekeeping duties, faculty meetings, extracurricular activities, PTA/PTO meetings, sporting events, field trips, and parent-teacher conferences. Parent-teacher conferencing skill development shall be permissible as professional development.

Section 5. [~~(1) Each superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator for the local district.~~

~~(2) The minimum qualifications for the appointment shall be a valid Kentucky certificate as a principal or supervisor.~~

~~(3)~~] The duties of the district professional development coordinator shall be as follows:

(1) [~~(a)~~] Facilitates needs assessments for professional development and the development of goals and objectives for training programs and projects. [~~Beginning in July, 1991,~~] Needs assessments and development of goals and objectives shall be carried out in conjunction with the school council or professional development committee of each school through regular meetings.

(2) [~~(b)~~] Provides technical assistance to school councils or professional development committees in the establishment of a school plan for professional development for the local district.

(3) Assists in developing [~~(c) Completes, in conjunction with the consortium,~~] a professional development plan for inclusion in the school improvement plan.

[~~(d) Serves as chairperson of district's Professional Development Committee.~~]

(4) [~~(e)~~] Coordinates the planning, implementation and evaluation of the professional development program in conjunction with the school and district professional development committees to include maintaining or verifying all professional development records, documentation and other pertinent records. [~~and the consortium.~~]

[~~(f) Meets regularly with administrators and teachers to establish future goals and identify specific training needs of the district's personnel.~~]

(5) [~~(g)~~] Coordinates the establishment of policies, procedures, timetables, preparation of necessary forms and letters, assignment of workshop sites and all other practical elements of professional development training, including fiscal management.

[~~(h) Maintains all professional development records, documentation, and other pertinent records.~~]

(6) [~~(i)~~] Interprets the professional development programs' objectives, results, and needs to school professional development committees, district staff, the board, civic and parent groups, teacher training institutions and others as appropriate.

[~~(j) Keeps updated on current professional development trends.~~]

(7) [~~(k)~~] Maintains continuous liaison with Kentucky Department of Education[~~, the consortium to which the district belongs~~] and other agencies involved with the district in the provision of professional development activities.

[~~Section 6. Each local school, district, and consortium shall develop a plan for professional development. This plan shall describe training activities which the school, district, and consortium will provide for its certified staff within the goals of KERA. The consortium plan, along with the plans of its member districts and schools shall be submitted to the Department of Education prior to the implementation of the plans.~~]

Section 6. [~~7.~~] Additional standards for the school and district[~~, and consortium~~] professional development planning process [~~plans~~] are in the document "Professional Development Planning Process", dated November 1994 [~~September, 1993, and the addendum dated May 1994,~~] which is [~~are~~] hereby incorporated by reference and may be obtained from the Division of Professional Development, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky, Monday through Friday, 8 a.m. - 4:30 p.m.

Section 7. [~~8.~~] More than fifteen (15) percent of each local district's professional development funds shall not be used for administrative purposes.

Section 8. [~~9.~~] When implementing professional development programs under KRS 158.070, each local school or district[~~, or consortium of districts~~] shall adhere to its professional development plan [~~as developed with technical assistance as requested from the Department of Education.~~

~~Section 10. Any school, district, or consortium not complying with Sections 1 through 9 of this administrative regulation shall be required to personally appear through appropriate representatives before the State Board for Elementary and Secondary Education in order to offer explanation for noncompliance~~].

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: March 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on April 28, 1995, at 10 a.m. in the State Board Room, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be

heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Audrey T. Carr

(1) Type and number of entities affected: All certified personnel in the 176 school districts of the Commonwealth.

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

(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 on the competition) for the:

1. First year following implementation: The proposed change will reduce paperwork load due to sunset of KRS 156.0951 requiring local school districts to be in consortia.

2. Second and subsequent years: See above item.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The proposed change will reduce paperwork load due to sunset of KRS 156.0951 requiring local school districts to be in consortia.

(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 additional revenue is required. Administrative regulation shall be enforced by Department of Education, Division of Professional Development staff.

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

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

(b) Kentucky: 176 local school districts

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as directed to promulgate by KRS 156.095.

(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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: There does not appear to be any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicating.

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? Yes. The governing statute (KRS 156.095) provides exemption for local school districts with student enrollment of 20,000 or more students providing professional development standards are met.

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

815 KAR 20:070. Plumbing fixtures.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the kind, type and quality of plumbing fixtures that shall be used in the construction of plumbing systems and identifies the manufacturer's specification number of the material accepted in those installations. This amendment is necessary to ensure that water heaters can be replaced without excessive cost to homeowners and to minimize the damage caused by leaking water heaters. [~~This amendment is necessary to bring the administrative regulation into compliance with the mandates of the federal government concerning the amount of water usage of plumbing fixtures.~~]

Section 1. Materials. Receptacles used as water closets, urinals, or for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, except as indicated in Section 4 of this administrative regulation.

Section 2. Installation. Plumbing fixtures shall be installed to allow access for cleaning. Where practical, all pipes from fixtures shall be run to the wall and no trap or pipe shall extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. Water closet bowls shall be of one (1) piece construction and hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces, and it shall be provided with an integral flushing rim to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. Plastic water closet bowl and tank shall be constructed with a polypropylene lining inside the one (1) piece bowl and tank. The outer surface of the bowl shall be constructed of PVC material and the filler material between the two (2) surfaces shall be made of polyurethane foam. The bowl shall have a three (3) inch water seal and shall have a two and one-eighth (2 1/8) inch waste opening passage.

Section 5. Frost-proof Closet. A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy. The room shall be tightly enclosed and accessible from the outside only. The soil pipe between the trap and hopper shall be of extra heavy cast-iron, four (4) inches in diameter and shall be light colored porcelain enamel on the inside. The building shall have a nonabsorbent floor. A frost-proof water closet shall have a four (4) inch vent.

Section 6. (1) Floor drains and shower drains. A floor drain or a shower drain shall be considered a plumbing fixture and shall be provided with a strainer.

(2) Shower drain pan construction. Shower pans shall be constructed without seams and shall extend to a minimum height of six (6) inches on all vertical walls. Shower pans shall not be required on a concrete floor before the outside grade level. Shower drain pans shall be constructed as follows:

(a) Of sheet lead weighing not less than four (4) pounds per square foot; or

(b) Of nonplasticized chlorinated polyethylene produced and

labeled as ASTM D-412-66, D-1204-54 and D-568-61 and they shall be not less than 0.040 inches thick; or

(c) Of nonplasticized polyvinyl chloride (PVC) sheet material produced and labeled as ASTM D-1004, D-2204, D-412 and D-1790 and they shall be not less than 0.040 inches thick; or

(d) Of other approved material. Copies of ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Fiberglass bathtubs, showers, tub enclosures and shower stalls. Fiberglass bathtubs and tub enclosures shall be produced and labeled as ANSI Z 124.1. Acrylic-faced bathtubs shall be produced and labeled as ASTM E-84B or E-162. Fiberglass shower stalls and shower receptors shall be produced and labeled as ANSI Z 124.2.

(4) Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls. Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, shall be produced and labeled as ANSI Z 124-1, lavatories shall be produced and labeled as ANSI Z 124-3 and shower stalls shall be produced and labeled as ANSI Z 124-2. Copies of ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 7. Fixture Strainers. Fixtures, other than water closets and pedestal urinals, shall be provided with a strainer. The outlet area of the strainer shall not be less than the interior area of the trap.

Section 8. Fixture Overflow. The overflow from a fixture shall be optional, but if used, the overflow shall be connected to the inlet side of a trap and accessible for cleaning.

Section 9. Fixture Additions. Fixtures added to a plumbing system shall be installed to comply with all applicable sections of the State Plumbing Code.

Section 10. Defective Fixtures. Newly installed fixtures found defective or old fixtures found to be in an unusable condition, shall be repaired, replaced, or removed within thirty (30) days upon written notice from the department.

Section 11. Water Heaters. (1) Water heaters shall be properly connected to the hot and cold water supply. A water heater designed for use as an appliance for supplying potable hot water for domestic or commercial purposes may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit. Every water heater shall be accessible for inspection, repair and replacement. When a water heater is located in an attic of a residence, a water tight pan of corrosion resistant material shall be installed beneath the water heater. The pan shall be equipped with at least a three-quarter (3/4) inch drain to be piped similarly to a pressure and temperature relief valve discharge line. Fuel-fired water heaters shall be connected to a flue or chimney of a size which is at least as large as the water heater manufacturer's instructions. Fuel-fired water heater vents shall not be connected to a flue serving a coal-burning apparatus. [~~Water heaters shall be properly connected to the hot and cold water supply and shall be connected to an adequate size flue or chimney. A water heater shall not be connected to a flue serving a coal burning apparatus.~~] The flue or chimney shall extend two (2) feet above the roof and shall be properly flashed and shall not terminate within six (6) feet of a door or window. A fuel-fired water heater, with the exception of those having direct-vent or through the wall vent systems, shall not be placed in any bathroom, toilet room or a room used for sleeping. If a fuel-fired water heater is placed in a closed room or closet, the door shall be a louver door or shall be properly ventilated to provide combustion air and circulation (see 815 KAR 20:120).

(2) Direct venting system location. Residential gas-fired direct vent and through the wall type water heaters shall be vented in accordance with the manufacturer's recommendations and shall be installed in accordance with the National Fire Prevention Association Pamphlet #54 adopted by reference in the Kentucky Fire Prevention Code filed in 815 KAR 10:040. The vent terminal of a direct vent appliance with an input of 50,000 BTU per hour or less shall be located at least nine (9) inches from any opening through which flue gases could enter a building, and an appliance with an input over 50,000 BTU per hour shall require a twelve (12) inch vent termination clearance. The bottom of the vent terminal and the air intake shall be located at least twelve (12) inches above grade" (see 815 KAR 20:120, Section 11).

Section 12. Conservation of Water. (1) Conservation of hot water.

(a) Showers. Showers used for other than safety reasons shall be equipped with approved flow control devices to limit total flow to a maximum of two and one-half (2.5) gpm per shower head.

(b) Lavatories.

1. Lavatories in restrooms of public facilities shall be equipped with outlet devices which limit the flow of domestic hot water to a maximum of 0.75 gpm.

2. Lavatory faucets (other than those in restrooms of public facilities) shall be equipped with flow control devices which limit the flow of domestic hot water to a maximum of two (2.0) gpm.

3. Sink faucets shall be equipped with flow control devices which limit the flow of domestic hot water to a maximum of two and one-half (2.5) gpm.

(2) Conservation of cold water.

(a) Showers. Showers used for other than safety reasons shall be equipped with approved control devices to limit total flow to a maximum of two and one-half (2.5) gpm per shower head.

(b) Lavatory and sink faucets.

1. Lavatory faucets: lavatory faucets shall be equipped with flow control devices which limit the flow of domestic cold water to a maximum of two (2.0) gpm.

2. Sink faucets: sink faucets shall be equipped with flow control devices which limit the flow of domestic cold water to a maximum of two and one-half (2.5) gpm.

(c) Water closets: no water closet shall be installed in any facility or building unless it is of a type designed and manufactured to limit the gallons per flush as required by this subsection: 1. Residential (private use) installations: water closets for private use single family dwellings, duplexes and townhouses, condominiums and apartment units shall not exceed one and six-tenths (1.6) gallons per flush.

2. Commercial (public use) installations: water closets for public use, including commercial buildings, shall not exceed three and one-half (3.5) gallons per flush.

(d) Urinals: urinals shall not exceed one (1.0) gallon per flush.

(3) The provisions of this section shall apply to new construction, renovations and replacement in existing structures. Upon satisfactory compliance with the requirements of this section, the Division of Plumbing shall permit the installation of tank type water closets equipped with devices found by the inspector to meet applicable specifications in water closets having a tank capacity in excess of three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters). The Division of Plumbing may also allow the use of standard flush water closets and urinals which do not meet the specific specifications if, in the opinion of the division, the configuration of the building drainage system requires a greater quantity of water to adequately flush the system, or if the owner requests the use of antique fixtures which may not be equipped for reduced flow.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 26, 1995
FILED WITH LRC: March 14, 1995 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on Tuesday, April 25, 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 April 20, 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: Implementation of this amendment will not affect the cost of living or employment in any area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing fee schedule is adequate. Enforcement of the regulation will not increase agency costs.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation will protect against leaks causing damage to property.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This amendment applies to all water heaters installed in attics.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:001. Definitions.

RELATES TO: KRS 205.710-205.800, 403.210-403.240, 405.520, 407.010-407.480, 45 CFR 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 15 USC 1673(b), 31 USC 7502

STATUTORY AUTHORITY: KRS 194.050, 205.710-205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the Child Support Enforcement Program (CSEP). KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the CSEP.

Section 1. Definitions of terms utilized in administrative regulations relating to the CSEP are as follows:

(1) "Absent parent" means either a mother or father of a dependent child who is not living in the home with the child. This term may also be used to describe the alleged father in a paternity case.

(2) "Any other person or entity that may have standing to request a modification" means a nonparental client.

(3) "Arrearage" means the total unpaid support obligation established by judicial or administrative order owed by an absent parent.

(4) "Assignment of rights" means the written transfer of rights to any child support, ~~[or]~~ any medical support, or mainten-ance obligation to the state.

(5) "Assigned support obligation" means any child support or medical support obligation assigned to the state.

(6) "Authority to collect" means the nonpublic assistance client's authorization for the Cabinet for Human Resources to collect child support or maintenance owed on behalf of the family ~~[child]~~ for whom the cabinet is providing child support services.

(7) "Central registry" means a centralized office within the state agency responsible for:

(a) Receiving and distributing an incoming interstate request; and

(b) Responding to an inquiry received from another state regarding an interstate case.

(8) "Default" means the absent parent's failure to return a financial statement or to keep an appointment, and the absent parent's income and assets cannot be obtained and verified from another source to determine a support obligation based on the Kentucky child support guidelines.

(9) "Dispute hearing" means the process whereby an absent

parent's objections to administrative determinations of the cabinet are heard by an impartial hearing officer upon a timely request.

(10) "Distribution" means either a disbursement of collection to the family or an allotment of various portions of the collections to the state and federal government for the reimbursement of the share of the AFDC assistance payment to the family or money expended for a child in foster care.

(11) "Initiating state" means the state that initiates child support activity on behalf of a child whose parent resides outside the child's state of residence.

(12) "Excess collections" means the difference between the amount of the assistance payment for the month in which the amount of the collection is used to redetermine eligibility and either the monthly obligation or the amount collected, whichever is less.

(13) "Long-arm statutory authority" means a state statute which provides for state jurisdiction over a nonresident.

(14) "Maintenance" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(15) [~~(13)~~] "Notice of monthly support obligation" means an administrative order issued by the cabinet as specified in KRS 405.440 notifying the absent parent of the child support and medical support obligation and of the absent parent's right to request a hearing.

(16) [~~(14)~~] "Obligor" means that individual who is ordered to pay child support, medical support, or health care coverage.

(17) [~~(15)~~] "Offset" means set aside federal or state, or both, income tax refunds due an absent parent as a means of collecting past-due child support.

(18) [~~(16)~~] "Order to withhold earnings" means an administrative order issued by the cabinet, or a judicial order to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of any arrearage, and when applicable, the employee-paid share of the cost of health insurance coverage for a dependent child.

(19) [~~(17)~~] "Preoffset notice" means a letter notifying an absent parent who owes an arrearage that the arrearage has been certified for state and federal tax refund intercept, or state tax refund [~~tax~~] intercept only.

(20) [~~(18)~~] "Postreview challenge period" means the thirty (30) days following the date of the notice of adjustment or the notice of no change following the review for modification of [~~to~~] the child support [~~modification~~] order.

(21) [~~(19)~~] "Public assistance" means the receipt of aid to families with dependent children (AFDC), [~~AFDC-related~~] Medicaid, [~~or~~] foster care benefits.

(22) [~~(20)~~] "Responding state" means the state that is managing the child support case received from an initiating state.

(23) [~~(21)~~] "Unassigned arrearage" means any arrearage that accrues that is not assigned to the Cabinet for Human Resources.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: March 7, 1995
FILED WITH LRC: March 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 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 April 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: This administrative regulation clarifies terminology utilized within the Child Support Enforcement Program and related judicial and administrative actions. This is an expansion of materials previously promulgated. The definition is being added in order to harmonize with statutory requirements. Child support enforcement clients having maintenance orders in addition to child support orders will be affected. However, the number of clients affected is undeterminable.

(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 public comments received. No public hearing was held on the NOI and 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 public comments received. No public hearing was held on the NOI and 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: 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 funding - 66%; agency funding - 34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held on the NOI and no public comments were received.

(b) Kentucky: No public hearing was held on the NOI and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because of the necessity to harmonize with statutory language.

(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: None

(11) Tiering: Is tiering applied? No. The purpose of the regulation

amendment is only for clarification of terminology.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 15 USC 1673(b), 31 USC 7502

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation sets forth clarifying and specific terminology utilized by the Child Support Enforcement Program.

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation does not contain new services of new requirements, and therefore does not affect local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation does not affect local governments.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect local governments.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:016. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 205.211, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), 42 USC 602(a)(8)(A)(viii), 602(a)(13), 602(a)(39), PL 103-66 §13736, 13742, "Treatment of Retroactive SSI and Child Support Collected During the SSI Retroactive Period", Transmittal No. ACF-AT-93-20 (November 2, 1993), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Transmittal No. ACF-AT-94-17 (August 3, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children (AFDC) Program. This administrative regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Benefit group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3.

(a) The benefit group shall include:

1. The dependent child;

2. The child's eligible parent; and

3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.

(3) "Burial space" means a space and certain related services used for the remains of a deceased person. This includes:

(a) A grave site;

(b) Costs to open and close the grave;

(c) A crypt;

(d) A mausoleum space;

(e) A casket;

(f) A vault;

(g) An urn; and

(h) A headstone.

(4) "Change in circumstances" means a change in income and or dependent care expenses which affects the ongoing AFDC payment. This shall include:

(a) Beginning or ending employment;

(b) Change in employers or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in provider, number of hours of care, number of individuals for whom care is given, or amount charged; or

(f) Change in farm cropping arrangements or type of self-employment activities.

(5) ~~[(4)]~~ "Claimant" means the individual responsible for an overpayment.

(6) ~~[(5)]~~ "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(7) ~~[(6)]~~ "Deduction" means an amount subtracted from gross income to determine countable income.

(8) ~~[(7)]~~ "Excluded income" means income that is received but not counted in the gross income test.

(9) ~~[(8)]~~ "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(10) ~~[(9)]~~ "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in and adult basic education (ABE) program, a General Educational Development (GED) program or a literacy program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time.

(11) ~~[(10)]~~ "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this administrative regulation.

(12) ~~[(11)]~~ "Lump sum income" means income that does not occur

on a regular basis, and does not represent accumulated monthly income received in a single sum.

(13) [~~(12)~~] "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent is considered any person under the age of eighteen (18).

(14) [~~(13)~~] "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(15) [~~(14)~~] "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(16) [~~(15)~~] "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(17) [~~(16)~~] "Recoupment" means recovery of overpayments of assistance payments.

(18) [~~(17)~~] "Sanctioned individual" means any person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(19) "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(20) [~~(18)~~] "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

(21) [~~(19)~~] "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The amount that can be reserved by each benefit group shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (3) of this section:

(3) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Equity value up to $1,500 for one (1) motor vehicle;

(c) Basic household items essential for day-to-day living, including:

1. Furniture;

2. Appliances; and

3. Clothing.

(d) Gift or inheritance not legally available until a later date;

(e) Nonessential item with a value of less than fifty (50) dollars;

(f) All resources of a recipient of supplemental security income (SSI) or the state supplementation program (SSP) living in the home;

(g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;

(h) Crops and animals raised for home consumption.

(i) Real property which the benefit group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:

1. The benefit group shall agree to repay AFDC benefits received beginning with the first month of the exemption.

2. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment.

3. The amount of the repayment shall not exceed the net proceeds of the sale.

4. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Children's toys and bicycles;

(k) Household pets;

(l) Resources of a child excluded from the AFDC grant;

(m) Resources of an individual not receiving assistance but living in the home including:

1. The stepparent;

2. Parent or legal guardian of a minor parent;

3. The spouse of a nonresponsible specified relative; or

4. The spouse of a minor dependent child;

(n) Amount of AFDC grant;

(o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home.

(p) Funds in an IRA, retirement or deferred compensation account during the period of unavailability;

(q) Excluded income, as specified in Section 4 of this administrative regulation;

(r) Principal and accrued interest of an irrevocable trust during periods of unavailability;

(s) One (1) burial space per AFDC family member;

(t) $1,500 of the value of prepaid burial funds and cash surrender value of burial insurance policies per family member;

(u) Principal of a verified loan;

(v) Up to $12,000 to Aleutians and $20,000 to individuals of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

(w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to veterans or their survivors;

(x) Earned income tax credit (EITC) payments in the month of receipt and the following month;

(y) Any payment received from the Radiation Exposure Compensation Trust Fund; and

(z) A nonrecurring lump sum supplemental security income (SSI) retroactive payment that is made to an AFDC recipient who is not ongoing eligible for SSI, in the month paid and the next following month.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and

2. The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization in which the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) Bank accounts requiring one (1) signature for withdrawals.

1. Unless the other owner is a recipient of SSI, the total balance

of the account is considered available to the AFDC applicant or recipient [~~client~~].

2. If the other owner receives SSI, the balance is divided evenly by the number of owners and only the AFDC applicant or recipient's [~~client's~~] share is considered available.

(b) For bank accounts which require more than one (1) signature for withdrawals, determine the AFDC applicant or recipient's [~~client's~~] share by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, determine applicant or recipient's [~~client's~~] available share by dividing the value of the business enterprise by the number of owners.

(d) If resources are held jointly other than those listed in paragraphs (a) through (c) of this subsection, the applicant or recipient's [~~client's~~] share is determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership may be accomplished if the applicant or recipient [~~client~~] asserts he does not contribute to or benefit from a jointly held resource and he provides:

1. A written statement regarding ownership, who deposits and withdraws; and

2. A written statement from each of the other owners which corroborates the applicant or recipient's [~~client's~~] statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant or recipient's [~~client's~~] name has been removed from the resource.

Section 3. Income Limitations. In determining eligibility for AFDC the following shall apply:

(1) Gross income test.

(a) The total gross non-AFDC income shall not exceed the gross income limitation standard. This income includes:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI;

3. Income of a sanctioned individual;

4. An amount deemed available from the parent of a minor parent living in the home with the benefit group;

5. An amount deemed available from a stepparent living in the home;

6. An amount deemed available from the spouse of a minor dependent child living in the home; and

7. An amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types specified in Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The benefit group has not received assistance during the four (4) months prior to the month of application.

3. The benefit group has a member added to the case and that member:

a. Has earned income; and

b. Has not received assistance during the four (4) months prior to being added to the case.

(b) The total gross income after application of excluded income and deduction policy set forth in Section 4(1) and (2) of this administrative regulation shall be compared to the assistance standard set forth in Section 7 of this administrative regulation.

(c) If income exceeds this standard, the benefit group is ineligible.

(d) For a benefit group which meets the gross income test but has received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the benefit group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by subtracting excluded income and applicable deductions in Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the benefit standard, the benefit group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months which equals the quotient of the division of total countable income by the standard of need for the benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need increases and the amount of grant the benefit group would have received also changes;

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group;

3. The benefit group incurs and pays necessary medical expenses not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the AFDC household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the agency determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded and Deductions Income. All gross non-AFDC income received or anticipated to be received by the benefit group, sanctioned individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy as set forth in the following subsections:

(1) Gross income test. Incomes listed in this subsection shall be excluded:

(a) Deductions applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, as set forth in Section 5 of this administrative regulation;

(b) Deductions applicable to alien sponsor's income, as set forth in Section 6 of this administrative regulation;

(c) Deductions applicable to self-employment income;

(d) Earnings received by a dependent child from participation in programs under the Job Training Partnership Act (JTPA) program for a period not to exceed six (6) months within a given calendar year;

(e) Unearned income received by a dependent child from participation in a JTPA program;

(f) The difference between the standard of need and the payment maximum for the benefit group, as specified in Section 7 of this administrative regulation, for households in which a member receives a JTPA stipend;

(g) Value of United States Department of Agriculture (USDA) program benefits including:

1. Donated foods;

2. Supplemental food assistance received under 42 USC 1771;

3. Special food service program for children under 42 USC 1775;

4. Nutrition program for the elderly under 42 USC 3001; and

5. The monthly food stamp allotment;

(h) Reimbursement for transportation in performance of employment duties, if identifiable;

(i) The value of JOBS supportive services payments and self-initiated supportive services payments authorized under 904 KAR 2:017;

(j) Nonemergency medical transportation payments;

(k) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(l) Educational grants, loans, scholarships, including:

1. Payments obtained and used under conditions that preclude their use for current living costs; and

2. All education grants and loans to any undergraduate made or insured under any program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs.

(m) Highway relocation assistance;

(n) Urban renewal assistance;

(o) Federal disaster assistance and state disaster grants;

(p) Home produce utilized for household consumption;

(q) Housing subsidies received from federal, state or local governments;

(r) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(s) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving under programs authorized by 42 USC 5001 and 42 USC 5011, including:

1. Foster grandparents;

2. Senior health aides;

3. Senior companions;

4. Service Corps of Retired Executives (SCORE); and

5. Active Corps of Executives (ACE);

(u) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 if less than the minimum wage under state or federal law, whichever is greater;

(v) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, or adult foster care;

(w) Payments made under the Low Income Home Energy Assistance Program (LIHEAP) under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(x) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(y) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(z) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group;

(aa) The principal of a verified loan;

(bb) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II;

(cc) Income of an individual receiving SSI;

(dd) The essential person's portion of the SSI check;

(ee) Income of an individual receiving mandatory or optional state supplementary payments;

(ff) The advance payment or refund of earned income tax credit (EITC);

(gg) Payments made directly to a third party on behalf of the applicant or recipient ~~[client]~~ by a nonresponsible person;

(hh) Child support received in a month for which the AFDC payment is suspended;

(ii) In-kind income;

(jj) Income of a technically ineligible child;

(kk) Payments made from the Agent Orange Settlement Fund;

(ll) AFDC back payments;

(mm) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship as specified in 904 KAR 2:006, Section 10;

(nn) Payments made from the Radiation Exposure Compensation Trust Fund; ~~[and]~~

(oo) Up to $2,000 per year of income received by individual Indians denied from leases or other uses of individually-owned trust or restricted lands; and

(pp) Payments made to individuals because of their status as victims of Nazi persecution.

(2) Applicant eligibility test. Excluded income in subsection (1) of this section and any applicable deduction listed in this subsection shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) On or after July 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, child care, for a child or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense beginning in the second calendar month following the month employment begins ~~[is allowed]~~ not to exceed:

1. $175 per month per individual for full-time employment; or

2. $150 per month per individual for part-time employment; or

3. $200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude or deduct all incomes listed in subsections (1) and (2) of this section as well as deductions listed in this subsection:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group.

1. The one-third (1/3) portion of this deduction shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income.

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period.

3. These deductions shall not be available to the individual until he has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Deductions from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in the employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at a prospective job or training site would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for this work in the community was not made; or

5. The child care arrangement is terminated through no fault of the applicant or recipient ~~[client]~~; or

6. The available child care does not meet the needs of the child,

for example, a disabled child; or

7. The parent is temporarily absent from work on approved educational leave; or

8. The JOBS participant leaves employment in an attempt to improve skills, become self-sufficient and leave the AFDC rolls; or

9. The individual is needed in the home to care for another ill or incapacitated household member and no other household member is available to provide needed care.

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section;

(c) Fails to report and increase in earnings, which impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

Section 5. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, as described in subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent;

(d) A parent barred from receiving assistance due to failure to meet alien status; or

(e) A parent of a minor parent.

(2) Income. The gross income of the individual is considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for The appropriate family size, for:

1. The support of the individual; and

2. Any other person living in the home if:

a. His needs are not taken into consideration in the AFDC eligibility determination; and

b. He is or may be claimed as a dependent for purposes of determining his federal personal income tax liability by the individual.

(c) Any amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for purposes of determining his personal income tax liability by the individual;

(d) Payments for alimony or child support to a person not living in the home by the individual;

(e) Income of an SSI recipient who is listed in subsection (1) of this section; or

(f) A retroactive SSI payment, which is counted in determining eligibility and the amount of payment to the AFDC unit in the month received, in any subsequent month.

(3) Sanction exception. The income of any sanctioned individual is not eligible for the deductions listed in this section.

(4) Resources. Resources which belong solely to the stepparent, spouse of a minor dependent child, spouse of a specified relative other than a parent or parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group.

Section 6. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien, subject to deductions set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to those aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed $175;

2. An amount equal to the AFDC assistance standard for the appropriate family size of:

a. The sponsor; and

b. Other persons living in the household:

(i) Who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability; and

(ii) Whose needs are not considered in making a determination of eligibility for AFDC;

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or AFDC.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less $1,500.

Section 7. Payment Maximum. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities.

(2) Countable income, as determined by the provisions of Section 8 of this administrative regulation, is subtracted in determining eligibility for and the amount of the AFDC assistance payment, as follows:

	Effective July 1, 1989	
Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	$162	$394
2 persons	$196	$460
3 persons	$228	$526
4 persons	$285	$592
5 persons	$333	$658
6 persons	$376	$724
7 or more persons	$419	$790

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. Best Estimate. (1) The agency shall compute the benefit using its best estimate of income which will exist in the payment month.

(2) The following methods shall be used by the agency to

calculate a best estimate:

(a) For cases with earned income, other than self-employment earned income:

1. The agency:

a. Shall not round cents to the nearest dollar before adding or multiplying hourly or daily earnings; but

b. Shall round cents to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, the agency shall use income from all pay periods in the preceding two (2) calendar months.

3. The agency shall determine a monthly amount by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered;

c. Converting the pay period figure to a monthly figure by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the agency shall compute the anticipated monthly income by:

a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or

b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

c. Converting the resulting pay period figure to a monthly amount by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

(b) For cases with unearned income, other than unearned self-employment income, the agency shall determine a monthly amount by:

1. Not rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis;

3. Unless it does not represent the ongoing situation, averaging the amount of nonstable unearned income received in the three (3) prior calendar months.

(c) For cases with self-employment income:

1. If the self-employment enterprise has been in operation for at least a year, the agency shall prorate the income by dividing the income from the last calendar year by twelve (12).

2. If the self-employment enterprise has been in operation for less than a year, the agency shall prorate the income by dividing by the number of months the business has been in existence.

3. The agency shall determine profit by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for cases with:

1. Earned or unearned income other than self-employment; or

2. Income from a self-employment enterprise which has not been in existence for at least one (1) year;

(b) At twelve (12) month intervals for cases with a self-employment enterprise which has been in existence for at least one (1) year;

(c) Whenever the agency becomes aware of a change in circumstances; or

(d) To reflect a mass change in the standard of need or maximum payment standard.

Section 9. [8.] AFDC Recoupment. Except for those overpayments in administrative regulation 904 KAR 2:017, the following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The claimant;

(b) The overpaid assistance unit;

(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(d) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 7 of this administrative regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 10. [9.] Avoiding an Overpayment. (1) An AFDC recipient may voluntarily return a benefit check to avoid an overpayment if:

(a) The case is totally ineligible for the month for which the check is issued; and

(b) The check has not been reduced for recoupment of a previous overpayment.

(2) If a check is voluntarily returned, the agency shall determine whether or not the recipient [client] is due a refund as described in Section 11 [10] of this administrative regulation.

Section 11. [10.] Refund. A recipient [client] shall be due a refund in the following situations:

(1) The agency recoups an amount in excess of the actual overpayment;

(2) The agency offsets an overpayment and an underpayment and finds a balance owed to the recipient [client];

(3) A recipient [client] voluntarily returns an AFDC check to avoid an overpayment and the current month obligation of child support was collected by the agency during the month the AFDC check was intended to cover, leaving a balance owed to the recipient [client].

Section 12. [11.] Correction of Underpayments. The following provisions apply to all AFDC payments:

(1) The department shall promptly correct an underpayment to:

(a) A current AFDC recipient; and

(b) One who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

(a) The month the payment is paid; or

(b) The next following month.

Section 13. [12.] Material Incorporated by Reference. (1) Forms

necessary for the determination of financial eligibility and recovery of overpayments in the AFDC program are incorporated effective December 1, 1993. These forms include:

(a) PA-30.2, revised 7/85;

(b) PA-35, revised 2/91;

(c) PA-36, revised 1/85;

(d) PA-412, revised 1/91; and

(e) PA-415, revised 11/89.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: March 8, 1995

FILED WITH LRC: March 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 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 April 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: The only provision in this amendment that will affect any entities is the direct child care payment. We looked at the time period of July 1, 1994 through December 31, 1994, to determine the number of AFDC recipients who began employment. In that six month period, a total of 7,860 persons began either full-time or part-time employment. This averaged out to 1,310 persons a month that could have been eligible for a direct child care payment in the first month of employment.

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

(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 hearing was requested as a result of the Notice of Intent being published so no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published so no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No hearing was requested as a result of the Notice of Intent being published so no comments were received.

1. First year following implementation: No fiscal impact to entities.

2. Second and subsequent years: See Item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: During July 1994 through December 1994, approximately $660,000 was paid in child care expenses. This averaged out to $110,000 a month. This amendment proposes that the state would pay a direct child care payment for the first month of employment and then allow child care as a deduction beginning in the second month. This would allow individuals to accept employment without being concerned how child care expenses would be paid until the first pay check is received. We used the $110,000 a month figure times 12 to determine the yearly cost for this provision. That amount figured out to be $1,320,000. The state/federal match for child care expenses in AFDC is 30.03/69.97. We estimate that this provision would cost the state $396,400 a year to implement the direct child care payments for the month of employment.

1. First year: See direct and indirect cost or savings.

2. Continuing cost or savings: Same as item #1.

3. Additional factors increasing or decreasing costs: Depending on whether or not the number of AFDC recipients who begin employment increases or decreases, the cost could increase or decrease as well.

(b) Reporting and paperwork requirements: No additional paperwork would be required other than what is currently requested for verification purposes. Payments would be made on an automated system.

(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: Title IV-A funds and state general 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: No hearing was requested as a result of the Notice of Intent being published so no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published so no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were discussed. We currently only allow a deduction for child care payments with no direct payments offered.

(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: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: 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? Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. KRS 205.200(2), 205.210(1), 205.211, 45 CFR 233, 42 CFR 435.831, 42 USC 602(a)(39), 602(a)(13), 602(a)(8)(A)(viii), 45 CFR 233.20(a)(13), PL 103-66 Section 13736 and 13742, "Treatment of Retroactive SSI and Child Support Collected During the SSI Retroactive Period", Transmittal No. ACF-AT-93-20 (November 2, 1993), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Transmittal No. ACF-AT 94-17 (August 3, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance.

2. State compliance standards. The state compliance standards

are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate. All states are required to implement changes that are federally mandated in transmittal letters provided by the governing federal agency.

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. Not applicable.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:020. Child support enforcement program: confidentiality and cooperative agreements.

RELATES TO: KRS 205.175, 205.712, 205.800, 45 CFR 303.21, 303.105, 303.107, 302.34

STATUTORY AUTHORITY: KRS 194.050, 205.710 to 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. The cabinet shall make efforts to establish paternity and secure support from parents of children receiving public assistance as a result of desertion, abandonment, birth out-of-wedlock, and for other children on application. KRS 205.795 and 405.520 empower the secretary to adopt administrative regulations pertaining to the administration of the CSEP. This administrative regulation specifies the procedures for safeguarding information and entering into cooperative agreements.

Section 1. Safeguarding Information. The use or disclosure of information concerning an applicant or recipient of CSEP shall be limited to:

(1) The administration of the CSEP or other federal or federally assisted program which provides assistance or services directly to individuals on the basis of need; or

(2) An investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of a program specified in subsection (1) of this section.

Section 2. Cooperative Agreements. (1) As permitted by KRS 205.712(4) and 205.800, cooperative agreements initiated by the cabinet with local officials shall:

(a) Contain a clear description of specific duties, functions and responsibilities of each party in administration of the CSEP;

(b) Specify clear and definite standards which meet federal requirements;

(c) Specify financial reimbursement arrangements including:

1. Budget estimate;

2. Covered expenditures;

3. Methods of determining costs; and

4. Billing procedures for the child support agency;

(d) Specify record maintenance and format requirements;

(e) Contain appropriate reporting requirements;

(f) Contain the requirements for compliance with 31 USC 7502; [~~and~~]

(g) Provide the beginning and end dates of the cooperative agreement, review or renewal provisions, and termination circumstances; and

(h) Provide audit criteria.

(2) When officials enter into an agreement with the cabinet, reimbursement [~~federal financial participation (FFP)~~] for child support activities shall be provided when billing is submitted in accordance with procedures:

(a) Established by the cabinet; and

(b) Specified in the cooperative agreement.

(3) The officials shall provide the cabinet in timely fashion statistical information concerning CSEP activities as prescribed by the cabinet and specified in the cooperative agreement.

(4) If no agreement is executed, referrals for child support activities may be made to local law enforcement officials in accordance with the official's statutory obligations, but the officials shall not be eligible for reimbursement as specified in subsection (2) of this section.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: March 7, 1995
FILED WITH LRC: March 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 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 April 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: This administrative regulation provides for the safeguarding of information and entering into cooperative agreements. The child support enforcement agency contracts with 103 legal entities to enforce child support statutes across the Commonwealth.

(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 public comments received. No public hearing was held on the NOI and 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 public comments received. No public hearing was held and no 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: Annual audits of contracting officials will be mandated. However, the cost of these audits will be included in the operational costs associated with the administration of the child support program and will be reimbursed to the contracting official by the program.

2. Second and subsequent years: Annual audits of contracting officials will be mandated. However, the cost of the audits will be included in the operational costs associated with the administration of the child support program and will be reimbursed to the contracting official by the program.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No fiscal impact as audit costs are included in the grants and contracts classification within the enacted 95/96 Child Support Administration budget.

2. Continuing costs or savings: No fiscal impact as audit costs are included in the grants and contracts classification within the enacted 95/96 Child Support Administration budget.

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 funding - 66%; agency funding - 34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received. Therefore, there is no economic impact or effect arising from this administrative regulation.

(b) Kentucky: No public hearing was held and not public comments were received. Therefore, there is no economic impact or effect arising from this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered in order to harmonize with statutory language and contract 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: 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: None

(11) Tiering: Is tiering applied? No. Tiering was not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 303.21, 303.105, 303.107, 302.34.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation provides for the safeguarding of information and entering into cooperative agreements. The child support enforcement agency contracts with 103 legal entities to enforce child support statutes across the Commonwealth.

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains new services and new requirements of the contracting officials, and therefore does affect local governments by requiring yearly audits to be performed by the contracting official.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the audit criteria required of the contracting officials for child support enforcement program.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide for annual audits of the child support enforcement program services provide in contracting officials offices.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:116. Home energy assistance program.

RELATES TO: KRS 194.050, 42 USC 8621 et seq.

STATUTORY AUTHORITY: KRS 194.050, 42 USC 8621 et seq.

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by 42 USC 8621 et seq., as amended, to administer the Low Income Home Energy Assistance Program (LIHEAP) to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. This administrative regulation states the eligibility and benefits criteria for heating assistance.

Section 1. Definitions. (1) An "authorized representative" means the person who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

(2) "Crisis component" means the component that provides assistance to households which are experiencing a home heating crisis.

(3) "Economic unit" means one (1) or more persons sharing common living arrangements.

(4) "Emergency" means the household is without heat at the time of application or will be disconnected from a utility service within forty-eight (48) hours.

(5) "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.

(6) "Gross income" means all earned and unearned income, including lump sum payments received by the households during the calendar month preceding the month of the application.

(7) "HEAP" means home energy assistance program and shall refer to the heating assistance portion of LIHEAP.

(8) "Heating season" means the period from October through April.

(9) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit and purchase energy in common ~~[who share complete kitchen facilities for the exclusive use of the individual or individuals]~~.

(10) "Life threatening situation" means without heat or will be without heat within forty-eight (48) hours and temperatures are at a dangerous level for household members.

(11) "Principal residence" means the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) He considers home;

(c) To which, when absent, he intends to return; and

(d) Is identifiable from other residences, commercial establishments, or institutions.

(12) "Subsidy component" means the component that provides eligible households with a one (1) time payment to the household's energy provider.

Section 2. Application. (1) Each household or authorized representative shall complete an application and provide information necessary to determine eligibility and benefit amount.

(2) An application shall not be considered completed until all information needed is received.

Section 3. Eligibility Criteria. (1) Income.

(a) Gross income shall be at or below 110% of the federal poverty income guidelines as published annually by the U.S. Department of Health and Human Services. The Department for Social Insurance shall announce the income guidelines after being published by the Department of Health and Human Services.

(b) Excluded from income are:

1. Payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose;
2. Payments made to others on the household's behalf;
3. Loans;
4. Reimbursements for expenses;
5. Incentive payments (JET and JTPA) normally disregarded in AFDC;
6. Federal payments or benefits which shall be excluded according to federal law; and
7. Supplemental medical insurance premiums.

(2) Liquid assets.

(a) The household shall have total liquid assets at the time of application of not more than $1,500, or $4,000 if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and living expenses [~~$5,000~~].

(b) Excluded assets are:

1. Cars;
2. Household or personal belongings;
3. Principal residence;
4. Cash surrender value of insurance policies;
5. Prepaid burial policies;
6. Real property; and
7. Cash on hand or in a bank account if the cash is income considered under subsection (1)(a) of this section.

(3) Crisis component.

(a) Applicants shall meet the income and liquid assets criteria; and

(b) Be without heat; or

(c) Be without fuel within five (5) days; or

(d) Have received a notice of disconnection of service; or

(e) Have an inoperable heating system [~~Require a heat system repair to obtain adequate heat~~]; or

(f) For those households whose home heating costs are included as an undesignated portion of the rent, the household must have received a notice of eviction for nonpayment of rent.

Section 4. Benefit Levels. (1)(a) Payments to the households' heating fuel providers shall be made for the full benefit amount.

(b) Benefits shall be determined from fuel usage data and from the average heating season energy cost for the six (6) primary heating fuels prior to the implementation of the subsidy component.

(c) Households shall receive benefits based on the household's poverty level and the type of heating fuel. Those households with the lowest incomes and highest heating season fuel costs shall receive the highest benefits. Benefits shall be a percentage of the average annual heating season energy costs of the primary heating fuel.

(d) Households living in federally assisted housing and receiving a utility allowance shall be eligible for benefits which shall be lower than benefits provided to all other households. [~~Benefit matrix subsidy component.~~

~~Households Income as a Percent of 100% Federal Poverty Level~~	~~Benefit Amount as a Season Energy Costs (October through April)~~
~~0-22%~~	~~18.5%~~
~~23-44%~~	~~16.5%~~
~~45-66%~~	~~14.5%~~
~~67-88%~~	~~12.5%~~
~~89-110%~~	~~10.5%~~]

(2) Crisis component. Benefits to households, including households living in federally assisted housing, shall be the minimum amount necessary to alleviate the crisis. Benefits may be fuel or other energy for heating, heaters, blankets, or emergency shelter. Space heaters shall be a temporary service and shall be loaned to a household until fuel is delivered, the heating system is repaired or other resources are located which will alleviate the crisis. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis.

(a) In determining the minimum amount of assistance, the contracting agency shall take into consideration direct subsidies for payment of utility cost received by the household from other programs.

(b) A household may [~~shall~~] receive assistance more than once, but shall not receive more than the maximum allowable for the primary heating fuels determined prior to component implementation.

(c) The benefits for a household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable for the primary heating fuel as determined prior to component implementation.

(d) A household that has a heating system that has become inoperable since the end of the previous heating season [~~needing a heat system repair~~] shall be referred to the local weatherization program to have its heating system evaluated and repaired if necessary.

Section 5. Benefit Delivery Methods. (1)(a) Payment under the subsidy component is authorized by a one (1) party check made payable to the household's energy provider [~~vendor~~] or landlord if the cost of heating is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of heating.

(2) For the crisis component, direct cash payments shall not be made to the recipient. Payments shall be authorized to the energy provider by one (1) party checks upon delivery of fuel or restoration, or continuation, of service; or to vendors supplying heaters, blankets, or emergency lodging[~~, or restoration or continuation of service~~].

Section 6. Right to a Fair Hearing. Any individual who has been denied assistance or whose application has not been acted upon with reasonable promptness has a right to request and receive a fair hearing in accordance with 904 KAR 2:055.

Section 7. Time Standards. (1) Under the subsidy component, an eligibility determination shall be made promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

(2) Under the crisis component, completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours.

(3) Applicants shall have five (5) working days from the date of application to provide information necessary to complete the application.

Section 8. Effective Dates. (1) Implementation and termination dates for HEAP, depending upon the availability of funds, are:

(a) Applications for the subsidy component shall be accepted within the time period the department designates in the annual LIHEAP state plan as submitted to the federal government.

(b) Applications for the crisis component shall be accepted beginning on the date specified in the annual LIHEAP state plan and ending by April 30 [~~March 31~~], or until all available funds have been expended. Applications shall be processed in the order taken until funds are expended.

(2) HEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation if additional federal funds are made available.

Section 9. Allocation of Funds. (1) An amount of funds sufficient to provide benefits to all eligible households that apply during the subsidy application period shall be reserved for the subsidy component.

(2) The balance of benefit funds for HEAP shall be reserved for the crisis component. All benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's share of the eligible population except that the department shall establish by administrative regulation a minimum and maximum level of funds that agencies may receive relative to the amount of funds expended for crisis assistance in the preceding year. [~~nonduplicated households assisted in the preceding year's crisis component.~~]

(3) Each agency shall reserve ten (10) percent of the allocation under subsection (2) of this section to assure that funds are available [~~component availability~~] until April 30 [~~March 31~~], to assist [~~for emergency crisis assistance for~~] households who are without heat or will be disconnected from utility services within forty-eight (48) hours.

(4) No less than $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

(1) Reconnection of utilities and delivery of fuel during the crisis component shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program;

(3) HEAP recipients shall be treated the same as households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

JOHN L. CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: March 13, 1995

FILED WITH LRC; March 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 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 April 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: The Home Energy Assistance Program will be comprised of 2 components, subsidy and crisis which will provide heating benefits to eligible low income households at or below 110% of the federal poverty level. Subsidy will provide heating assistance benefits to approximately 115,000 eligible households while crisis will assist approximately 75,000 households experiencing a heating crisis. The 23 local community action agencies will operate the program statewide.

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

(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 cancelled, and 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 comment received: Because no requests were received, the public hearing for the Notice of Intent was cancelled and 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: The HEAP service providers are required to accept applications, determine eligibility and benefit amounts, issue vouchers, reimburse vendors, solicit and approve vendors, submit reports to the contracting agency, and obtain an annual audit. These requirements will neither increase nor decrease the costs. Cost of the program is determined by the federal appropriation of LIHEAP; the cost of administration is relative to the allocation - not to exceed 10% of the grant. The contractor agency, Kentucky Association for Community Action, will monitor each subcontractor a minimum of one time during the duration of the HEAP program.

2. Second and subsequent years: The compliance, paperwork and reporting requirements for all subsequent years will be the same as the first year.

(3) Effects on the promulgating administrative body: The Department for Social Insurance shall be responsible for the overall administration of HEAP.

(a) Direct and indirect cost or savings: Up to ten (10) percent of available funds for HEAP, may be used for administration.

1. First year: Normal costs associated with administration of this program and contract management shall be incurred.

2. Continuing cost or savings: There will not be any continuing costs or savings.

3. Additional factors increasing or decreasing costs: The Department for Social Insurance is not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: All HEAP applicants shall complete an application and provide materials to verify eligibility. The local administering agencies shall report services provided, submit invoices necessary for reimbursement and shall be subject to reporting and paperwork requirements necessary for appropriate administration of energy assistance programs including audits. The Department for Social Insurance shall collect and analyze data on households receiving assistance and report such to the Department

for Health and Human Services.

(4) Assessment of anticipated effect on state and local revenues: The HEAP shall have little impact upon state or local revenues. Increased tax revenues will be generated from recipient expenditures or receipt of energy assistance benefits.

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

(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 regarding the economic impact on Kentucky; the public hearing on the Notice of Intent was cancelled because no requests were received. However, $14,846,000 is available for benefits to be paid to vendors to purchase fuel - coal, wood, fuel oil, propane, gas and electric, for heat. $1.3 million is available in administration money for local community action agencies to operate the programs.

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being amended to reflect the plan for heating assistance contained in the Low Income Home Energy Assistance Block Grant which was subject to substantial public review and comment, a legislative review and public hearing. Criteria has been set at a level to maximize the number of households assisted with the minimum amount necessary for a reasonable benefit. Various levels of funds for the 2 components were examined. Balancing a federal intent that funds be used for heating assistance with the need for adequate crisis assistance funding, the cabinet proposed the funding levels reflected in the state plan. The public review and comment supported the funding levels.

(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 HEAP will have a somewhat positive effect on the public health of the low income eligible population in that they will receive benefits to maintain a heating source, to assist in having a heating source, gas or electric turned back on, or to have an inoperable heat system repaired.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the public health of low-income families would result if the program is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If HEAP is not implemented a number of individuals or households at or below 110% of the federal poverty level may experience severe health problems related to not having sufficient heat during the winter; hypothermia and freezing to death would be possible.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or governmental policy is in conflict, overlapping or a duplication of HEAP.

(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? Federal statutes mandate that eligibility requirements be in a like manner on a statewide basis; therefore, tiering is prohibited.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 97-35 as amended, and 45 CFR 96.

2. State compliance standards. This regulation specifies income eligibility at 110 percent of poverty. It also provides for local administration by community action agencies.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income eligibility to range between 110 percent and 150 percent of poverty. Outreach activities must be conducted to assure that eligible households, especially those with elderly, disabled, or both are made aware of HEAP assistance. The designation of local agencies administering similar low income energy assistance programs shall be given priority as service deliverers. The statute requires that owners and renters be treated equitably. The statue requires crisis assistance that is weather or supply related or related to other factors affecting the availability of residential energy until March 15. In addition, it is required that the highest level of assistance be provided to those households which have the lowest incomes and the highest energy costs in relation to household income and household size.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The block grant concept permits state flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy, the state has adopted the minimum income eligibility criteria permitted under the statute. Other criteria designed to target benefits to the most in need is a liquid resources test of $1,500, except that households with a catastrophic illness shall have a limitation on resources at $4,000. The statute does not address benefit type or amount. This regulation sets the type and value of assistance at a level to provide a reasonable benefit to serve the maximum number of households with the available funds.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. Due to the limited amount of funds and a need in excess of available funds, it is necessary to target assistance to those households most in need.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect cities which own and operate utilities for heating.

3. State the aspect or service of local government to which this administrative regulation relates. Municipal utilities.

4. How does this administrative regulation affect the local government or any service it provides? The provision of energy assistance benefits helps low income households pay for and maintain heat. Municipal utilities, and thus the cities, will benefit through reductions in the amount of payments in arrears and through helping households to maintain service.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:380. Child Support Enforcement Program application process.

RELATES TO: KRS 205.710-205.800, 205.992, 407.010 to 407.480, 45 CFR 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3, 303.15, 303.30-303.31, 303.70

STATUTORY AUTHORITY: KRS 194.050, 205.710 to 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. KRS 205.795 and 405.520 provide that the secretary shall develop administrative

regulations to operate the CSEP in accordance with federal law and regulations. This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available. [~~This administrative regulation also includes material which was previously incorporated by reference in 904 KAR 2:170. 904 KAR 2:171, the repeal of 904 KAR 2:170, is being filed concurrently with the filing of this administrative regulation.~~]

Section 1. Aid to Families with Dependent Children (AFDC) Process for Child Support Services. (1) As a condition of eligibility for assistance, each applicant for, or recipient of, AFDC shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person.

(a) The assignment shall include all members of the case for whom support rights apply.

(b) The assignment shall be completed at the time of application for AFDC benefits.

(2) A client shall cooperate in all phases of child support activity if his needs are included in an AFDC case, as specified in 904 KAR 2:006, Section 16.

(3) If the client states that "good cause" for noncooperation exists, he shall have the opportunity to establish his claim according to criteria contained in 904 KAR 2:006, Section 16.

(4) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a referral from the public assistance agency.

(5) Services provided to an AFDC recipient through the Child Support Enforcement Program shall include:

(a) Location of the absent parent;

(b) Establishment of paternity;

(c) Establishment of child support and medical support obligations;

(d) Review and modification of child support and medical support orders when appropriate;

(e) Enforcement of child support, [~~and~~] medical support, and maintenance obligations; and

(f) Collection and distribution of:

1. Child support amounts; and

2. Medical support amounts; and

3. Maintenance if the client is the spouse or ex-spouse.

Section 2. Foster Care Process for Child Support Services. (1) The child support agency shall collect and distribute child support on behalf of children for whom:

(a) The state is making foster care maintenance payments as required by 42 USC 657; and

(b) An assignment of rights has been made.

(2) The Department for Social Services worker with responsibility for the foster care child shall:

(a) Cooperate with the child support agency;

(b) Complete and forward the foster care child support referral;

(c) Complete and forward the foster care child support change of status form when changes occur which relate to the child support process; and

(d) Forward copies of court documents pertaining to the child support process.

(3) "Good cause" for nonenforcement of child support for a foster care recipient exists when criteria contained in 904 KAR 2:006, Section 16 are met.

(4) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).

(5) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a referral from the Department for Social Services.

(6) [~~(5)~~] Services available to a foster care recipient shall include:

(a) Location of the absent parent;

(b) Establishment of paternity;

(c) Establishment of child support or medical support obligations;

(d) Enforcement of child support and medical support obligations;

(e) Review and modification of child support or medical support orders when appropriate; and

(f) Collection and distribution of child support payments.

Section 3. Medicaid Only Process for Child Support Services. (1) [~~Medical Support. (1) Medical support shall be a mandatory service for any recipient of the Medicaid Program, including a recipient of AFDC or foster care benefits.~~

~~(2)~~] When a public assistance referral is received, the child support agency shall obtain the following information:

(a) The [~~AFDC,~~] Medicaid[~~, or foster care~~] case number;

(b) The name of the absent parent;

(c) The Social Security number of the absent parent;

(d) The name and Social Security number of the child;

(e) The home address of the absent parent; and

(f) The name and address of the absent parent's place of employment.

[~~(3) Medical support services shall be provided with the consent of a nonpublic assistance client. When a nonpublic assistance child support application is provided to an individual requesting child support services, the child support agency shall:~~

~~(a) Inform the client that medical support enforcement is available; and~~

~~(b) Obtain the following information:~~

~~1. The name of the absent parent;~~

~~2. The name and Social Security number of the absent parent;~~

~~3. The Social Security number of the child;~~

~~4. The home address of the absent parent; and~~

~~5. The name and address of the absent parent's place of employment.~~]

(2) [~~(4)~~] An application for Medicaid shall include an assignment of rights for medical support, as specified in 907 KAR 1:011, Section 8.

(3) [~~(5)~~] Except for a client who is pregnant or in her post partum period as specified in 907 KAR 1:011, Section 9, a client shall cooperate in all phases of medical support activity if his needs are included in a Medicaid case.

(4) [~~(6)~~] If the Medicaid client states that "good cause" for noncooperation exists, he shall have the opportunity to establish the claim according to criteria contained in 904 KAR 2:006, Section 16.

(5) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).

(6) [~~(7)~~] The child support agency shall open a case and determine needed action within twenty (20) calendar days of the receipt of [~~:~~

~~(a)~~] a referral from a public assistance agency[~~; or~~

~~(b) A nonpublic assistance application~~].

(7) [~~(8)~~] Services available to Medicaid only clients [~~through medical support enforcement~~] shall include:

(a) Location of the absent parent;

(b) Establishment of paternity;

(c) Establishment of [~~and enforcement of child support and~~] medical support obligations;

(d) Enforcement of [~~child support and~~] medical support obligations;

(e) Review and modification of [~~child support and~~] medical support aspects of support obligations when appropriate;

(f) Application for health insurance coverage through an employer for the child if court or administratively ordered but not acquired by either parent;

(g) Collection of medical support payments if ordered[~~; or~~

~~(g) Collection of health insurance payments~~].

Section 4. Services to an Individual not Receiving AFDC.(1) Child support services shall be made available to any individual who:

(a) Assigns rights for medical support only; and

(b) Files a nonpublic assistance application for services with the child support agency; or

(c) [~~(b)~~] Is a Medicaid only client who requests and gives consent for child support services in addition to medical support; or

(d) [~~(c)~~] Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance; or

(e) Is receiving Medicaid only nonfoster care services.

(2) Notification shall be made within five (5) working days to the family no longer eligible for public assistance that services shall continue unless the child support agency is notified to the contrary by the family.

Section 5. Application Process for a Nonpublic Assistance Individual. (1) Upon the request of a nonpublic assistance applicant, an application packet shall be given to the applicant.

(a) If the request is made in person, the packet shall be provided the same day.

(b) If the request is made by telephone or mail, the packet shall be sent to the applicant within five (5) working days of the request.

(2) The application packet shall include:

(a) Nonpublic assistance application form;

(b) Nonpublic assistance services fact sheet;

(c) [~~Authority to collect support form; and~~

~~(d)~~] Civil rights information pamphlet.

(3) The applicant shall be required to complete and return a notarized authorization and acknowledgment of no representation form. [~~the authority to collect form.~~]

(4) Medical support services shall be provided with the consent of a nonpublic assistance client. When a nonpublic assistance child support application is provided to an individual requesting child support services, the child support agency shall:

(a) Inform the client that medical support enforcement is available; and

(b) Obtain the following information:

1. The name of the absent parent;

2. The name and Social Security number of the absent parent;

3. The Social Security number of the child;

4. The home address of the absent parent; and

5. The name and address of the absent parent's place of employment.

(5) The child support agency may take an assignment of support rights from an individual receiving nonpublic assistance child support services if enforcement becomes necessary and a lien is to be filed in order to collect past due support[~~; however:~~

~~(a) An assignment of rights shall not be a condition of eligibility for services; and~~

~~(b) The agency shall inform the recipient of this condition~~].

(6) [~~(5)~~] The child support agency shall open a case within twenty (20) calendar days of receipt of a nonpublic assistance application.

(7) [~~(6)~~] The nonpublic assistance application fee may not exceed twenty-five (25) dollars and shall be determined by an income fee scale.

(a) The income fee scale shall be based on the previous year's net income.

(b) If the previous year's net income is unknown, the fee shall be based on an estimate of the previous year's net income.

(c) The following fees shall be charged for services other than location only:

Yearly Net Income	Fee
$0 to 2,000	$5.00
2,001 to 3,000	8.00
3,001 to 4,000	10.00
4,001 to 5,000	13.00
5,001 to 6,000	15.00
6,001 to 7,000	18.00
7,001 to 8,000	20.00
8,001 to 9,000	23.00
9,001 and above	25.00

Section 6. Parent Locator Service and Associated Fee Service. (1) For all public assistance cases referred to the child support agency or nonpublic assistance cases for which child support services are being provided, the child support agency shall attempt to locate an absent parent or an absent parent's sources of income and assets when location is necessary to take the next appropriate action.

(2) Location services may be provided upon application by a noncustodial parent as described in KRS 205.730.

(3) For a nonpublic assistance case in which location is the only service requested, a ten (10) dollar nonrefundable fee shall be charged. For parental kidnapping requests, a twenty (20) dollar nonrefundable fee shall be charged.

Section 7. Interstate Process for Child Support Services. (1) The child support agency shall extend to interstate child support cases the full range of services available to intrastate cases. These services shall include:

(a) Location of the absent parent;

(b) Location of the custodial parent for establishment of paternity;

(c) Establishment of paternity;

(d) [~~(c)~~] Establishment of child support obligation for:

1. A[~~n~~] AFDC or foster case;

2. A Medicaid only case with the consent of the recipient; and

3. A nonpublic assistance case.

(e) [~~(d)~~] Establishment of medical support obligation for:

1. An public assistance case; or

2. A nonpublic assistance case with the consent of the applicant.

(f) [~~(e)~~] Enforcement of support orders;

(g) [~~(f)~~] Review and modification of child support or medical support orders, or both, if appropriate; and

(h) [~~(g)~~] Collection and distribution of current and past due support payments.

(2) To enforce child support laws between states:

(a) The child support agency shall receive, distribute, and monitor all incoming interstate cases and apprise other states of changes in interstate cases.

(b) The child support agency shall establish an interstate central registry responsible for:

1. Receiving and distributing incoming interstate requests; and

2. Responding to inquiries received from other states on interstate cases.

(3) Within ten (10) working days of receipt of an interstate case, the central registry shall:

(a) Ensure review of submitted documentation for completeness;

(b) Forward the case to the appropriate functional unit for case processing;

(c) Acknowledge receipt of the case and request missing documentation from the initiating state, if needed;

(d) Inform the initiating state of where the case has been forwarded for action.

(4) If case documentation is inadequate, the case shall be forwarded for any necessary action pending additional information from the initiating state.

(5) The central registry shall respond to other state inquiries within five (5) working days of receipt of request.

(6) The initiating agency state shall:

(a) Use long-arm statutory authority to establish paternity if statutory authority exists;

(b) Within twenty (20) calendar days of determining that the absent parent is in another state, forward any necessary information and the case to the responding state's central registry for action.

(c) Provide the agency in the responding state sufficient and

accurate information and documentation and the Interstate Child Support Enforcement Transmittal Form.

(d) Provide the child support agency or central registry in the responding state with any additional requested information or notify the responding state when the information will be provided within thirty (30) calendar days of receipt of the request.

(e) Notify the agency in the responding state within ten (10) working days of receipt of the new information by submitting updated forms or additional information.

(7) The responding state agency shall establish and use caseload procedures which ensure provision of necessary services including maintenance of case records. The agency shall periodically review program performance on interstate cases to evaluate the effectiveness of responding state procedures.

(8) The state shall ensure that the organizational structure and agency staff are adequate to provide administration and supervision to provide the following functions:

(a) Intake;

(b) Establishment of paternity, child support obligation and medical support obligation, or both;

(c) Location;

(d) Collection of current and past due child support, [~~and~~] medical support, and maintenance payments;

(e) Certification for federal or state tax refund intercept, or both;

(f) Monitoring;

(g) Enforcement of child support obligations, [~~and~~] medical support obligations, and maintenance [~~or both~~];

(h) Review and modification of child support and medical support obligations.

(9) Within seventy-five (75) calendar days of receipt of interstate forms and documentation, a responding state shall:

(a) Provide location services if requested and documentation is adequate; or

(b) If documentation is inadequate:

1. Notify the initiating state of necessary additions or corrections; and

2. Process the interstate case to the extent possible pending initiating state action;

(c) Within ten (10) working days of locating an absent parent in a different jurisdiction within the state, the agency shall forward appropriate forms and documentation to that jurisdiction and notify the initiating state of its action.

(d) Within ten (10) working days of locating an absent parent in a different state, the agency shall return the work and documentation to the initiating state's central registry, or, at the direction of the initiating state, forward forms and documentation to the central registry of the state where the absent parent has been located. The initial responding state's central registry shall be notified where the case has been sent.

(e) The responding state shall provide any necessary services as it would in an intrastate case by:

1. Establishing paternity and obtaining [~~attempting to obtain~~] judgment for prenatal costs, birthing expenses, and genetic tests upon establishment;

2. Establishing a child support obligation or medical support obligation, or both;

3. Reviewing cases for possible modification;

4. Processing and enforcing orders referred by another state;

5. Collecting and monitoring any support payment from an absent parent and forwarding collections to a location specified by the initiating state not later than fifteen (15) calendar days from the initial date of receipt;

6. Providing sufficient identifying information to identify the case and date of collection or identify that the payment was made through state income tax refund offset and include the responding state's identifying code;

7. Providing timely notice to the initiating state in advance of formal hearings to establish or adjust a child support order;

8. Notifying the initiating state within ten (10) working days of receipt of new information; and

9. Notifying the interstate central registry in the initiating state when a case is closed.

(10) The child support agency in the responding state shall pay the costs it incurred in processing state agency interstate cases. However, the child support agency of the initiating state shall pay the costs of genetic testing to establish paternity.

(a) If the responding state is successful in establishing paternity, that state's child support agency shall attempt to obtain a judgment for the cost of genetic tests from the party who denied paternity.

(b) Recoupment of these costs may also be shared by each party as long as the total amount recouped does not exceed the actual costs of the genetic tests.

(c) If costs are recovered, the responding state shall reimburse the initiating state.

(d) The responding state shall identify fees and costs deducted from support payments when forwarding payments to the initiating state.

Section 8. Material Incorporated by Reference. (1) Forms necessary to establish a child support or medical support case through the Division of Child Support Enforcement are incorporated effective March 15, 1995 [~~December 1, 1993~~]. These forms include:

(a) PA-125, revised 6/83;
(b) PA-125 Supplement A, revised 6/83;
(c) PA-125 Supplement B, revised 12/82;
(d) PA-125.1, revised 5/90;
(e) KA-125, revised 7/92;
(f) KA-125 Supplement A, revised 7/92;
(g) KA-125 Supplement B, revised 7/92;
(h) KA-125 Supplement C, revised 7/92;
(i) PA-121, revised 8/87;
(j) CS-11, issued 10/94;
(k) CS-33, revised 10/94 [~~2/93~~];
(l) [~~(k)~~] CS-37, revised 10/94 [~~2/93~~];
(m) [~~(l)~~] DSS-1260, revised 11/92;
(n) [~~(m)~~] DSS-1263, revised 11/92;
(o) [~~(n)~~] CS-65, revised 7/94 [~~7/91~~];
(p) [~~(o)~~] CS-98, revised 1/91;
(q) [~~(p)~~] CS-100, revised 1/91;
(r) [~~(q)~~] CS-103, revised 1/91;
(s) [~~(r)~~] CS-109, revised 5/89;
(t) DS-136, revised 7/91;
(u) [~~(s)~~] CS-140, revised 3/91.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: March 7, 1995
FILED WITH LRC: March 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 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 April 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: This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available. The policy changes incorporated within this regulation will affect all child support enforcement cases where medical support and maintenance is an issue. An accurate number of the cases affected is not available at this time.

(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 public comments received. No public hearing was held and 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 public comments received. No public hearing was held and no public comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no anticipated increase in reporting or paperwork.

2. Second and subsequent years: There is no anticipated increase in reporting or paperwork.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No fiscal impact as health insurance will acquired through the wage assignment process. Wage assignments for support enforcement are current policy.

2. Continuing costs or savings: No fiscal impact as health insurance will be acquired through the wage assignment process. Wage assignments for support enforcement are current policy.

3. Additional factors increasing or decreasing costs: No fiscal impact as health insurance will be acquired through the wage assignment process. Wage assignments for support enforcement are current policy.

(b) Reporting and paperwork requirements: There is no anticipated increase in reporting or paperwork anticipated as these duties will be incorporated a daily procedures.

(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 funding - 66%; agency funding - 34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as policy is necessary to harmonize with statutory language.

(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: None

(11) Tiering: Is tiering applied? No. Tiering was not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 303.21, 303.105, 303.107, 302.34.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available.

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains new services and new requirements of the contracting officials, and therefore does affect local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation specifies the process by which individuals may apply for child support services, including medical support and maintenance. Contracting officials for child support enforcement program provide services to individuals seeking assistance enforcement of child support orders and related issues such as maintenance and medical support.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide child support enforcement program services provided by contract including the enforcement of medical support and maintenance.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:390. Child Support Enforcement Program paternity establishment.

RELATES TO: KRS 406.011 to 406.180, 45 CFR 302.31, 303.5, 302.33

STATUTORY AUTHORITY: KRS 194.050, 205.710 to 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. The agency shall establish paternity when necessary to secure support for a child. KRS 205.795 provides that the secretary shall develop administrative

regulations to operate the CSEP in accordance with federal regulations. This administrative regulation specifies the requirements of the agency in the establishment of paternity. [~~This administrative regulation also includes material which was previously incorporated by reference in 904 KAR 2:170. 904 KAR 2:171, the repeal of 904 KAR 2:170, is being filed concurrently with the filing of this administrative regulation.~~]

Section 1. Requirement for Paternity Establishment. The child support agency shall bring action, as specified in KRS 406.21(1) and (3) if: [~~undertake establishment of paternity and secure support for a child from any person who is legally liable for support when:~~]

(1) The child is born out of wedlock; and

(2) An assignment of rights to the child support agency is in effect or an individual not receiving public assistance applies for child support services including paternity establishment.

Section 2. Agency Action. (1) A case requiring paternity action shall be opened upon receipt of:

(a) A public assistance case referral; or

(b) A nonpublic assistance application, in accordance with KRS 205.721.

(2) The agency shall open a case pending determination of good cause.

(a) If "good cause" for failure to cooperate is determined, the child support case shall be closed;

(b) Good cause may be found to exist if criteria contained in 904 KAR 2:006, Section [~~(~~]16[~~)~~](4) are [~~is~~] met.

(c) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).

(3) For all cases referred to the child support agency in which paternity has not yet been established, the agency, within ninety (90) days of locating the alleged father or custodial parent shall:

(a) File for paternity establishment;

(b) Complete service of process to establish paternity; or

(c) Document unsuccessful attempts to serve process, whichever occurs later.

(4) Paternity shall be established or the putative father excluded as a result of genetic tests or legal process within one (1) year of:

(a) Successful service of process; or

(b) The child reaching the age of six (6) months.

(5) Upon order by a court of competent jurisdiction, the child support agency shall recover from an absent parent a reasonable fee for performing genetic tests.

Section 3. Identification of Laboratories which perform Genetic Tests. (1) The child support agency shall identify laboratories which perform legally and medically acceptable genetic tests which tend to include or exclude an alleged father in paternity proceedings.

(2) The child support agency shall provide a list of laboratories identified in subsection (1) of this section upon request to:

(a) Courts;

(b) Law enforcement officials; and

(c) The general public.

Section 4. Material Incorporated by Reference. (1) The form necessary for interstate paternity establishment services provided through the Division of Child Support Enforcement is incorporated effective March 15, 1995 [~~November 1, 1993~~]. This form is the CS-99, revised January 1991.

(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: March 7, 1995

FILED WITH LRC: March 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 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 April 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: This administrative regulation specifies the requirements of the agency in the establishment of paternity. The child support agency established 7,984 paternities in state fiscal year 1994.

(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 public comments received. No public hearing was held and 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 public comments received. No public hearing was held and 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 additional reporting or paperwork requirements for clients.

2. Second and subsequent years: No additional reporting or paperwork requirements will be realized.

(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:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will be realized as these duties are incorporated within daily procedures.

(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 funding - 66%; agency funding - 34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative adjustments were not considered as changes to the regulations are being proposed in order to harmonize with statutory language.

(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: None

(11) Tiering: Is tiering applied? No. Tiering was not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 303.21, 303.105, 303.107, 302.34.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation provides requirements of the child support agency in the establishment of paternities.

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains new services and new requirements of the contracting officials, and therefore does affect local governments by requiring additional administrative work in establishments of paternity cases.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the establishment of paternity cases for child support enforcement program.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide for additional paternity services to custodial parents and noncustodial parents.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

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

RELATES TO: KRS 205.710 to 205.800, 403.210 - 403.240, 405.520, 45 CFR 302.50, 302.56, 303.4, 303.6, 303.8, 303.31

STATUTORY AUTHORITY: KRS 194.050, 205.710 - 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with the provisions of KRS 205.710 to 205.800. This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders. ~~[The content of this administrative regulation includes information regarding the establishment of a child support obligation and the appeal procedure which was previously located in 904 KAR 2:022. 904 KAR 2:420, the repeal of 904 KAR 2:022, is being filed concurrently with this administrative regulation. It also includes material which was previously incorporated by reference in 904 KAR 2:170. 904 KAR 2:171, the repeal of 904 KAR 2:170, is being filed concurrently with the filing of this administrative regulation.]~~

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established:

(a) By a court of competent jurisdiction; or

(b) An administrative order.

(2) The amount of the obligation shall be:

(a) The amount specified in Section 2(4)(a) of this administrative regulation; or

(b) The amount determined by the child support guideline contained in KRS 403.212, as computed on Form CS-71, Commonwealth of Kentucky Worksheet, for a child support obligation administratively established by child support agency staff.

(3) The amount determined shall be for collection purposes. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For all public assistance cases referred to the child support agency, or for those nonpublic assistance cases for which child support services are being provided, the agency shall use state statute and legal process in establishing a child support and medical support obligation, including KRS 454.200.

(5) In addition to the deductions as specified in KRS 403.212(2), an administratively or judicially imputed child support obligation shall be determined by:

(a) 100 percent of the income of the parent with whom the child resides, when:

1. There is no support order; or

2. There is a support order but there is no support obligation worksheet; or

3. A worksheet cannot be obtained; or

(b) That parent's portion of the total support obligation as indicated on the worksheet, when:

1. There is a support order; and

2. A copy of the child support obligation worksheet can be obtained.

(6) Within ninety (90) calendar days of locating an absent parent or of establishing paternity, the child support agency shall establish an order for support or document unsuccessful attempts to serve process.

(7) ~~[(6)]~~ If a court or administrative authority dismisses a petition for support without prejudice, the agency shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support and medical support obligation when:

(a) Paternity is not in question;

(b) There is no existing order of support for the child;

(c) The parent resides or is employed in Kentucky; and

(d) The absent parent's address is known.

(2) The cabinet shall determine the monthly support obligation in accordance with the Kentucky child support guideline as contained in KRS 403.212.

(3) To gather necessary information for administrative establishment, the cabinet shall:

(a) Send to the parental client:

1. A financial questionnaire;

2. A child care expense questionnaire; and

3. A medical support verification request; and
4. An administrative subpoena.
(b) Send to the nonparental client:
1. A nonparental client information request [~~child care expense questionnaire~~]; and
2. A medical support verification request, if appropriate.
3. An administrative subpoena if a medical support information request is sent.
(c) Send to the absent parent:
1. An appointment letter;
2. A financial questionnaire;
3. A child care expense questionnaire; [~~and~~]
4. A medical support verification request; and
5. An administrative subpoena.
(d) Send to the employer of the parental client or the absent parent, or both if both are employed, a wage information request.

(4) In a default case, the cabinet shall set the obligation based on the AFDC standard of need for the child or children as specified in 904 KAR 2:016, Section 7(2).

(5) The child support obligation may be retroactively modified upward, without a showing of change in circumstance, if, within two (2) years of the establishment of the order, evidence of gross income is presented which would have established a higher amount of child support pursuant to the child support guideline.

(6) After the monthly support obligation has been determined, the cabinet shall serve the notice of monthly support obligation upon the absent parent in accordance with KRS 405.440.

(7) In accordance with KRS 405.430(2), the cabinet may modify the monthly support obligation established by the cabinet.

(8) The cabinet shall not administratively modify any obligation which was established by a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) The child support agency shall have a written and publicly available review and adjustment plan for child support orders.

(2) The child support agency shall review all public assistance cases which are thirty six (36) months old or older. Subsequent reviews shall occur at thirty six (36) month intervals based on the date:

(a) The order was adjudicated;
(b) It was determined the order should not be adjusted; or
(c) Upon which the post review challenge period ended.

(3) All public assistance and nonpublic assistance cases shall be reviewed at the request of either parent or any other person or entity that may have standing to request a modification subject to the child support order.

(4) The child support agency shall notify each parent subject to an order of the right to request a review.

(5) Within fifteen (15) calendar days of receipt of a review request, the child support agency must determine if a review shall be conducted.

(6) The child support agency shall notify each parent subject to a child support or medical support order of the review thirty (30) days prior to the review commencement.

(7) Within 180 days of determining that a review should be conducted, or of locating the nonrequesting parent, the child support agency shall:

(a) Send a notice to each parent that a review will be conducted;
(b) Conduct the review;
(c) Send a notice of the result; and
(d) Modify the order or determine that there will be no change.

Section 4. Appeal Procedures. (1) A parent, or any other person or entity that has standing or his authorized representative may request a dispute hearing in accordance with KRS 405.440 and 405.450.

(2) A request shall be made to the child support agency: [~~area child support office:~~]
(a) In writing;
(b) In person; or
(c) Orally, later reduced to writing within the time frames as specified in subsection (3) of this section.

(3) The written request for a dispute hearing shall be considered timely if:

(a) Made within twenty (20) days of receipt of an initial notice of monthly support obligation;

(b) Made within twenty (20) days after the parent is notified that the initial support obligation will be upheld; or

(c) Made after thirty (30) days but before fifty (50) days have passed since the parent requested a dispute hearing, but the cabinet has not acted upon the request.

(4) If the request is not made within the time period specified in subsection (3) of this section, the parent shall show good cause for the late request. Good cause reasons shall include:

(a) A parent being away from home during the entire filing period;

(b) The parent's inability to read the notice of monthly support obligation; or

(c) The parent's incapacity due to a serious illness during the entire filing period.

(5) The parent or any other person or entity having standing to request modification or his authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.

(6) If the objection is being filed on an initial notice of monthly support obligation, the obligation shall be stayed as specified in KRS 405.450(2).

(7) If the objection is being filed on a proposed modification of an existing obligation, or a decision that the existing obligation should not be changed, the amount on the prior notice is enforceable and that amount shall be paid while the hearing is pending.

(a) If the parent or any other person or entity having standing to request a modification, or his authorized representative prevails, the cabinet shall promptly return to the obligor any overpayments made since the hearing was requested.

(b) If the cabinet prevails, the obligation amount will be retroactive to the effective date on the notice of monthly support obligation.

(8) The parent or any other person or entity having standing to request a modification, or his authorized representative may withdraw the hearing request by writing to the area child support office or the Hearing Branch in the Department for Social Insurance's Division of Administrative Review.

(9) If the parent or any other person or entity having standing to request modification, or his authorized representative fails to appear at the hearing, the Hearing Branch may allow the parent to reschedule the hearing.

(a) The parent or any other person or entity having standing to request modification or his authorized representative shall be notified by mail that he has ten (10) days to show good cause for failing to appear or the action shall be dismissed.

(b) If the parent or any other person or entity having standing to request modification or his authorized representative does not reschedule or show good cause, the hearing officer shall dismiss the action.

Section 5. Material Incorporated by Reference. (1) Forms necessary for the establishment, review, and modification of child support orders, medical support orders, or both, provided through the Division of Child Support Enforcement are incorporated effective March 15, 1995 [~~December 1, 1993~~]. These forms are:

(a) CS-66, revised 7/94 [~~8/92~~]; and
(b) CS-71, revised 7/94; and
(c) CS-72, revised 6/89; and
(d) CS-28, issued 2/94.

(2) These forms may be inspected and copied at the Department

for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: March 7, 1995
FILED WITH LRC: March 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 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 April 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: This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders and the utilization of the newly developed child support guideline form. This form and instructions will affect any child support case determined since July 15, 1994. An accurate number of those cases affected is not available at this time. However, one of every three dissolution of marriage actions affects families with children. This number excludes paternity and child support orders out of wedlock.

(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 public comments received. No public hearing was held and 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 public comments received. No public hearing was held and 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: An increase in paperwork will be realized by child support offices and legal representatives. No additional costs should be incurred by the clients.

2. Second and subsequent years: An increase in paperwork will be realized by child support offices and legal representatives. However, no additional costs should be incurred by the clients.

(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:

(b) Reporting and paperwork requirements: An increase in paperwork will be realized by child support offices and legal representatives.

(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 funding - 66%; agency funding - 34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Regulatory amendments were developed in order to harmonize with statutory language.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: It is anticipated that children who qualify for medical assistance will be afforded health insurance coverage through private health insurance when ordered by court or administrative order.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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 applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 303.21, 303.105, 303.107, 302.34.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation provides requirements of the child support agency in the establishment and modification of child support orders and medical support orders.

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains new services and new requirements of the contracting officials, and therefore does affect local governments by requiring additional administrative work in establishments of child support and medical support orders.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the establishment of child support and medical support orders for the child support enforcement program.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide for additional establishment of child support and medical support orders.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:410. Child support collection and distribution.

RELATES TO: KRS 205.710-205.800, 403.215, 405.450, 405.465, 405.467, 405.490, 405.520, 45 CFR 302.32, 302.37, 302.38, 302.51-302.54, 302.60, 303.6, 303.100-303.102, 15 USC 1673(b)

STATUTORY AUTHORITY: KRS 186.570, 194.050, 205.710 to 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. KRS 205.712 provides for the child support agency to receive and process all child support payments. This administrative regulation sets forth the procedures for collection and distribution of child support payments. [~~This administrative regulation includes content regarding wage withholding and other enforcement remedies which was previously included in 904 KAR 2:022. 904 KAR 2:420, the repeal of 904 KAR 2:022, is being filed concurrently with the filing of this administrative regulation. It also includes material which was previously incorporated by reference in 904 KAR 2:170. 904 KAR 2:171, the repeal of 904 KAR 2:170, is being filed concurrently with the filing of this administrative regulation.~~]

Section 1. Collection of Maintenance [~~Spousal Support~~]. Agency efforts shall include collecting maintenance if it meets the definition of "duty of support" in KRS 205.710(5). [~~support for a spouse or former spouse who is living with a child if:~~

~~(1) A support obligation has been established for that spouse; and~~

~~(2) The child support obligation is being enforced by the state child support agency.~~]

Section 2. Methods of Collection. (1) Wage withholding.

(a) As specified in KRS 403.215, 405.465 and 405.467, the cabinet shall use this method:

1. As the primary tool for child support collection; and

2. As necessary to facilitate enrollment of a child through an employer in available health insurance.

(b) For all cases, the child support agency shall provide for wage withholding without necessity of an amendment or court action to the child support order.

[~~(b) The total amount withheld shall not exceed the maximum amount permitted by 15 USC 1673(b).~~]

(c) If an absent parent has more than one (1) child support wage assignment against him, the child support agency shall allocate amounts available for withholding, giving priority to the current child support obligation amount due each family.

(d) No amount of an employee paid share of the cost of health insurance shall be deducted if, after child support and maintenance are deducted:

1. The total monthly amount of health care coverage exceeds the Federal Consumer Credit Protection Act limits; or

2. Only a portion of the monthly amount needed to purchase health insurance is available.

(e) [~~(d)~~] If amounts are improperly withheld, the cabinet shall promptly refund those amounts.

(f) [~~(e)~~] To comply with the advance notice requirements of KRS 405.467(4) [~~(3)~~], the agency shall notify the absent parent within fifteen (15) calendar days of the request for wage withholding in writing that:

1. He has ten (10) days to contest the withholding;

2. Failure to contest the withholding within the specified time shall result in the child support agency notifying the employer within five (5) working days to begin withholding; and

3. Withholding shall apply to the current and any subsequent employer.

(g) [~~(f)~~] In addition to the requirements of KRS 405.467(5)-(11) [~~(8)~~], the employer shall be notified, within fifteen (15) days of the request for wage withholding, of the following:

1. The employer shall forward collected child support amounts to the child support agency and collected medical insurance premiums to the health insurance carrier within ten (10) working days of the date the amount is withheld from the absent parent's wages;

2. The employer shall include on the transmittal to the child support agency the name and Social Security number of the absent parent, the child support agency assigned case number and the date the money was withheld;

3. The employer may combine amounts due the child support agency into one (1) payment if the employer identifies by the name, Social Security number, and the child support agency assigned case number the amount attributable to each absent parent;

4. The employer shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed; and

5. The employer shall notify the child support agency promptly when the absent parent terminates employment and provide the following information:

a. The absent parent's last known address; and

b. The name and address of the new employer, if known.

(h) [~~(g)~~] The absent parent shall keep the child support agency informed of his current employer, [~~and~~] if he has access to health insurance coverage at a reasonable cost and the [~~,~~] health insurance policy information.

(i) [~~(h)~~] The child support agency shall extend the withholding system to include withholding from wages derived in this state although the support order was issued by another state.

1. Within twenty (20) days of determining that withholding is appropriate for an interstate case, the initiating state shall notify the child support agency of the state where the absent parent is employed to implement interstate withholding.

2. The notice shall contain:

a. The amount requested to be withheld;

b. The arrearage amount; and

c. A copy of the child support and medical support order.

3. The state where the support order was entered shall provide the information necessary for withholding within thirty (30) days of the receipt of the request.

4. The state of the absent parent's employer shall:

a. Send notice to the absent parent within fifteen (15) calendar days of locating the absent parent or his employer;

b. Provide the absent parent with the opportunity to contest the withholding; and

c. Send notice to his employer and to the absent parent.

5. The child support agency shall notify the state in which the custodial parent resides when the absent parent is no longer employed in the state and provide the state with both the absent parent's and new employer's name and address, if known.

6. Except for when the withholding shall be implemented in the state where the support order is filed, the laws and procedures of the state where the absent parent is employed shall apply.

(j) [~~(i)~~] The child support agency shall terminate wage withholding procedures when there is no longer a current order of support and all arrearages have been satisfied.

(2) Withholding of unemployment compensation.

(a) The child support agency, through an agreement with the state employment security agency, shall provide withholding of a child support obligation from an absent parent receiving unemployment compensation under the following conditions:

1. An absent parent who is delinquent and owes child support may voluntarily sign an agreement to withhold child support from unemployment compensation benefits.

2. The employment security agency shall commence withholding

if:

a. An agreement is signed by the absent parent; or

b. A notice of claim of intent to withhold is completed by the child support enforcement agency when the absent parent fails to sign an agreement to withhold within fifteen (15) calendar days; and

c. No mistake in fact or law is proven which causes the absent parent to be found not owing.

(b) Withholding of unemployment shall not exceed fifty (50) percent of the benefit amount unless:

1. Ordered by a court of competent jurisdiction; or

2. Requested by the absent parent.

(3) Federal tax refund (offset).

(a) Past-due child support [AFDC], medical support payments (if a specified dollar amount is included in the order) maintenance, and foster care related support shall qualify for offset if:

1. There is a court ordered or administratively established support obligation;

2. There has been an assignment of support to the child support agency;

3. The arrearage equals at least $150 [as of January 1 of a year] and shall have been delinquent at least three (3) months;

4. The arrearage shall be owed for a child or for a child and the parent with whom the child is presently living;

5. The child support agency shall determine the amount of the arrearage and have a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid.

6. The child support agency shall verify the accuracy of the absent parent's name and social security number.

(b) Past due child support, medical support or maintenance in a nonpublic assistance case [child support arrearage] shall qualify for offset if:

1. There is a court ordered or administratively established support obligation and the child support agency is enforcing the order;

2. The arrearage shall be equal to no less than $500 dollars and may not include fees, court costs, or any other non child support debt owed to the state or to the family;

[3. The arrearage may include medical support payments if a specific dollar amount has been ordered by the court;

4. The arrearage may include spousal support if:

a. Established by court order; and

b. The child support and spousal support are included in the same order.]

3. [5.] The child support agency shall have verified the accuracy of the arrearage and have a copy of the support order, including modifications and a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid;

4. [6.] The arrearage shall be owed on behalf of a child who lives with the client and who is a minor as of December 31 of the year in which the case is submitted for offset;

5. [7.] The child support agency shall calculate an assigned arrearage [as this arrearage shall be paid prior to a non-AFDC arrearage];

6. [8.] The child support agency shall verify the accuracy of the absent parent's name and social security number.

(4) State income tax refund (offset).

(a) An AFDC, foster care, or medical support arrearage which is owed by any person who is required to provide medical support for a child who is eligible for medical assistance (if a specified dollar amount is included in the order) related child support arrearage shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;

2. The absent parent's name and social security number are known;

3. The arrearage is at least twenty-five (25) dollars; and

4. The arrearage has been verified as accurate.

(b) [Spousal support shall not be included for offset and the arrearage amount shall be adjusted accordingly;

(c)] A nonpublic assistance support arrearage shall qualify for offset if criteria specified in Section 2(3)(b) of this administrative regulation is met and arrearages are not less than $150.

Section 3. Aid to Families with Dependent Children (AFDC) Accounts Distribution. (1) A child support payment collected on behalf of a recipient of AFDC shall:

(a) Be made payable to the child support agency; and

(b) Be reported to the AFDC agency within ten (10) working days of the end of the month in which the support is received.

(2) A child support payment that makes the AFDC family ineligible for AFDC shall be reported to the child support agency by the AFDC agency.

(a) If the family is ineligible for an AFDC payment, the child support agency shall:

1. Distribute the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 904 KAR 2:380, Section 4(2).

(b) If the household remains eligible for an AFDC payment or if a hearing is requested:

1. The AFDC agency shall notify the child support agency; and

2. The child support agency shall distribute the collection as specified in Section 3(7) of this administrative regulation.

(3) A current payment that includes payment on a prior month obligation shall be distributed by the child support agency.

(4) A payment received in the month after ineligibility for AFDC is determined but prior to the last assistance payment being issued shall be used:

(a) To reimburse the state for any assistance paid; and

(b) To pay any excess to the family.

(5) If a hearing is requested and it is determined that the family is ineligible for an assistance payment, the child support agency shall:

(a) Determine the collected amount the family would have received; and [if it is determined that the family is ineligible for an assistance payment,]

(b) Forward any amount in excess of the assistance payment to the family.

(6) If a hearing is requested and the family is determined to be eligible for an assistance payment, distribution of that month's child support collection shall be made.

(7) [The first fifty (50) dollars of] The amount collected in a month on behalf of the AFDC family up to the first fifty (50) dollars shall be distributed to the AFDC family within fifteen (15) days of the date of initial receipt by the agency.

(a) If the collected amount is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.

(b) If the collected amount exceeds fifty (50) dollars, only fifty (50) dollars shall be paid to an AFDC family receiving support.

(c) If the collected amount represents payments from two (2) or more absent parents, only the first fifty (50) dollars shall be paid to the AFDC family.

(d) If the amount collected represents a payment for a prior month and is received by the child support agency in the month it is due, up to the first fifty (50) dollars shall be paid to the family.

(e) If the amount collected represents a payment for a prior month and is received by the child support agency in the month in which it is due, but the collection is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Made payable to the child support agency; and

(2) Upon receipt by the child support agency, shall be disbursed to the foster care agency for distribution.

Section 5. Tax Refund Intercept. (1) Public assistance accounts.

(a) Amounts collected in public assistance cases shall be applied to assigned arrearages.

(b) If no assigned arrearages remain, the collections shall be forwarded to the AFDC family [~~if unassigned arrearages are owed~~] or foster care agency within thirty (30) calendar days of the date of initial receipt by the agency.

(c) If a timely appeal is filed by an absent parent and the appeal is resolved, payment shall be made to the family or refunded to the absent parent within fifteen (15) calendar days of the resolution date.

(d) If a joint return has been filed, tax refund intercept collection shall be held by the child support agency for six (6) months prior to being distributed.

(2) Nonpublic assistance accounts. For a nonpublic assistance account, if no assigned arrearage remains, an amount collected which represents an [~~unassigned~~] arrearage amount shall be sent to the family within thirty (30) calendar days of the initial receipt date.

(3) If the absent parent contests the accuracy of a past due amount, he may request an administrative review in accordance with specifications in 904 KAR 2:400, Section 4.

Section 6. Treatment of Excess Payments. (1) Collection of child support payments shall be applied to the required obligation amount for the month in which the support was collected.

(2) After the current obligation amount is satisfied, any excess amount shall be treated as payment on previous unpaid arrearage.

Section 7. Wage Withholding Distribution. (1) A child support or medical support payment made through wage or other withholding shall use the date the income is withheld for the date of collection for distribution to meet the support obligation.

(2) Distribution of wage withholding collections shall be made according to specification in Sections 3, 4, 6 or 8 of this administrative regulation.

Section 8. Interstate Case Payment Distribution. Child support payments that are collected by a responding state on behalf of an initiating state shall be forwarded to the initiating state within fifteen (15) calendar days of initial receipt by the responding state.

(1) If the collected amount is less than fifty (50) dollars, the responding state shall send the amount collected to the location specified by the child support agency in the initiating state within fifteen (15) calendar days of the date of initial receipt in the responding state.

(2) The initiating state upon receipt of collection made by the responding state shall retain the collections to reimburse the assistance payment for the month it was received or the next month if the amount collected exceeds the required support obligation for the month and is in excess of the AFDC assistance payment.

(3) Collection of child support in the month after the month the family receives its last AFDC assistance payment shall be distributed and sent to the family within fifteen (15) calendar days of the date of initial receipt in the state.

Section 9. Additional Administrative Enforcement Remedies. (1) When the cabinet determines that the obligor owes an arrearage, the cabinet may implement administrative enforcement remedies listed below to collect the delinquent support amounts:

(a) Filing of liens on personal or real property when an arrearage is equal to or greater than one month's obligation; and

(b) Report to credit bureaus; and

(c) Notifying the Transportation Cabinet to deny or revoke motor vehicle driver's license. [~~reporting.~~]

(2) Within the context of the provisions of KRS 205.768, the Cabinet for Human Resources:

(a) Shall inform the credit reporting agency of a child support arrearage in each case referred for federal tax refund intercept; and

(b) May inform the credit reporting agency of a child support arrearage in any case which did not meet criteria for federal tax refund intercept because the parent's social security number is unknown.

(3) Advance notice of the release of the information required by KRS 205.768(2) shall be given to the absent parent in the preoffset letter of information concerning the federal tax refund intercept.

(4) An absent parent whose case shall not be certified for federal tax refund intercept but may be reported to a consumer reporting agency shall receive prior notice of the past due amount of child support and of the right to request an administrative review within thirty (30) days of the receipt of the notice.

(a) If the preoffset letter is returned and location services are unsuccessful, that individual shall be deleted from the list sent by the child support agency.

(b) If location services are successful, his name may be added to an updated list.

(c) An identifying list of absent parents is forwarded to the credit reporting agency the January following the certification year.

(5) Denial or suspension of driver's license.

(a) As a remedy of last resort when all other civil remedies either do not apply or have been tried and have failed, including judicial remedies, the cabinet shall:

1. Identify a case with a verified arrearage equal to one (1) year's obligation amount which accrued beginning January 1, 1994 or thereafter; and

2. Send by first class mail to an absent parent who holds a valid Kentucky driver's license and who has the ability to pay support:

a. A notice of intent to request denial or suspension of a driver's license; and

b. An absent parent answer to notice of intent.

3. Notify the absent parent that the only basis for resolution of the dispute shall be:

a. The arrearage is incorrect and does not equal or exceed the amount of support owed for one (1) year; or

b. The wrong individual has been identified; or

c. A bond is posted for the total arrearage which has accrued since January 1, 1994; or

d. A payment agreement is entered into by the absent parent to pay current support, plus a specified amount on the total arrearage which has accrued since January 1, 1994; or

e. The absent parent pays the total arrearage which has accrued since January 1, 1994.

(b) To assure delivery of the notice of intent, the cabinet shall refer the case for parent locator service if the notice is returned and the forwarding address is unknown;

(c) If the absent parent requests a dispute hearing by contesting the arrearage based upon a mistake of fact and returns the absent parent answer to notice of intent form within twenty (20) calendar days of the notification date, the cabinet shall:

1. Within ten (10) working days of the absent parent's response, schedule and hold an interview with the absent parent; and

2. Attempt to resolve the dispute at the time of the interview; and

3. Forward the absent parent's written request for a hearing to the agency responsible for conducting the dispute hearing.

(d) The child support agency shall inform the agency responsible for conducting the hearing that:

1. A resolution has been reached as a result of the interview; and

2. A written request from the absent parent to withdraw the hearing request shall be sent; or

3. A resolution to the dispute has not been reached; and

4. The hearing request remains in effect.

(e) Upon the decision made by the agency conducting the hearing, and within twenty (20) calendar days of the hearing officer's

decision, the child support agency shall notify the Transportation Cabinet of the request for the denial or suspension of the driver's license, unless:

1. The absent parent makes full payment of the total arrearage that may have accrued since January 1, 1994; or

2. The absent parent enters into a payment agreement to pay current support, plus a specified amount on the total arrearage which accrued since January 1, 1994; or

3. The absent parent posts a bond for the total arrearage which has accrued since January 1, 1994.

(f) If the case does not qualify for submittal to the Transportation Cabinet, a notice to deny or suspend the driver's license is not sent.

(g) If the absent parent does not contest the arrearage or after the interview and hearing process, the case qualifies for submittal to the Transportation Cabinet, the Cabinet for Human Resources shall refer the name of the absent parent to the Transportation Cabinet for the denial or suspension of the driver's license, unless:

1. The absent parent makes full payment of the arrearage within twenty (20) calendar days of the interview by the Cabinet for Human Resources; or

2. The absent parent posts a bond within twenty (20) calendar days of the interview for the total arrearage which accrued since January 1, 1994; or

3. The absent parent enters into a payment agreement to pay current support, plus a specified amount on the total arrearage which has accrued since January 1, 1994.

(i) The Cabinet for Human Resources shall notify the Transportation Cabinet to reinstate or reissue a previously suspended or revoked driver's license when:

1. The absent parent makes full payment of the arrearage; or

2. The absent parent posts a bond for the total arrearage amount; or

3. The absent parent enters into a payment agreement to pay current support, plus a specified amount on the total arrearage which has accrued since January 1, 1994, and makes a good faith payment which equals three (3) months' current support.

Section 10. Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.490 or 405.440 as described in 904 KAR 2:400, Section 4.

Section 11. Material Incorporated by Reference. (1) Forms necessary for the collection and distribution of child support and medical support are incorporated effective February 15, 1995 [~~November 1, 1993~~]. These forms include:

(a) CS-111, revised 5/89;
(b) CS-63, issued 2/95;
(c) CS-78, revised 5/89;
(d) CS 44, issued 2/95;
(e) [~~CS-111, revised 5/89;~~
~~(b)~~] CS-148, revised 10/93;
(f) [~~(c)~~] CS-149, revised 10/93;
(g) [~~(d)~~] CS-122, revised 7/94 [~~9/93~~];
(h) [~~(e)~~] CS-123, revised 7/94 [~~9/93~~].

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: March 7, 1995

FILED WITH LRC: March 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 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 April 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: This administrative regulation sets forth the procedures for collection and distribution of child support payments. This regulation will also include the procedures by which the denial or suspension of drivers' licenses will occur when a child support arrearage of one year accumulates beginning January 1, 1994.

(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 public comments received. No public hearing was held and 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 public comments received. No public hearing was held and 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: An increase in paperwork will be realized by child support offices and legal representatives. No additional costs should be incurred by the clients.

2. Second and subsequent years: An increase in paperwork will be realized by child support offices and legal representatives. No additional costs should be incurred by the clients.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 1995

5 staff and related cost	$156,400
2 hearing officers and related costs	62,600
System costs	84,000
Policy costs	46,900
New Form Cost	1,000
Postage	2,100
Total	353,000

2. Continuing costs or savings: 1996

5 staff and related cost	$164,300
2 hearing officers and related costs	65,800
Forms	1,500
Postage	2,200
Total	223,800

3. Additional factors increasing or decreasing costs: It is anticipated collections will increase as a result of this new procedure. The additional collections retained by the state is anticipated to be $385,200. If these projections hold, the collections will offset the cost by SFY 1996.

(b) Reporting and paperwork requirements: An increase in paperwork will be realized by child support offices and legal representatives.

(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 funding - 66%; agency funding - 34%.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was held and no public comments were received.

(b) Kentucky: No public hearing was held and no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Regulatory amendments were developed in order to harmonize with statutory language.

(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: None

(11) Tiering: Is tiering applied? No. Tiering was not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 303.21, 303.105, 303.107, 302.34.

2. State compliance standards. There are no differing or additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation provides requirements of the child support agency in the collection and distribution of child support payments.

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation contains new services and new requirements of the contracting officials, and therefore does affect local governments by requiring additional administrative work in the collection of child support and medical support payments.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the collection of child support payments and medical support payments for the child support enforcement program.

4. How does this administrative regulation affect the local government or any service it provides? This regulation requires the contracting officials to provide for possible modification of child support orders and for modification of orders to collect medical support/insurance orders.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:010. Definitions.

RELATES TO: KRS 194.050, 7 CFR 217.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, PL 103-66

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Food Stamp Program.

Section 1. Definition of terms utilized in administrative regulations relating to the Food Stamp Program are as follows:

(1) "Application for participation" means the form designed or approved by Food and Consumer [~~Nutrition~~] Service (FCS) [~~(FNS)~~] that is completed by:

(a) A household member; or

(b) An authorized representative.

(2) "Authorization to participate card" (ATP) means the document that is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

(3) "Authorized representative":

(a) Means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

1. Making application for the program;

2. Obtaining the coupons; and

3. Using the coupons.

(b) An adult who is a nonhousehold member may be designated as the authorized representative for certification purposes if the authorized representative:

1. Has been designated in writing by:

a. The head of the household;

b. The spouse; or

c. Another responsible member of the household; and

2. Is an adult who is aware of relevant household circumstances.

(c) The following individuals shall not act as an authorized representative unless:

1. The specific written approval of the designated state agency officials is obtained; and

2. That official determines that no one else is able to serve as the authorized representative:

a. A state agency employee who is involved in the certification or issuance processes;

b. A retailer that is authorized to accept food coupons; and

c. An individual disqualified for an intentional program violation.

(d) The cabinet shall disqualify an individual from participating as an authorized representative up to one (1) year if the cabinet obtains evidence that the individual has:

1. Misrepresented a household's circumstances;

2. Knowingly provided false information pertaining to the household; or

3. Made improper use of coupons.

(4) "Boarder":

(a) Means an individual to whom a household furnishes lodging and meals for reasonable compensation;

(b) "Reasonable compensation" is determined:

1. By considering only the amount paid for meals; and

2. Provided that the amount paid for meals is distinguishable from

the amount paid for lodging.

(c) A reasonable monthly payment for meals shall be:

1. An amount which equals or exceeds the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for more than two (2) meals a day; or

2. An amount which equals or exceeds two-thirds (2/3) of the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for two (2) meals or less per day.

(d) A boarder is ineligible to participate in the program independent of the household providing the board.

(5) "Certification" means the action necessary to determine eligibility of a household including:

(a) Interview;

(b) Verification; and

(c) Decision.

(6) "Communal dining facility" means:

(a) A public or nonprofit private establishment, approved by FNS, that prepares and serves meals for elderly persons;

(b) A public or private nonprofit establishment (eating or otherwise) that feeds:

1. Elderly persons; and

2. SSI recipients and their spouses;

(c) Federally subsidized housing for the elderly that prepares and serves meals to the residents; and

(d) A private establishment that contracts with an appropriate state or local agency to offer meals at concessional prices to:

1. Elderly persons; and

2. SSI recipients and their spouses.

(7) "Coupon" means:

(a) Any stamp;

(b) Coupon; or

(c) Type of certificate; that is

(d) Issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food.

(8) "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(9) "Disability [~~Disabled~~]" means:

(a) An individual who receives:

1. Supplemental Security Income (SSI) or presumptive SSI under 42 USC 1381 to 1385;

2. Disability or blindness payments under:

a. 42 USC 301 to 306;

b. 42 USC 401 to 433;

c. 42 USC 1201 to 1206;

d. 42 USC 1351 to 1355; or

e. 42 USC 1381 to 1385;

3. Optional or mandatory state supplementation;

4. Disability retirement benefits from a:

a. Federal;

b. State; or

c. Local governmental agency; and

d. Resulting from a disability considered payment under 42 USC 221(i);

5. Annuity payments under:

A. 45 USC 231(a); and

b. Is determined to qualify for Medicare by the Railroad Retirement Board; or

c. Has a disability [~~Is disabled~~] based upon the criteria used under 42 USC 1381 to 1385; or

(b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration (VA) or paid as total (100 percent) by the VA under Title 38 of the United States Code;

(c) A veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

(d) A surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound;

(e) A surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38;

(f) A surviving spouse or surviving child of a veteran and considered by the VA to be entitled to:

1. Compensation for a service-connected death;

2. Pension benefits for a nonservice-connected death under Title 38; and

3. Has a disability considered permanent under 42 USC 221(i);

(g) An individual in receipt of disability related medical assistance under 42 USC 1396;

(h) An individual who is certified to receive, but not yet receiving SSI or Social Security disability payments; or

(i) An individual who is currently having his entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.

(10) "Drug addiction or alcoholic treatment and rehabilitation program" means any:

(a) Drug addiction; or

(b) Alcoholic treatment and rehabilitation program;

(c) Conducted by:

1. A private nonprofit organization; or

2. Institution that is certified as responsible for the administration of the state's program for:

a. Alcoholics; or

b. Drug addicts; by

(i) The cabinet; or

(ii) Agencies designated by the Governor.

(11) "Elderly" means an individual who is:

(a) Age sixty (60) or older; or

(b) Fifty-nine (59) years of age at the time of application but shall turn age sixty (60) before the end of month of application.

(12) "Eligible foods" means any of the following:

(a) Any food or food product intended for human consumption except:

1. Alcoholic beverages;

2. Tobacco;

3. Hot foods; and

4. Hot food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption by eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals;

(d) Meals served by a communal dining facility for:

1. The elderly;

2. SSI households; or

3. To both; and

4. To households eligible to use coupons for communal dining;

(e) Meals prepared and served by an authorized drug addiction or alcoholic treatment and rehabilitation center to:

1. Narcotic addicts;

2. Alcoholics; and

3. Their children;

(f) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or have a disability [~~disabled~~] as defined in subsection (9) of this section.

(g) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents;

(h) Meals prepared for and served by an approved authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons, provided that the facility shall:

1. Be a nonprofit establishment;

2. Be a licensed food service establishment; and

3. Provide meals to the homeless.

(13) "Excluded household member" means an individual residing with a household but excluded when determining the household's size in accordance with the provisions of 904 KAR 3:035, Section 5(3) and (4).

(a) The income and resources of the excluded household member shall be treated the same as that of an ineligible household member in accordance with 904 KAR 3:035, Section 5(3) and (4).

(b) The following are excluded household members and shall not participate as a separate household:

1. An ineligible alien;

2. An individual disqualified for failure to provide a social security number;

3. An individual disqualified for intentional program violation; or

4. An individual disqualified for failure to comply with work or workforce requirements.

(14) "Employment and training program" means a program consisting of one (1) or more of the following components:

(a) Work;

(b) Training;

(c) Education; or

(d) Job search.

(15) "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(16) "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

(17) "Group living arrangement":

(a) Means a public or private nonprofit residential setting that:

1. Serves no more than sixteen (16) residents; and

2. Is appropriately certified.

(b) To be eligible, a resident shall be blind or have a disability [~~disabled~~] as defined in subsection (9) of this section.

(18) "Head of household" means the person in whose name the application for participation is made as:

(a) Having primary financial responsibility for the household;

(b) Being an adult parent of a child of any age and living in the household; or

(c) An adult having parental control over a child under the age of eighteen (18) and living in the household.

(19) "Household" means:

(a) An individual who:

1. Lives alone; or

2. While living with others, customarily purchases and prepares meals for home consumption separate from others; or

(b) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

(c) The following individuals shall be treated as a group of individuals who customarily purchase food and prepare meals together for home consumption even if they do not do so:

1. Spouses who live together;

2. A parent and his child twenty-one (21) years of age or younger who live together, unless the child is:

a. Himself a parent and living with his child; or

b. Married and living with his spouse.

3. A child, excluding a foster child, under eighteen (18) years of age who lives with and is under parental control of a person other than his parent, together with the person exercising parental control.

(d) Notwithstanding the preceding sentences, the following individual shall be considered, together with any of the others who is his spouse, an individual household, without regard to the purchase of food and preparation of meals, if the income as determined under 7 USC 2014(d) of the others, excluding the spouse, does not exceed the poverty line, as described in 7 USC 2014(c)(1) by more than sixty-five (65) per centum:

1. An individual who lives with others;

2. An individual who is sixty (60) years of age or older; and

3. An individual who is unable to purchase and prepare meals because he suffers, as certified by a licensed physician, from a:

a. Disability which would be considered a permanent disability under 42 USC 421(i); or

b. A severe, permanent and disabling physical or mental infirmity which is not symptomatic of a disease;

(e) In no event shall any:

1. Individual; or

2. Group of individuals;

3. Constitute a household if they reside in an:

a. Institution;

b. Boarding house; or

c. Live with others and pay compensation to the others for meals.

(f) The following shall not be considered a resident of an institution and shall be considered an individual household:

1. A resident of federally subsidized housing for the:

a. Elderly;

b. Persons with a disability [~~Disabled~~] or blind recipients of benefits as defined under subsection (9) of this section;

2. A resident in a public or private nonprofit group living arrangement that:

a. Serves no more than sixteen (16) residents; and

b. Is certified by the appropriate state agency or agencies under regulations under 42 USCA 1382e(e); or

c. Is certified under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under this section;

3. A temporary resident of a public or private nonprofit shelter for battered women and children;

4. A resident of a public or private nonprofit shelter for individuals who:

a. Do not reside in a permanent dwelling; or

b. Have no fixed mailing address; and

c. Are otherwise eligible for coupons; and

5. A narcotics addict or alcoholic who together with his child live under:

a. The supervision of a private nonprofit institution; or

b. A publicly operated community mental health center, for the purpose of regular participation in a drug or alcoholic treatment program.

(20) "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(21) "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(22) "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to:

(a) College;

(b) University; and

(c) Vocational or technical school.

(23) "Meal delivery service" means an entity with which the cabinet has contracted for the preparation of meals at concessional prices to an individual who is unable to adequately prepare his meals.

(a) A "meal delivery service participant" shall include:

1. An elderly person and his spouse;

2. The person who has a physical or mental disability [~~physically or mentally disabled~~]; and

3. A person who otherwise has a disability [~~disabled~~] and his spouse.

(b) The cabinet shall contract with any of the following "meal delivery service" providers:

1. A political subdivision;

2. A private nonprofit organization; or

3. A private establishment.

(24) "Medicaid" means medical assistance under 42 USC 1396.

(25) "Nonassistance household" (NA) means a household

containing at least one (1) member who is not included in a public assistance (PA) household grant.

(26) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(27) "Nonhousehold member" means an individual residing with a household but not considered a household member in determining the household's eligibility or allotment.

(a) The following shall be considered a nonhousehold member and if otherwise eligible, may participate in the program as a separate household:

1. Roomer. An individual to whom a household furnishes lodging, but not meals, for compensation.

2. Live-in-attendant. An individual who resides with a household to provide medical, housekeeping, child care or other similar personal services.

3. Other. Another individual who shares living quarters with the household but who does not customarily purchase food and prepare meals with the household.

(b) The following shall be considered as a nonhousehold member, ineligible to participate in the program as a separate household, and treated as described in 904 KAR 3:035:

1. An ineligible student;

2. A person disqualified for noncompliance with the work requirements;

3. A border;

4. A resident of an institution, except as provided in subsection (17) of this section;

5. A striker, unless:

a. The household was eligible the day prior to the strike; and

b. The household is eligible at the time of application;

6. A household disqualified due to voluntary quit provisions.

(28) "Overissuance" means the amount by which coupons issued to a household exceeds the amount the household was eligible to receive.

(29) "Public assistance" (PA) means any of the programs authorized under 42 USC 601 to 686 including:

a. Old age assistance;

b. Aid to families with dependent children (AFDC);

c. Aid to the blind;

d. Aid to the persons who have a permanent and total disability [~~permanently and totally disabled~~]; and

e. Aid to aged, blind or persons with a disability [~~disabled~~].

(30) "Retrospective budgeting" means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month.

(31) "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(32) "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and children. If a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(33) [~~(32)~~] "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(34) [~~(33)~~] "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined under 8 USC 1101.

(35) [~~(34)~~] "Spouse" means either of two (2) individuals who:

(a) Would be defined as married to each other under applicable state law; or

(b) Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(36) [~~(35)~~] "Striker" means anyone involved in a strike or other concerted stoppage of work by employees. This shall include:

(a) A stoppage by reason of expiration of a collective-bargaining agreement; and

(b) Any concerted slowdown or other concerted interruption of operations by employees, unless:

1. The individual is exempt from work registration for reasons other than employment; and

2. The exemption existed on the day prior to the strike.

(37) [~~(36)~~] "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and disabled;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(38) [~~(37)~~] "Thrifty food plan" means:

(a) The diet required to feed a family of four (4) persons, determined in accordance with the Secretary of the United States Department of Agriculture calculations, consisting of:

1. A man and a woman twenty (20) through fifty (50);

2. A child six (6) through eight (8); and

3. A child nine (9) through eleven (11) years of age; and

(b) The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(39) [~~(38)~~] "Underissuance" means the amount that the allotment to that the household was entitled exceeds the allotment which the household received.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: March 8, 1995

FILED WITH LRC: March 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 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 April 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: Adding the definition of self-employment should have no direct impact on any entities. It merely clarifies the difference in self-employment income and wage income.

(2) Direct and indirect cost or savings to those affected: No hearing was requested following the publication of the notice of intent so no comments were received.

(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 hearing was requested following the publication of the notice of intent so no comments were received.

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested following the publication of the notice of intent so no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No hearing was requested following the publication of the notice of intent so no comments were received.

1. First year following implementation: No significant impact, if any.

2. Second and subsequent years: No significant impact, if any.

(3) Effects on the promulgating administrative body: The addition of a definition of self-employment will clarify the difference between self-employment income and wages.

(a) Direct and indirect cost or savings: No significant impact, if any.

1. First year: No significant impact, if any.

2. Continuing cost or savings: No significant impact, if any.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements other than those currently being used.

(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 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:

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested following the publication of the notice of intent so no comments were received.

(b) Kentucky:No hearing was requested following the publication of the notice of intent so no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No known alternative methods as the change is merely adding a definition for clarification.

(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 governmental 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? The federal statue at 7 USC 2014(b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. KRS 194.050, 7 CFR 271.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, PL 103-66, 7 CFR 271.4.

2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.

3. Minimum or uniform standards contained in the federal mandate. The definition being added is consistent with the federal mandate and applied in a like manner on a statewide basis.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. Not applicable.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MARCH 15, 1995

EXECUTIVE BRANCH ETHICS COMMISSION

9 KAR 1:015. Adjudicatory proceedings.

RELATES TO: KRS 11A.080(4)
STATUTORY AUTHORITY: KRS 11A.080(4)
NECESSITY AND FUNCTION: KRS 11A.080(4)(b) permits the commission to initiate an adjudicatory proceeding to determine whether there has been a violation.

Section 1. Initiating Order. Once the commission has determined there is probable cause to believe there has been one (1) or more violations of KRS Chapter 11A, it may confidentially reprimand the alleged violator or initiate an adjudicatory proceeding against the alleged violator. To initiate an adjudicatory proceeding, the commission shall issue an initiating order to the alleged violator, who is referred to as the respondent during the course of the adjudicatory proceeding. The initiating order shall:

(1) State the name of the respondent;

(2) State the alleged facts upon which the initiating order is issued;

(3) State each violation which the commission found probable cause to believe occurred, or is occurring, referencing specific statutes and administrative regulations which relate to the violation(s) involved;

(4) State that all material submitted to the commission by the respondent or his attorney shall be addressed to the Executive Branch Ethics Commission;

(5) Establish the procedural schedule for the proceeding or state that it will be set by subsequent order;

(6) Order the respondent to appear at a hearing scheduled by the commission at a time and place specified in the initiating order or to be set at a future date by subsequent order. Any order specifying a hearing date shall include the following information:

(a) The date, time, place, and nature of the hearing;

(b) The name, official title, and mailing address of the hearing officer (if no hearing officer has been appointed, the name, official title, and mailing address of the chairman of the commission); and

(c) The names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the commission;

(7) State the respondent's right to legal counsel;

(8) State the respondent's right to examine, prior to the hearing, any evidence which will be used at the hearing and any exculpatory information in the commission's possession;

(9) State the respondent's right to subpoena witnesses on his own behalf.

(10) State that if the respondent fails to attend or participate as required at any stage of the administrative hearing process without good cause shown, he may be held in default; and

(11) State the respondent's right to appeal a final commission order to the Franklin Circuit Court within thirty (30) days of service.

Section 2. Service. An order is considered issued the date it is signed by a majority of the commission and will be served upon the respondent pursuant to the Kentucky Rules of Civil Procedure.

Section 3. Answer. A respondent shall file his written answer to the initiating order with the commission within twenty (20) days of service. The answer shall be verified by the respondent.

Section 4. Counsel. If a respondent has retained counsel, the attorney shall file an entry of appearance with the commission. Notices, correspondence, and orders relating to the adjudicatory proceeding shall thereafter be transmitted to the attorney instead of the respondent.

Section 5. Discovery. All commission adjudicatory proceedings are subject to the Kentucky Rules of Civil Procedure. The presiding officer (defined in 9 KAR 1:030) shall issue subpoenas on written request of the respondent, his attorney, the commission or the commission's attorney. If the presiding officer is not the chairman, he shall forward any subpoena requests to the chairman for his signature. The respondent shall bear the cost of serving the subpoenas, paying any witness fees and expenses for subpoenas issued at his or his attorney's request.

Section 6. Prehearing Disclosure of Evidence. (1) By the commission. The respondent shall have the right to inspect any evidence to be used at the hearing and any exculpatory information in the commission's possession. Nothing in this section shall be construed as giving the respondent, or anyone else, the right to examine or copy the personal notes, observations, conclusions, or work product of the commission's legal counsel. An appointment for the inspection shall be made upon reasonable notice, during regular office hours, and at a time acceptable to the staff members involved in the investigation. The respondent may request copies of any evidence to be used at the hearing and any exculpatory evidence. The commission shall not charge the respondent any amount for providing such copies.

(2) By the respondent. At least thirty (30) days prior to the scheduled adjudicatory hearing, or as specified in the procedural schedule established by the initiating order or by the presiding officer, the respondent shall furnish to the commission's legal counsel:

(a) Copies of any documents which the respondent intends to introduce at the hearing;

(b) A list of the names, addresses, and home and work telephone numbers of any witnesses to be presented by the respondent at the hearing;

(c) Copies of any documents or other items of tangible evidence within the respondent's possession or control which he intends to introduce at the hearing; and

(d) Any other information as the presiding officer deems appropriate. The respondent shall not charge the commission any amount for any copies of material provided.

(3) Continuing duty to disclose. After disclosure has been completed, each party shall remain under an obligation to disclose any newly discovered items of evidence which may come to his attention. Such additional disclosure shall take place as soon as practicable. The presiding officer may refuse to allow a party to introduce evidence which was not properly and timely disclosed to the other party.

Section 7. Motions. Except for motions made during the course of an adjudicatory hearing, all motions shall be in writing, signed by the movant or his attorney, and filed with the commission.

Section 8. Prehearing Conferences. The respondent may request a prehearing conference with the presiding officer and the commission's attorney if the request is made at least five (5) days prior to the date scheduled for the hearing, or as designated in a commission order. The presiding officer shall conduct the prehearing conference unless the chairman designates another person to conduct the conference. The conference may be held to discuss jurisdictional matters, to prepare stipulations of facts or issues, to clarify issues, to rule on motions, to take evidence, to issue subpoenas and orders and

other matters which promote the orderly and prompt conduct of the proceeding. At the conclusion of the prehearing conference, the presiding officer shall issue a prehearing order incorporating all matters determined at the prehearing conference. If a prehearing conference is not held, the presiding officer may issue a prehearing order to regulate the conduct of the hearing.

Section 9. Settlement Conferences. The respondent may request a settlement conference with the commission's attorney if the request is made at least five (5) days prior to the date scheduled for the hearing. If the commission's attorney recommends a settlement offer be approved, he shall sign the offer and forward it to the chairman. If a majority of the commission agrees to accept the settlement offer, each approving member shall sign the offer and the chairman shall notify the presiding officer and the commission's attorney that the offer has been approved. Within ten (10) days of the approval of the offer, the commission shall issue an order which indicates the case is concluded by settlement. The commission shall not approve any settlement which provides for the confidentiality of the existence of the settlement, or which provides for the confidentiality of any of the terms of the settlement.

Section 10. Official Record. For each adjudicatory proceeding, the commission shall keep an official record of the proceedings which shall consist of:

(1) All notices, pleadings, motions, and intermediate rulings;

(2) Any prehearing orders;

(3) Evidence received and considered;

(4) A statement of matters officially noticed;

(5) Proffers of proof and objections and rulings thereon;

(6) Proposed findings, requested orders, and exemptions;

(7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;

(8) All requests by the presiding officer for an extension of time, and the response of the commission;

(9) Ex parte communications placed upon the record by the presiding officer; and

(10) The transcript of the hearing.

Section 11. Unless otherwise prohibited by law, the commission may waive any part of this administrative regulation upon good cause shown.

LIVINGSTON TAYLOR, Chairman

APPROVED BY AGENCY: February 9, 1995

FILED WITH LRC: March 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 28, 1995, at 9 a.m., in Room 386 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comment on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jill E. LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, 702 Capital Avenue, Frankfort, Kentucky 40601, (502) 564-7954.

REGULATORY IMPACT ANALYSIS

Contact person: Jill LeMaster

(1) Type and number of entities affected: This regulation will affect all persons who participate in an adjudicatory proceeding. We estimate this to affect 20 to 50 people per year, including parties, their attorneys, witnesses, hearing officers, and commission members.

(2) Direct and indirect costs or savings on the: Not applicable.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Not applicable.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Not applicable.

(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 compliance costs are due to participation in an adjudicatory hearing, not the implementation of the regulation.

2. Second and subsequent years: The compliance costs are due to participation in an adjudicatory hearing, not the implementation of the regulation.

(3) Effects on the promulgating administrative body: The compliance costs are due to participation in an adjudicatory hearing, not the implementation of the regulation.

(a) Direct and indirect costs or savings: Not applicable.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Minimal, if any.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Any cost would be paid for by the existing revenues budgeted in this agency.

(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: This method complies with KRS Chapters 11A and 13A and B (to be implemented in July of 1996), and the Civil Rules of Procedure.

(8) Assessment of expected benefits: No economic impact assessed.

(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: 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? No. Tiering was not applied; all provisions of the regulation apply to all participant in an adjudicatory proceeding. To apply tiering in this situation is unnecessary and could result in due process concerns.

EXECUTIVE BRANCH ETHICS COMMISSION

9 KAR 1:035. Posthearing procedure.

RELATES TO: KRS 11A.100
STATUTORY AUTHORITY: KRS 11A.100
NECESSITY AND FUNCTION: KRS 11A.100(5) grants the commission the authority to impose civil penalties on violators.

Section 1. Posthearing Procedure When the Presiding Officer is a Member of the Commission. (1) The commission shall meet in executive session within thirty (30) days of the conclusion of the hearing to review the evidence before it. The deliberations may be continued or adjourned for a period not to exceed ninety (90) days after the conclusion of the hearing.

(2) The commission shall issue a final order no later than ninety (90) days after the conclusion of the hearing. The commission may remand the matter for additional hearings or take other action it deems necessary in order to reach a decision.

(3) The commission shall issue a recommended order no later than thirty (30) days prior to the last day the commission is permitted to issue a final order. The commission shall send a copy of the recommended order to the respondent and to the commission's attorney by hand or by regular mail.

(4) The respondent and the commission's attorney shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the order with the commission.

(5) In its final order, the commission may find no violation, may impose any penalty or other remedy authorized by statute, or may remand the matter for additional hearings.

(6) The respondent shall have thirty (30) days from the date of service to file an appeal of a final commission order to the Franklin County Circuit Court.

Section 2. Posthearing Procedure When the Presiding Officer is Not a Member of the Commission. (1) The commission shall meet in executive session within thirty (30) days after the conclusion of the hearing to review the evidence before it. The proceedings may be continued or adjourned for a period not to exceed ninety (90) days after the presiding officer submits his recommended order.

(2) The presiding officer shall submit to the commission his recommended order within thirty (30) days of receiving a copy of the official record of the proceeding. The recommended order shall contain the presiding officer's findings of fact, conclusions of law, and recommended disposition of the hearing, including recommended penalties, if any. The presiding officer may ask for an extension of time to submit his recommended order. The extension shall be for no more than thirty (30) days, and shall be submitted to the commission in writing and based on good cause.

(3) At the same time the presiding officer submits his recommendation to the commission, he shall send, by regular mail, a copy of the recommended order to the commission's attorney and to the respondent. The commission's attorney and the respondent shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order with the commission.

(4) The commission may adopt the presiding officer's recommended order, or it may reject or modify the recommended order in whole or in part. The commission may issue its own findings of fact and conclusions of law or it may remand the matter for additional hearings.

(5) The commission shall issue its final order no later than ninety (90) days after it receives the presiding officer's recommended order.

(6) The respondent shall have ten (10) days to file with the commission a motion for reconsideration of a final order. The commission shall rule on the motion within ten (10) days of its receipt.

(7) The respondent shall have thirty (30) days from the date of service to file an appeal of a final commission order to the Franklin Circuit Court.

(8) Unless otherwise prohibited by law, the commission may waive any part of this administrative regulation upon good cause shown.

LIVINGSTON TAYLOR, Chairman
APPROVED BY AGENCY: February 9, 1995
FILED WITH LRC: March 14, 1995 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 28, 1995, at 9 a.m., in Room 386 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 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 this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comment on the proposed administrative regulation to the contact person.
CONTACT PERSON: Jill E. LeMaster, Executive Director, Executive Branch Ethics Commission, 273 Capitol Annex, 702 Capital Avenue, Frankfort, Kentucky 40601, (502) 564-7954.

REGULATORY IMPACT ANALYSIS

Contact person: Jill LeMaster
(1) Type and number of entities affected: This regulation applies to anyone who participates in an adjudicatory hearing, including parties, their attorneys, witnesses, hearing officers and commission members. We estimate this regulation will affect 20 to 50 people per 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: Not applicable.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Not applicable.
(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 compliance costs are due to participating in an adjudicatory hearing, not the implementation of this regulation.
2. Second and subsequent years: Same as above.
(3) Effects on the promulgating administrative body: Same as above.
(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: Any cost would be paid for by the existing revenues budgeted to this agency.
(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: This regulation complies with KRS Chapter 11A and the Kentucky Rules of Evidence.

(8) Assessment of expected benefits: No economic impact assessed.

(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: 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 applied; all provisions of the regulation apply to anyone who participates in an adjudicatory hearing. To apply tiering in this situation is unnecessary and would result in due process concerns.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:172. Deer hunting seasons and requirements.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025, 150.170, 150.175

NECESSITY AND FUNCTION: To set deer hunting season dates and limits, and to prescribe the methods by which deer may be legally taken. This administrative regulation contains the substance of 301 KAR 2:171, which it repeals. Substantive changes from 301 KAR 2:171 are: establishing a youth hunt the fourth Saturday in October; and requiring persons hunting or accompanying deer hunters during deer firearm seasons to wear hunter orange.

Section 1. Definitions. (1) "Adult" means an individual at least eighteen (18) years of age.

(2) "Antlered deer" means a deer with one (1) antler at least four (4) inches long, measured from the skin to the tip of the antler.

(3) "Antlerless deer" means a deer without antlers or with both antlers less than four (4) inches long, measured from the skin to the tips of the antlers.

(4) "Any deer" means antlered or antlerless deer.

(5) "Archery equipment" means long bows, recurve bows or compound bows incapable of holding an arrow at full or partial draw without aid from the archer.

(6) "Arrow" means the projectile fired from a bow or crossbow.

(7) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(8) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(9) "Firearms" means breech or muzzle-loading rifles, shotguns or handguns.

(10) "Fully automatic firearms" means a firearm which fires more than one (1) time with a single pull of the trigger.

(11) "Modern gun" means a rifle, handgun or shotgun which is loaded from the rear of the barrel.

(12) "Muzzle-loading gun" means a rifle, shotgun or handgun which is loaded from the discharging end of the barrel or discharging end of the cylinder.

(13) "Shotshell" means ammunition containing more than one (1) projectile.

(14) "Zone" means the grouping of counties or portions of counties as stipulated in 301 KAR 2:174, Deer hunting zones.

Section 2. Archery and Crossbow Season Dates. (1) Deer hunters may use archery equipment October 1 through January 15.

(2) Deer hunters may use crossbows:

(a) For ten (10) days beginning the fourth Tuesday in November; and

(b) During modern gun deer and muzzle-loader seasons.

Section 3. Archery and Crossbow Zone Limits. (1) During the modern gun deer season or muzzle-loader seasons, deer hunters using archery equipment or crossbows shall observe the same limits as hunters using firearms.

(2) During the youth hunt, persons using archery equipment may take any deer in Zones 1 through 4.

(3) During portions of archery or crossbow seasons not concurrent with the modern gun deer season or the muzzle-loader seasons:

(a) In Zones 1 through 6, hunters may take any deer.

(b) In Zone 7, hunters shall not take antlerless deer.

Section 4. Muzzle-loading Gun Season Dates. Deer hunters may use muzzle-loading firearms:

(1) For two (2) days beginning the third Saturday in October.

(2) For seven (7) days beginning the second Saturday in December.

(3) During the modern gun deer season.

Section 5. Muzzle-loading Gun Season Zone Limits. (1) During seasons when muzzle loaders are the only firearms allowed, deer hunters using muzzle-loading firearms, archery equipment or crossbows shall observe the following limits:

(2) In Zones 1 through 5, hunters may take any deer.

(3) In Zones 6 or 7, hunters shall not take antlerless deer.

Section 6. Modern Gun Deer Season Dates. (1) Zones 1 through 6: ten (10) days beginning the second Saturday in November.

(2) Zone 7: five (5) days beginning the second Saturday in November.

Section 7. Zone Limits for the Modern Gun Deer Season. Hunters using firearms, archery equipment or crossbows during the modern gun deer season shall observe the following limits:

(1) Zone 1: any deer for the entire ten (10) day season.

(2) Zone 2: any deer the first five (5) days; antlered deer the last five (5) days.

(3) Zone 3: any deer the first two (2) days; antlered deer the last eight (8) days.

(4) Zone 4: antlered deer the first eight (8) days; any deer the last two (2) days.

(5) Zones 5 and 6: antlered deer for the entire ten (10) day season.

(6) Zone 7: antlered deer for the entire five (5) day season.

Section 8. Youth Hunt. (1) Persons under the age of sixteen (16) may use firearms to take antlerless deer on the fourth Saturday in October in Zones 1 through 4 .

(2) Adults accompanying juveniles during the youth hunt shall not carry firearms and shall comply with the hunter orange provisions of Section 12 of this administrative regulation.

Section 9. Use of Tags. (1) Hunters shall not tag antlered deer with an "antlerless deer" tag.

(2) Hunters may tag either antlered oRantlerless deer with the "any deer" tag.

Section 10. Illegal Hunting Equipment. (1) Deer hunters shall not use devices other than firearms, archery equipment or crossbows.

(2) Firearm hunters shall not use:
(a) Rimfire ammunition.
(b) Fully automatic firearms.
(c) Firearms with a magazine capacity greater than ten (10) rounds.
(d) Fully jacketed ammunition.
(e) Tracer bullet ammunition.
(f) Shotshells.
(g) Muzzle-loading rifles smaller than .40 caliber.
(h) Muzzle-loading handguns smaller than .44 caliber.
(3) Archery or crossbow hunters shall not use:
(a) Broadheads smaller than seven-eighths (7/8) inch wide.
(b) Barbed broadheads.
(c) Crossbows without a working safety device.
(d) Chemically treated arrows.
(e) Arrows with chemical attachments.
(4) Except when firearms are permitted for deer hunting, archery or crossbow deer hunters shall not carry firearms.

Section 11. Season Limits. Except as provided in 301 KAR 2:178, 2:111 or 2:211, a person shall not take more than two (2) deer per license year.

Section 12. Hunter Orange. 1) During the modern gun deer season, muzzle-loader seasons or the youth hunt, persons hunting any species, and persons accompanying them, shall display solid, unbroken hunter orange visible from all sides on the head, back and chest:
(2) Subsection (1) of this section shall not apply to:
(a) Persons hunting migratory birds; or
(b) Persons hunting at night.
(3) The hunter orange portions of garments worn to fulfill the requirements of this section:
(a) May display a small section of another color.
(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.
(4) Camouflage pattern hunter orange garments worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

Section 13. Hunter Requirements, Shooting Hours, and Taking of Other Species. (1) An adult shall accompany firearm deer hunters under sixteen (16) years old and shall remain in a position to take immediate control of the juvenile's firearm.
(2) Adults accompanying juvenile hunters shall not be required to possess a hunting license or deer permit if the adult is not hunting.
(3) Hunters may be in the woods or stands before or after daylight hours, but shall not take deer except during daylight hours.
(4) Deer hunters may take wild hogs. Hunters shall check wild hogs at an official deer check station.
(5) Deer hunters shall not use dogs or other domestic animals.
(6) Hunters in vehicles or boats shall not take deer.
(7) Hunters shall not take swimming deer.

Section 14. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.175, persons shall have a deer permit in their possession while hunting deer.
(2) Holders of deer permits shall sign them before hunting.
(3) Persons possessing adult hunting licenses shall use no more than one (1) two (2) tag deer permit per license year.
(4) Persons possessing valid junior statewide hunting licenses shall not use more than two (2) individual junior deer hunting permits or one (1) two (2) tag permit.
(5) Juvenile hunters shall use the tag accompanying a junior deer hunting permit as either the "antlerless" or "any deer" tag as appropriate to the season and zone.
(6) A person whose name does not appear on the permit shall not use any portion of the deer permit.
(7) Persons who have lost their deer permit may purchase replacements after filing an affidavit with the licensing agent attesting to the loss.

Section 15. Tagging Deer. (1) Resident landowners, tenants and their dependents shall:
(a) Tag deer taken on their property only if they remove the deer from that property.
(b) Follow the tagging requirements of subsection (2) of this section for deer removed from their property.
(2) Other hunters not required to have a deer permit shall:
(a) Write "antlerless tag" and "any deer tag" on two (2) separate cards.
(b) Write their name and address on both cards.
(c) Carry these cards while deer hunting.
(d) Immediately after taking a deer, and before moving the carcass:
1. Write on the appropriate card the date when, and the county where, the deer was taken.
2. Attach the card to the carcass before moving the deer from where it was taken.
(3) Hunters required to have deer permits shall immediately attach the appropriate tag to the carcass before moving the deer.
(4) Hunters who tag deer shall:
(a) Attach the tag so that it cannot be removed without destroying the tag or mutilating the carcass.
(b) Not remove the tag until the carcass is processed.

Section 16. Checking Deer. (1) Landowners, tenants or their dependents are not required to check deer taken on their property.
(2) Other persons taking deer shall:
(a) Unless an authorized employee of the department checks the deer in the field, transport the entire or field-dressed carcass to the nearest open check station by 9 a.m. on the day after the deer was taken.
(b) Give a completed game check card to the person checking the deer.
(c) Retain the hunter's copy of the game check card until the deer is processed.
(d) Attach the taxidermy portion of the game check card to any parts of the deer removed for mounting.

Section 17. Transporting and Processing Deer. (1) Persons shall not transport unchecked deer out of Kentucky.
(2) Persons bringing deer or parts of deer into Kentucky shall have proof that the deer was legally taken.
(3) A person shall not submit deer taken outside Kentucky for Kentucky trophy deer listing.
(4) Persons may sell deer hides to licensed fur buyers and licensed fur processors.
(5) Persons who process deer shall:
(a) Keep accurate records of the hunter's name, address and date received for each deer in their possession.
(b) Provide and affix to each deer a tag showing the hunter's name, address and date received. This tag shall remain on the carcass until it is processed.
(c) Not accept deer carcasses without proper owner identification.

Section 18. 301 KAR 2:171, Seasons for deer hunting, is repealed.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: March 3, 1995
FILED WITH LRC: March 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 28, 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 April 23, 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: Division of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Don Walker

(1) Type and number of entities affected: An estimated 212,000 hunters will participate in white-tailed deer seasons provided for 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 continues deer seasons in effect for many years and should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the 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: This administrative regulation will impose no new reporting or paperwork requirements. As in past years, deer hunters will be required to report deer harvested by checking the carcass at an official check station.

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 will not cause the agency to incur additional costs or realize any additional savings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: The department must collect, tabulate and analyze data from mandatory deer check stations. This is a continuing requirement which will impose no additional reporting or paperwork requirements on the agency.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will be positively affected by this activity, and by the purchase of required licenses and permits.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sale of hunting licenses and deer permits.

(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: This administrative regulation applies to all geographical areas of the Commonwealth.

(b) Kentucky: Deer hunters expend money for equipment, transportation, food and lodging. These expenditures average approximately $25 per hunter, for a positive direct economic impact of $5,300,000.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closing the season. This alternative was rejected because white-tailed deer are a renewable natural resource and their numbers are at levels which can sustain regulated harvest by hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated hunting controls deer populations and prevents the environmental damage to the landscape caused by deer overpopulation. Deer hunting provides outdoor recreation for over 200,000 Kentuckians annually.

(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, deer populations grow unchecked, creating increasing levels of deer-vehicle collisions, crop depredations, and destruction of habitat.

(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: This regulation contains the substance of portions of 301 KAR 2:171. Substantive changes are listed in the "Necessity and Function" section of this administrative regulation. 301 KAR 2:171 is being repealed and replaced by three regulations to better meet the drafting, formatting and language requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection " and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:174. Deer hunting zones.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025, 150.170, 150.175, 150.340, 150.370

NECESSITY AND FUNCTION: To establish zones for deer hunting to control deer harvest and populations, and to provide optimum opportunity for deer hunters. This administrative regulation contains the substance of 301 KAR 2:171(2), with the following changes in zone assignments: Allen County, Zone 3 to Zone 4; Bell County, Zone 6 to Zone 7; Boyd County, Zone 5 to Zone 4; Bracken Co; Zone 3 to Zone 4; Bullitt County, Zone 3 to Zone 4; Butler County Zone 4 to Zone 3; Carter County, Zone 5 to Zone 4; Christian County, Zone 3 to Zone 2; Fayette County, Zone 7 to Zone 6; Fleming County, Zone 6 to Zone 5; Greenup County, Zone 5 to Zone 4; Hardin County, Zone 3 to Zone 2; Jessamine County, Zone 7 to Zone 6; Johnson County, Zone 7 to Zone 6; Lawrence County, Zone 5 to Zone 4; Leslie County, Zone 7 to closed; Livingston County, Zone 2 to Zone 3; Logan County, Zone 4 to Zone 3; Morgan County, Zone 6

to Zone 5; Ohio County, Zone 2 to Zone 1; Oldham County, Zone 1 to Zone 2; Pike County closed to Zone 7; Pulaski County, Zone 6 to Zone 5; Rowan County, Zone 6 to Zone 5; and Wolfe County, Zone 7 to Zone 6.

Section 1. Definitions. "Zone" means counties or portions of counties grouped for deer hunting season dates and limits.

Section 2. Zone Assignments. (1) Zone 1 consists of Jefferson and Ohio Counties.

(2) Zone 2 consists of Boone, Christian, Crittenden, Gallatin, Hancock, Hardin, Hopkins, Muhlenburg, Oldham, Todd, and Webster Counties.

(3) Zone 3 consists of Breckinridge, Butler, Caldwell, Campbell, Carroll, Grayson, Kenton, Livingston, Logan, Lyon, Meade, Shelby, Trigg, and Trimble Counties.

(4) Zone 4 consists of Adair, Allen, Anderson, Ballard, Barren, Boyd, Boyle, Bracken, Bullitt, Calloway, Carlisle, Carter, Casey, Cumberland, Daviess, Franklin, Fulton, Grant, Graves, Green, Greenup, Harrison, Henderson, Henry, Hickman, Larue, Lawrence, Marion, McLean, McCracken, Mercer, Metcalfe, Monroe, Nelson, Owen, Pendleton, Robertson, Scott, Simpson, Spencer, Taylor, Union, Warren, Washington, and Woodford Counties.

(5) Zone 5 consists of Clinton, Edmonson, Elliott, Fleming, Hart, Marshall, Mason, Morgan, Nicholas, Pulaski, Rowan, Russell, and Wayne Counties.

(6) Zone 6 consists of Bath, Clark, Fayette, Garrard, Jackson, Jessamine, Johnson, Laurel, Lewis, Lincoln, Madison, Martin, McCreary, Menifee, Whitley, and Wolfe Counties.

(7) Zone 7 consists of Bell, Bourbon, Breathitt, Clay, Estill, Floyd, Harlan, Knott, Knox, Lee, Letcher, Magoffin, Montgomery, Owsley, Perry, Pike, Powell, and Rockcastle Counties.

Section 3. Leslie County is closed to deer hunting.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 3, 1995

FILED WITH LRC: March 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 28, 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 April 23, 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: Division of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Don Walker

(1) Type and number of entities affected: An estimated 212,000 hunters will participate in white-tailed deer seasons provided for 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 continues deer seasons in effect for many years and should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the 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: This administrative regulation will impose no new reporting or 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: This administrative regulation will not cause the agency to incur additional costs or realize any additional savings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: The department must collect, tabulate and analyze data from mandatory deer check stations. This is a continuing requirement which will impose no additional reporting or paperwork requirements on the agency.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will be positively affected by this activity, and by the purchase of required licenses and permits.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sale of hunting licenses and deer permits.

(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: This administrative regulation applies to all geographical areas of the Commonwealth. Placing counties in zones with more liberal or more restrictive harvest requirements may create slight economic impact.

(b) Kentucky: Deer hunters expend money for equipment, transportation, food and lodging. These expenditures average approximately $25 per hunter, for a positive direct economic impact of $5,300,000.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is a uniform season statewide. This alternative was rejected because such a uniform season would allow too many deer to be taken in some areas and not enough in others. It would neither provide optimal recreational opportunities nor meet deer population objectives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated hunting controls deer populations and prevents the environmental damage to the landscape caused by deer overpopulation. Deer hunting provides outdoor recreation for over 200,000 Kentuckians annually.

(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: In some areas, deer populations could grow to levels which would create increasing incidents of deer-vehicle collisions, crop depredations, and destruction of habitat. In other areas, deer populations could be decreased or eliminated.

(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: This regulation contains the substance of portions of 301 KAR 2:171. Substantive changes are listed in the "Necessity and Function" section of this administrative regulation. 301 KAR 2:171 is being repealed and replaced by three regulations to better meet the drafting, formatting and language requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering is applied to this administrative regulation. Each county of Kentucky was examined separately and placed in one of eight categories, depending upon deer population, last season's harvest and population objectives for the future.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:178. Deer hunting on wildlife management areas.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025, 150.170, 150.175

NECESSITY AND FUNCTION: To establish deer hunting administrative regulations on wildlife management areas and other public lands open to deer hunting. The substance of this administrative regulation was formerly contained in 301 KAR 2:171, which is being repealed. Substantive changes from 301 KAR 2:171(9) are: decreasing from three (3) to two (2) the number of youth hunts on Ballard WMA; opening Peabody WMA during the early muzzle-loader season; changing the Green River Lake WMA quota hunt from any deer to antlered deer; closing Lloyd, Kentucky River and Lapland WMAs to weekend gun deer hunting; establishing an antlered deer quota hunt and an archery season at Fishtrap Lake WMA; increasing the area limit from one (1) to two (2) deer at Higginson-Henry WMA; moving the quota hunt at Paintsville Lake WMA from November to December; changing the archery season opening date from October 15 to October 1 on Cane Creek and Beaver Creek WMAs; and adjusting dates for deer hunts on the West Kentucky WMA.

Section 1. Definitions. (1) "Modern gun season" means the ten (10) consecutive-day period beginning the second Saturday in November.

(2) "Private inholding" means privately owned property completely surrounded by a WMA.

(3) "Quota hunt" means WMA deer hunts, including youth hunts, whose participants are selected by a random drawing.

(4) "Statewide deer requirements" means the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2:172 and 2:174.

(5) "Wildlife management area" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.

(6) "WMA" means a wildlife management area.

(7) "WMA tag" means a carcass tag the department issues to hunters for use on WMA deer hunts.

Section 2. General WMA Requirements. (1) Unless specified otherwise in this administrative regulation, statewide deer requirements apply to WMAs.

(2) If specific deer hunting dates are given for a WMA in this administrative regulation, persons shall hunt deer only on those dates.

(3) On WMAs, Westvaco Public Hunting Areas, the Daniel Boone National Forest, Reelfoot National Wildlife Refuge, Land Between the Lakes and the Big South Fork National Rivers and Recreation Area, persons:

(a) Shall not use nails, spikes, screw-in devices, wire or tree climbers for attaching tree stands or climbing trees.

(b) May use portable stands and climbing devices that do not injure trees.

(c) Shall not place portable stands in trees more than two (2) weeks before opening day, and shall remove them within one (1) week following the last day, of each hunting period.

(d) Shall plainly mark portable stands with their name and address.

(e) Shall not use existing permanent tree stands.

(4) Limits.

(a) A hunter may take two (2) deer from the West Kentucky and Higginson-Henry WMAs.

(b) A hunter shall not take more than one (1) deer from each of the other WMAs listed in Section 5 of this administrative regulation.

(5) Owners of private inholdings or their guests may hunt on the owner's lands without application but shall follow all other requirements for the WMA which surrounds the inholding.

(6) Persons shall not hunt on private inholdings when deer hunting is not allowed on the surrounding WMA.

(7) Except to travel through a WMA on established public roads or to use areas designated open by signs, persons without a valid quota hunt permit shall not enter a WMA during quota hunts on that area.

(8) Persons hunting any species or persons accompanying them shall wear hunter orange:

(a) Meeting the requirements specified in 301 KAR 2:271.

(b) On WMAs when firearms are permitted for deer hunting.

(9) Persons shall not:

(a) Enter portions of WMAs marked by signs as closed to public access; or

(b) Hunt in portions of WMAs marked by signs as closed to hunting.

Section 3. Quota Hunt Applications. (1) Persons whose names are not drawn shall not hunt during quota hunts.

(2) Persons wishing to participate in quota hunts shall apply on forms furnished by the department.

(3) More than one (1) hunter shall not apply per form.

(4) Four (4) or fewer persons may apply as a party by stapling their applications together and mailing them in the same envelope.

(5) Hunters over sixteen (16) years old shall not apply to more than one (1) quota hunt.

(6) Persons at least ten (10) but not yet sixteen (16) years old by the scheduled hunt date may apply for:

(a) One (1) quota hunt;

(b) One (1) Ballard WMA youth hunt; and

(c) One (1) other youth hunt.

(7) Applicants who submit multiple applications or fail to meet application requirements shall be disqualified.

(8) Applicants shall stamp and self-address applications.

(9) Applications shall be postmarked no later than August 31.

(10) The commissioner may extend the application deadline if the production or distribution of forms is delayed.

Section 4. Quota Hunt Procedures. (1) Persons shall hunt on assigned dates and in assigned areas.

(2) Hunters may use firearms, archery equipment or crossbows during quota hunts.

(3) Hunters shall check in before, and check out at the completion of, the quota hunt.

(4) When checking in, persons required to possess hunting licenses and deer permits shall show:

(a) A hunting license;

(b) A valid quota hunt permit;

(c) Proof of identify, including Social Security number; and

(d) A current deer permit; or

(e) A completed hunter's portion of a current deer season game check card.

(5) A person whose name does not appear on a quota hunt permit shall not use that permit.

(6) The youth hunt permit shall admit the person whose name appears on the permit and one (1) adult. The adult shall not be required to:

(a) Possess a hunting license or deer permit; or

(b) Apply in advance.

(7) Quota hunt participants shall tag deer with WMA tags issued when they check in.

(8) Deer taken during quota hunts do not count toward season limits specified in statewide deer requirements.

(9) Persons drawn for quota hunts on Ballard, Higginson-Henry, Kleber, Taylorsville Lake and Yellowbank WMAs shall not apply to the same area quota hunt for the next three (3) seasons.

Section 5. WMA Hunting Dates and Requirements. (1) Ballard WMA.

(a) Quota youth hunts, antlered or antlerless deer as specified on permit: two (2) consecutive Saturdays and Sundays beginning the third Saturday in October.

(b) Statewide deer requirements apply to the 300 acre tract south of Terrell Landing Road.

(2) Beaver Creek WMA.

(a) Archery hunt, antlered deer:

1. October 1 through the day before the modern gun season.

2. The day after the quota hunt through December 31.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in December.

(3) Cane Creek WMA.

(a) Archery hunt, antlered deer: October 1 through December 31.

(b) Gun hunt, antlered deer: the second Saturday in November.

(4) Central Kentucky WMA.

(a) Archery hunt, any deer: December 18 through January 15.

(b) Deer hunters shall check in and check out.

(5) Clay WMA.

(a) Archery hunt, antlered deer: October 15 through the day before the modern gun season.

(b) Deer hunters shall check in and check out.

(6) Cyprus AMAX-Robinson Forest WMA.

(a) Persons shall not hunt deer:

1. On the main block of Robinson Forest.

2. With firearms during the modern gun season.

(b) Archery and muzzle-loader seasons correspond to statewide requirements.

(c) Deer hunters shall check in and out.

(7) Daviess County WMA: closed to deer hunting.

(8) Dewey Lake WMA.

(a) Archery hunts.

1. Antlered deer, October 1 through October 14.

2. Any deer, October 15 through October 31.

3. Antlered deer, November 1 through December 31, except persons shall not archery hunt during:

a. The youth quota hunt; or

b. The modern gun deer season.

(b) Youth quota hunt, antlered or antlerless deer as specified on permit: two (2) consecutive days beginning the first Saturday in November.

(c) Deer hunters shall check in and check out.

(9) Fishtrap Lake WMA.

(a) Archery hunt, antlered deer, October 1 through December 31, except during the quota hunt.

(b) Quota hunt: two (2) consecutive days beginning the second Saturday in December.

(10) Grayson Lake WMA.

(a) Youth quota hunts, any deer:

1. Two (2) consecutive days beginning the first Saturday November.

2. Two (2) consecutive days beginning the first Saturday in December.

(b) Archery and crossbow hunt, any deer: October 1 through December 31.

(c) The portion of the area west of Route 1496 and east of Bruin Creek, the Bruin Creek fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork is open to youth quota hunting and closed to archery and crossbow hunting.

(d) Deer hunters shall check in and check out.

(11) Green River Lake WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: October 1 through December 31, except during the quota hunt.

(12) Higginson-Henry WMA.

(a) Quota hunt, antlered or antlerless deer as specified on permit: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunts.

1. Antlerless deer, October 1 through 15.

2. Any deer, October 16 through December 31.

(c) Deer hunters shall check in and check out.

(13) Kleber WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: the third Saturday in October through December 31, except during the quota hunt.

(c) Deer hunters shall check in and check out.

(14) Kentucky River WMA. Statewide deer requirements apply, except that persons shall not hunt deer on Saturdays or Sundays during the modern gun deer season.

(15) Lapland WMA (including the Indiana Hardwoods Tract). Statewide seasons apply, except that persons shall not hunt deer on Saturdays or Sundays during the modern gun deer season.

(16) Lloyd WMA. Statewide seasons apply, except that persons shall not hunt deer on Saturdays or Sundays during the modern gun deer season.

(17) Mill Creek WMA.

(a) Archery hunt, antlered deer: October 15 through the day before the modern gun season, and the day after the quota hunt through December 31.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in December.

(18) Obion Creek WMA.

(a) Quota hunt, any deer: three (3) consecutive days beginning the first Friday in November.

(b) Archery hunt, any deer: October 1 through December 31, except during the quota hunt.

(19) Paintsville Lake WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunt, any deer: October 1 through December 31, except no archery hunting during the quota hunt or the modern gun deer season.

(c) Deer hunters shall check in and check out.

(20) Peabody WMA.

(a) Quota hunts, any deer.

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the third Thursday in November.

(b) Muzzleloader hunt, two (2) consecutive days beginning the third Saturday in October.

(c) Archery hunt, any deer: October 1 through January 15, except during quota hunts.

(21) Pennyrile WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, antlered deer: October 1 through January 15, except during quota hunts.

(22) Pioneer Weapons WMA. Statewide requirements apply except:

(a) Hunters shall not use modern guns.

(b) Crossbows may be used during the entire archery season.

(23) Redbird WMA.

(a) Archery hunt, antlered deer.

1. October 1 through the day before the modern gun season.

2. The third Thursday in November through December 31.

(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.

(c) Deer hunters shall check in and check out.

(24) Stewart Island WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning on the last Saturday in October.

(b) Quota hunt applicants shall be present at 10 a.m. central daylight time on the third Saturday of September in downtown Smithland to participate in a public drawing.

(25) Swan Lake WMA: closed to deer hunting.

(26) Taylorsville Lake WMA.

(a) Archery hunt, any deer: October 1 through December 31.

(b) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.

(27) Tradewater WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, antlered deer: October 1 through January 15, except during the quota hunt.

(28) Twin Knobs Campground.

(a) Quota gun hunt, any deer: two (2) consecutive days beginning the second Saturday in December for persons with a disability license issued under the provisions of KRS 150.170 (7) or (8).

(b) Persons drawn for the quota hunt shall show their disability license when the they check in.

(29) West Kentucky WMA.

(a) Archery hunts, any deer.

1. October 1 through January 15 in unposted zones.

2. December 12 through January 15 in designated posted zones.

3. Persons shall not archery hunt.

a. For eight (8) consecutive days beginning the Saturday following Thanksgiving.

b. The day before and during quota hunts.

(b) Quota hunts, any deer.

1. Two (2) consecutive days beginning the third Saturday in November.

2. Two (2) consecutive days beginning the second Saturday in December.

(c) Youth hunt, any deer: two (2) consecutive days beginning the first Saturday in November.

(d) Crossbow hunt, any deer: the day following the quota youth hunt for fourteen (14) consecutive days.

(e) Gun hunters shall not use rifles or handguns.

(f) Persons shall not carry firearms in posted zones.

(g) A person shall not take more than two (2) deer from this WMA.

1. One (1) deer shall be antlerless and shall be tagged with the statewide tag.

2. The other deer may be antlered or antlerless and shall be tagged with a WMA tag issued on the area.

3. One (1) deer may be taken by gun; it shall be tagged with the WMA tag.

4. The department shall not issue more than one (1) WMA tag to an individual.

(h) Deer hunters shall check in and check out.

(30) Westvaco public hunting areas. Statewide deer requirements apply; in addition, persons hunting on Westvaco property:

(a) Shall possess a Westvaco Hunting Permit.

(b) Shall not hunt from or place a tree stand within fifty (50) yards of the property line.

(31) White City WMA.

(a) Archery hunt, any deer: October 1 through December 31.

(b) Quota hunts, any deer.

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days immediately following the first quota hunt.

(32) Yatesville WMA. Statewide deer requirements apply except that:

(a) Deer hunters shall check in and check out.

(b) Persons shall not take antlerless deer during the last two (2) days of the modern gun deer season.

(33) Yellowbank WMA.

(a) Quota youth hunt, antlered or antlerless deer as specified on permit: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunts.

1. Antlered deer: October 1 through 14.

2. Any deer: October 15 through December 31.

(c) Deer hunters shall check in and check out.

(34) Zilpo Campground.

(a) Quota hunt, any deer: two (2) consecutive days beginning the second Saturday in December for persons with a disability license issued under the provisions of KRS 150.170(7) or (8).

(b) Persons drawn for the quota hunt shall show their disability license when checking in.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 3, 1995

FILED WITH LRC: March 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 28, 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 April 23, 1995 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Division of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Contact Person: Don Walker

(1) Type and number of entities affected: An estimated 212,000 hunters will participate in white-tailed deer seasons provided for 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 continues deer seasons in

effect on wildlife management areas for many years and should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the 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: This administrative regulation will impose no new reporting or paperwork requirements. As in past years, deer hunters will be required to check in and out at an official check station on most wildlife management areas, as well as submit applications for quota hunts.

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 will not cause the agency to incur additional costs or realize any additional savings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: The department must collect, tabulate and analyze data from deer check stations. This is a continuing requirement which will impose no additional reporting or paperwork requirements on the agency.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will be positively affected by this activity, and by the purchase of required licenses and permits.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sale of hunting licenses and deer permits.

(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: This administrative regulation applies to all geographical areas of the Commonwealth.

(b) Kentucky: Deer hunters expend money for equipment, transportation, food and lodging. These expenditures average approximately $25 per hunter, for a positive direct economic impact of $5,300,000.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closing the season. This alternative was rejected because white-tailed deer are a renewable natural resource and their numbers are at levels which can sustain regulated harvest by hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated hunting controls deer populations and prevents the environmental damage to the landscape caused by deer overpopulation. Deer hunting provides outdoor recreation for over 200,000 Kentuckians annually.

(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, deer populations grow unchecked, creating increasing levels of deer-vehicle collisions, crop depredations, and destruction of habitat.

(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: This regulation contains the substance of portions of 301 KAR 2:171. Substantive changes are listed in the "Necessity and Function" section of this administrative regulation. 301 KAR 2:171 is being repealed and replaced by three regulations to better meet the drafting, formatting and language requirements of KRS Chapter 13A.

(11) TIERING: Is tiering applied? Tiering is applied in this administrative regulation to the extent that each wildlife management area was examined for hunter density, deer population levels and other biological or social factors before applying specific season dates or other hunter requirements on these areas.

LABOR CABINET
Department of Workers' Claims

803 KAR 25:010. Procedure for adjustments of claims.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.260

NECESSITY AND FUNCTION: KRS 342.260 requires the commissioner to promulgate such rules and administrative regulations as are necessary to carry on the work of the department, the administrative law judges, the Workers' Compensation Board and to implement the provisions of KRS Chapter 342. The function of this administrative regulation is to regulate practice and procedure before the administrative law judges and the Workers' Compensation Board. This administrative regulation covers the subject matter of 803 KAR 25:011, which is repealed.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" means the Workers' Compensation Board created pursuant to KRS 342.215(1).

(3) "Commissioner" means the commissioner of the Department of Workers' Claims appointed pursuant to KRS 342.228.

(4) "Date of filing" means the date a pleading, motion, or other document is received by the commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except final orders and opinions of administrative law judges and the Board, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion.

(5) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.

(6) "An employer who has not secured payment of compensation" means any employer who employs covered employees as defined by KRS 342.640 but has not complied with KRS 342.340.

(7) "Special defenses" means defenses that shall be raised by "special answer" filed within twenty (20) days of the date of the scheduling order, or within ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence. Special defenses are waived if not timely raised. Special defenses which shall be pleaded are defenses arising under:

(a) KRS 342.035(3) unreasonable failure to follow medical advice;

(b) KRS 342.165 failure to comply with safety regulation;

(c) KRS 342.316(6) and 342.335 false statement on employment application;

(d) KRS 342.395 voluntary rejection of Act;

(e) KRS 342.610(3) voluntary intoxication and self-infliction of injury;

(f) KRS 342.710(5) refusal to accept rehabilitation services; and

(g) Running of periods of limitations or repose.

Section 2. Parties. (1) The party making the original application for adjustment of claim pursuant to KRS 342.270 shall be designated as "plaintiff" and adverse parties "defendants".

(2) All persons shall be joined as plaintiffs in whom any right to

any relief pursuant to KRS Chapter 342, arising out of the same transaction or occurrence, is alleged to exist. If any person should refuse to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law judge may order, upon a proper showing, that a party be joined or dismissed.

(b) The special fund shall be joined as a defendant in accord with the provisions of KRS 342.120 and 342.1202.

(c) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 3. Pleadings. (1) An application for adjustment of claim and all other pleadings shall be typewritten, and be submitted upon the printed forms prescribed by the commissioner in this administrative regulation, where applicable.

(2) An application for adjustment of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail. Incomplete applications shall not be filed, and shall be returned to the applicant. If the application is resubmitted in proper form within twenty (20) days of the date it was returned, the filing shall relate back to the date the application was first received by the commissioner. Otherwise, the date of second receipt shall be the filing date.

(3) All pleadings shall include a certification of service upon other parties in conformity with Rule 5.02, Kentucky Rules of Civil Procedure. After the application has been assigned to an administrative law judge, subsequent pleadings shall include within the style of the claim, and immediately before the claim number, "Before (name), ALJ." Upon consolidated claims, the most recent claim number shall be set forth first. Notices of deposition and physical examination are to be served upon the parties only and shall not be filed with the commissioner.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.

(2) The movant may file a short memorandum supporting the motion, and opposing parties may file short memoranda in reply. Further memoranda (e.g., reply to response) shall not be filed.

(3) Every motion and response, the grounds of which depend upon the existence of facts not appearing in evidence, shall be supported by affidavits demonstrating such facts.

(4) Every motion, the grounds of which depend upon the existence of facts which movant contends are shown in the evidence or are admitted by the pleadings, shall make reference to the point in the record where that evidence or admission is found.

(5) A motion, other than to reopen pursuant to KRS 342.125 and for interlocutory relief pursuant to Section 10 of this administrative regulation, may be considered ten (10) days after the date of filing. A response will be considered if filed prior to the tenth day after the filing of the motion.

(6)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by plaintiff;

2. An affidavit evidencing the grounds set forth in KRS 342.125;

3. A current medical report showing a change in condition and/or occupational disability;

4. A copy of the opinion and award or settlement sought to be reopened.

(b) A motion to reopen shall not be considered until twenty-five (25) days after the date of filing. Responses may be served within twenty (20) days of filing the motion to reopen.

(7) Motion for allowance of an attorney's fee shall be made within thirty (30) days following finality of the award or settlement upon which the fee request is based and be served upon the adverse parties and the attorney's client in conformity with Section 3(3) of this administrative regulation. The motion shall set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320. The motion shall be accompanied by affidavit of counsel detailing the services rendered and the time expended, Form 109 as required by KRS 342.320(3), and a copy of the contingency fee contract.

Section 5. (1) Application for adjustment of an Injury Claim Form 101 shall be filed with the following completed documents:

(a) Work history (Form 104);

(b) Medical history (Form 105);

(c) Medical release (Form 106); and

(d) One (1) medical report describing the injury which is the basis of the claim; and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of the legible handwritten notes of a treating physician. Medical reports filed with an application shall not be considered as evidence unless notice is filed pursuant to Section 14 of this administrative regulation.

(2) Defendants may file answers to the application within twenty (20) days after the date of service. If none are filed, all allegations of the application will be deemed denied. If, however, an answer other than a special answer under subsection (3) of this section is filed, only those allegations which are specifically denied shall be deemed disputed.

(3) Proof-taking and discovery shall proceed pursuant to the scheduling order issued by the commissioner, generally providing sixty (60) days for all parties; thirty (30) days thereafter for defendants only; and, plaintiffs fifteen (15) days thereafter for rebuttal only.

(4) During the pendency of a claim any party obtaining a report of a medical examination or a vocational evaluation shall serve a copy upon all other parties within thirty (30) days of receipt.

(5) Within thirty (30) days after an application has been filed, the commissioner shall assign the claim to an administrative law judge and schedule the time and place of the prehearing conference. The conference shall be scheduled no earlier than fifteen (15) days after the last day of discovery and proof-time.

Section 6. Application for Adjustment of an Occupational Disease Claim. Form 102 shall be filed with the following completed attachments:

(a) Those items set forth in Section 5(1)(a) through (c) and, additionally;

(b) Two (2) written medical reports supporting the claim in compliance with KRS 342.316(2)(b)1. These reports shall not be considered evidence unless notice is filed pursuant to Section 14 of this administrative regulation.

(2) Upon service of Form 102 and thereafter for sixty (60) days, defendants may depose witnesses and cause the plaintiff to be examined by medical experts. Reports shall be exchanged pursuant to Section 5(5) of this administrative regulation.

(3) Within sixty (60) days after the date of service of Form 102 each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3, or eligibility of the plaintiff for benefits shall be deemed conceded. If a notice of election to resist an application has been timely filed, the commissioner shall assign the case to an administrative law judge and issue a scheduling order as prescribed in Section 5(6) of this administrative regulation.

(4) Special defenses as described in Section 5(3) of this administrative regulation shall be pleaded within sixty (60) days after the date of service of Form 102 or within ten (10) days of discovery if discovery could not have been had earlier in the exercise of due diligence.

(5) If a medical report filed with the Form 102 application contains findings of separate physicians relative to x-ray examination, spirometric testing or clinical examination, it shall be considered a single medical report.

Section 7. Application for Retraining Incentive Benefits. (1) Form 103 shall be filed with the completed documents required by Section 5(1)(a) through (c) of this administrative regulation and additionally two (2) x-ray reports complying with KRS 342.316.

(2) Discovery and processing of retraining incentive benefit claims shall proceed as set forth in Section 5(2) through (4) of this administrative regulation.

Section 8. Prehearing Conference. (1) The prehearing conference is an informal procedure. No transcript or recordings of the proceedings shall be made. At the conference parties shall dispose of controversies when possible and define disputed issues. Witness lists, copies of known exhibits, and proposed stipulations shall be exchanged fifteen (15) days before the conference. Lists shall state the name of each proposed witness and summarize the testimony of the witness. Except for good cause shown, persons who were not listed as witnesses shall not present testimony. For medical witnesses, the summary shall include a diagnosis, the physical findings, the results of diagnostic studies supporting the diagnosis, any assessment of functional impairment and a discussion of any restrictions of work activities.

(2) At the prehearing conference, the administrative law judge may limit witnesses and exhibits to be presented at hearing.

(3) The plaintiff and counsel and all other parties, either personally or through counsel, shall attend the prehearing conference. Representatives shall hold authority to resolve issues and make offers of settlement. Under compelling circumstances, the administrative law judge may waive the requirement that the plaintiff personally attend.

(4) Rescheduling or postponement of a prehearing conference shall be sought by motion filed at least fifteen (15) days prior to the scheduled conference.

(5) At the conclusion of the conference, the administrative law judge shall prepare a summary of all contested issues and stipulated matters which shall be signed by parties or counsel. Only the listed contested issues shall be the subject of further proceedings.

(6) Upon motion, the administrative law judge may order additional discovery or proof to be taken between the prehearing conference and the hearing.

(7) The hearing shall be scheduled within sixty (60) days of the prehearing conference.

(8) If the parties agree upon a settlement, a settlement agreement (Form 110) shall be submitted for approval of the administrative law judge and acted upon within ten (10) days.

Section 9. Ombudsman Program. (1) The commissioner may direct on a pilot basis that a mediation conference be held before an ombudsman pursuant to KRS 342.329. Such conferences may be held in advance of, or by agreement of all parties in lieu of, the prehearing conference described above. The timing of discovery and proof may be varied upon "pilot claims" from those time frames otherwise prescribed in these rules. Scheduling orders upon "pilot claims" shall clearly set forth the purpose, time and place of proceedings before the ombudsman and subsequent proceedings before an administrative law judge.

(2) All parties shall promptly comply with information requests from an ombudsman and appear either personally or by counsel at conferences before the ombudsman.

Section 10. Interlocutory Relief. (1) During the pendency of a claim, a party may seek three (3) forms of interlocutory relief:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(b);

(b) Medical benefits pursuant to KRS 342.020; or

(c) Rehabilitation services pursuant to KRS 342.710.

(2) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the issuance of the scheduling order, or within twenty (20) days of the filing of any subsequent motion.

(3) A request for interlocutory relief becomes ripe for decision twenty (20) days after the issuance of the scheduling order where relief has been requested in the Form 101 application. Where request for interlocutory relief has been made by motion, the request becomes ripe twenty (20) days after service of the motion.

(4) Entitlement to interlocutory relief may be shown by means of affidavit, deposition, or other evidence of record demonstrating that movant is eligible under KRS Chapter 342 and will suffer irreparable injury, loss, or damage pending a final decision on the application. Rehabilitation services may be ordered while the claim is pending upon a showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(5) When interlocutory relief is awarded in the form of income benefits the application shall be placed in abeyance, unless a party shows irreparable harm thereby. The administrative law judge may require periodic report as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the administrative law judge's own motion, interlocutory relief may be terminated and the claim removed from abeyance.

(6) Interlocutory relief may not be granted upon a claim for retraining incentive benefits.

(7) An attorney's fee in the amounts authorized by KRS 342.320 but in no event to exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

Section 11. Hearings. (1) At hearing, the parties shall present proof concerning contested issues. If plaintiff fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the claim may be taken under submission immediately, or briefs may be ordered. Briefs shall not exceed fifteen (15) pages in length. Reply briefs are limited to five (5) pages. Permission to increase the length of a brief may be sought by motion. The administrative law judge may announce his decision at the conclusion of the hearing or defer decision until rendition of a written opinion. In any event, a decision shall be rendered no later than sixty (60) days following hearing. The time for filing a petition for reconsideration or notice of appeal shall not begin to run until the "date of filing" of the written opinion as set forth in Section 1(4) of this administrative regulation.

Section 12. Petitions for Reconsideration. (1) Within fourteen (14) days of the filing of the order, award, or decision as set forth in Section 1(4) of this administrative regulation, a party may petition for reconsideration clearly stating the patent error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 13. Appeals to the Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a final order of an administrative law judge as set forth in Section 1(4) of this administrative regulation any party aggrieved by the order may appeal to the board. As used in this section "final order" shall be determined in accordance with Civil Rule 54.02(1) and (2).

(2) An appeal shall be initiated by the filing of a notice of appeal denoting the appealing party as the "petitioner" and all parties against whom the appeal is taken as "respondents." The administrative law judge who rendered the order appealed from shall be named as a "respondent." If appropriate, the Director of the Special Fund shall be named as a "respondent" pursuant to KRS 342.316(10)(b). The workers' compensation claim number shall be set forth in all pleadings before the board.

(3) Any party other than the petitioner may file a cross-appeal through notice of cross-appeal filed within ten (10) days after notice of appeal is served. The cross-appeal shall designate the parties as appropriate (i.e., petitioner-cross-respondent).

(4) Notice of appeal, cross-appeal and all other pleadings before the board shall be served as provided in Section 3(3) of this administrative regulation. The commissioner shall issue an acknowledgement to all parties of the filing of a direct appeal only.

(5) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.285(2), the board shall immediately schedule a hearing on that issue. All subsequent appeal time in the case shall be calculated from the date the transcript of hearing is filed instead of the date of filing of the notice of appeal.

(6) Petitioner's brief shall be filed within thirty (30) days of filing of the notice of appeal. The organization and contents of the petitioner's brief shall be as provided in CR 76.12(4)(c) except no index shall be required and the appendix shall only include copies of the decision appealed, petitions for reconsideration, rulings on petitions, and cases cited from federal courts and foreign jurisdictions.

(7) Respondent's brief shall be filed within thirty (30) days of the date petitioner's brief was served. Organization and contents shall be as provided in CR 76.12(4)(d) except no index shall be required and the appendix shall only include copies of cases cited from federal courts and foreign jurisdictions. If the respondent is also a cross-petitioner, a combined brief shall address issues raised by the cross-appeal.

(8) Failure of a party to timely file a brief is ground for imposition of one (1) or more of the following penalties:

(a) Affirmation or reversal of the final order;

(b) Striking of an untimely brief; or

(c) A fine on counsel of not more than $500.

(9) Petitioner's reply brief may be served within fifteen (15) days after the date on which the last respondent's brief was served or due, whichever is earlier. The organization and contents of the petitioner's reply brief shall be as provided in CR 76.12(4)(e), except that no appendix, index, or contents page shall be required. If the petitioner is also a cross-respondent, a combined brief shall address issues raised by the cross-petitioner's brief.

(10) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within fifteen (15) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier. The organization and contents of the cross-petitioner's reply brief shall be as provided in CR 76.12(4)(e) except that no appendix, index, or contents page shall be required.

(11) Petitioner's brief and the respondent's brief shall be limited to fifteen (15) pages each, reply briefs to five (5) pages, and combined briefs to twenty (20) pages. Permission to increase the length of a brief shall be sought by motion. Requirements of this administrative regulation with respect to a "statement of points and authorities" shall not apply to any brief of five (5) pages or less. All pleadings shall conform to the requirements set forth in CR 7.02(4). Pleadings shall be filed without covers, but the style of the case, including the claim number and title of the pleading, shall appear on the first page of the pleading.

(12) The board shall enter its decision affirming, modifying, or setting aside the order appealed from, or, in its discretion may remand the claim to the administrative law judge for further proceedings. Motions for reconsideration are not permitted.

(13) The decision of the board may be appealed to the Kentucky Court of Appeals as provided in CR 76.25.

(14) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of any motion; and, any intermediate order may be issued on the signature of any board member.

Section 14. Medical Reports. (1) A party may introduce direct testimony from a physician through medical report, subject to the limitations of KRS 342.033, Section 5(1)(d) of this administrative regulation, and the scheduling order issued pursuant to Section 5(6) of this administrative regulation.

(2) Medical reports shall be submitted on Form 107 (injury) or Form 108 (occupational disease) as appropriate, except that an administrative law judge may permit the introduction of other reports.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or the submitting attorney verifying the authenticity of the report.

(4) Medical reports shall include within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician assigned a medical qualifications index number, reference may be made to the physician's index number in lieu of attaching qualifications.

(5) Any narrative in a medical report on a Form 107 or Form 108 shall be typewritten. Other portions of a report, including spirometric tracings, shall be clearly legible.

(6) Upon notice a party may file the testimony of two (2) physicians, either by deposition or medical report, which shall be admitted into evidence without further order if there has been no objection filed. Objection to the filing of a medical report shall be filed within ten (10) days of the notice or the motion for admission. Grounds for the objection shall be stated with particularity. The administrative law judge shall rule on the matter within fifteen (15) days of the filing of a motion or objection, whichever is last filed.

(7) If a medical report is admitted as direct testimony, any adverse party may depose the reporting physician as if on cross-examination at its expense.

Section 15. Extensions of Proof Time. (1) Extensions of time for producing evidence shall not be granted except upon showing of circumstances preventing the party from timely introducing proof. Motion for extension of time must be filed no later than five (5) days before the deadline sought to be extended. The motion or supporting affidavits must set forth:

(a) The efforts to produce the evidence in a timely manner;

(b) Facts which prevented timely production; and

(c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(2) In the absence of compelling circumstances, only one (1) thirty (30) day extension shall be granted to each side for completion of discovery or proof by deposition.

(3) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs if the extension is granted to a plaintiff and to all defendants should an extension be granted to a defendant, and shall extend the time of the adverse party automatically except when the extension is for rebuttal proof.

Section 16. Stipulation of Facts and Judicial Notice. (1) Refusal to stipulate facts which are not genuinely in issue may warrant imposition of sanctions. Assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation provided that the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery

that the stipulation was erroneous. Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. Coverage - Insured Status. (1) The administrative law judge shall take judicial notice that the Act is mandatory except for those employers exempted by KRS 342.650 and those employees rejecting the Act pursuant to KRS 342.395 and 342.400.

(2) Upon the filing of a claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Should an employer not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 18. Evidence - Rules Applicable. (1) The rules of evidence prescribed by the Supreme Court apply in all proceedings before the administrative law judges, except as varied by specific statute and these administrative regulations.

(2) A nontreating physician is permitted to use the history and the subjective symptomatology related to him by the patient in arriving at and formulating opinions.

Section 19. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of CR 26 to 37, inclusive, except for CR 27, 33, and 36 which are not adopted and do not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of telephonic deposition must relate the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) That all opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party must contribute proportionate costs of the conference call.

(3) The commissioner shall establish a medical qualifications index. An index number will be assigned to a physician upon the filing of the physician's qualifications. Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications. Qualifications may be revised or updated by submitting revisions to the commissioner. Nothing in this rule shall preclude any party from inquiring further into the qualifications of a physician.

Section 20. Appearances. (1) Only attorneys duly licensed in Kentucky may appear or practice before the administrative law judges or the board, except that any natural person who is a party to any proceeding may represent himself.

(2) Any party who elects to represent himself without the aid of counsel shall be held accountable in the same manner, and to the same degree, as an attorney.

Section 21. Withdrawal of Records. (1) No portion of any original record of the department shall be withdrawn except on order of the commissioner, an administrative law judge, or a member of the board.

(2) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final. A party filing an exhibit may make arrangements to claim an exhibit prior to that time. If an unclaimed exhibit has no money value, it will be destroyed; if an unclaimed exhibit has a value of more than $100, it shall be sold as surplus property; if an unclaimed exhibit has a value of less than $100, it shall be donated to an appropriate state agency; and, if an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 22. Routine Records Admission. Any party may file in the record of a case any properly authenticated hospital, armed forces or Social Security records. However, opinions of physicians which may be expressed in such records shall not be considered by the administrative law judge in violation of the rule relative to the number of physician's opinions set forth in KRS 342.033.

Section 23. Sanctions. Pursuant to KRS 342.310, an administrative law judge and the board may assess costs upon determination that proceedings have been brought, prosecuted or defended without reasonable grounds. Whenever justice will be served penalties shall be assessed against an offending attorney rather than against the client the attorney represents. Where a party is a governmental agency and attorney's fees are assessed, such fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of like services had a private attorney been retained. Failure of a party to timely file any pleading required by these administrative regulations may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

Section 24. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the uninsured employers' fund of compensation shall be made only after the claimant, or any other party in interest, has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The claimant may by motion and affidavit demonstrating compliance with the requirement of subsection (1) of this section, request an administrative law judge to order payment from the uninsured employers' fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for payment thereof, who has failed to secure payment of compensation as provided for by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the special fund.

(4) Compliance with subsection (1) of this section shall not be required and the compensation awarded shall be deemed uncollectible from an uninsured employer upon a showing that the employer has filed a petition under either Chapter 7 or Chapter 11 of the Federal Bankruptcy Code.

Section 25. Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) Predicted normal values for FVC and FEV1 shall be determined in accordance with the latest edition of the American Medical Association Guideline. Age is to be determined as of the date of the evaluation. Height is to be measured while the claimant stands in his stocking feet and shall be rounded to the nearest centimeter.

(2) Formulas established by the Guidelines for predicted normal FVC and FEV1, shall be applied and predicted values computed. For example, the formula applicable to men for FVC and FEV1 as set forth in the Fourth Edition of the Guides are:

FVC in liters equals 0.06 times H - 0.0244 times A minus 2.19.

FEV1 in liters equals 0.0414 times H - 0.0244 times A minus 2.19.

H is height in centimeters.

A is age in years.

(3) The plaintiff's height, as measured in his stocking feet, shall

be rounded out to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

Section 26. Forms. (1) Forms 101, 102, 103, 104, 105, 106, 107-I, 107-P, 108, 109, 110-I, 110-O and 110-R (rev. 3/15/95) are hereby adopted by reference.

(2) Incorporation by reference. One (1) copy of Forms 101, 102, 103, 104, 105, 106, 107, 108, 109, 110-I, 110-O and 110-R (rev. 3/15/95) is filed herewith and incorporated by reference.

(3) Obtaining forms.

(a) Forms are available to the public at main and branch offices of the Department of Workers' Claims:

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

4. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

Section 27. 803 KAR 25:011, Procedure for Adjustments of Claims, is hereby repealed.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: March 15, 1995

FILED WITH LRC: March 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 1:30 p.m., on April 24, 1995. Individuals interested in attending this hearing shall notify this agency in writing by April 19, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Valerie L. Salven, General Counsel, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie L. Salven

(1) Type and number of entities affected: This administrative regulation will affect the parties to contested workers' compensation claims. Employers, employees, insurers, the Special Fund, the Uninsured Employers' Fund, and attorneys representing these persons or entities will be affected. During the fiscal year ended June 30, 1994, there were 13,131 contested workers' compensation claims or reopened cases filed with the Department of Workers' Claims.

(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 impact on cost of living and employment is anticipated.

(b) Cost of doing business in geographical area in which the administrative regulation will be implemented to the extent available from public comments received. To the extent that this proposed administrative regulation clarifies and simplifies the practice of contested workers' compensation claims, it should have a favorable effect on the cost of doing business.

(c) Compliance, reporting, paperwork requirements.

1. First year following implementation. The paperwork requirements under this proposed regulation are essentially the same as under the regulation it will replace, 803 KAR 25:011. The forms utilized in the practice of workers' compensation cases have been updated, but otherwise the compliance, reporting, and paperwork requirements remain essentially the same.

2. Second and subsequent years. Same as first year.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional costs will be incurred for the initial printing of new forms. This cost is not expected to exceed $10,000.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Voluntary mediation conferences before ombudsmen may decrease costs of litigation before ALJs.

(b) Reporting and paperwork requirements: Little or no change in reporting and paperwork requirements under new regulation from 803 KAR 25:011.

(3) Assessment of anticipated effect on state and local revenues: None; no effect.

(4) Source of revenue: The Kentucky Workers' Compensation Funding Commission pursuant to KRS 342.122.

(5) The economic impact on:

(a) Geographic area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky, and to the extent that this proposed regulation results in a simpler, quicker method of handling contested workers' compensation claims, it should have a favorable economic impact.

(b) Kentucky: See response to (a) above.

(6) Assessment of alternative methods: Reasons why alternatives were rejected: This administrative regulation was deemed to be the most reasonable and equitable means of simplifying hearings and appeals in workers' compensation cases.

(8) Assessment of expected benefits:

(a) Effect from public health and environment: No effect.

(b) Detrimental effect if not implemented: No effect.

(c) Explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation, or government policy which conflicts, overlaps, etc.: No conflict known. Reference is made within the regulation to some statutes that must be consulted for definitions or additional requirements.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) Is in conflict: Not applicable.

(10) Additional information or comments: None

(11) Tiering: Is tiering applied? No. Tiering is not appropriate since multiple classes are not involved. This proposed regulation applies equally to all litigants before administrative law judges and the Workers' Compensation Board.

LABOR CABINET
Department of Workers' Claims

803 KAR 25:021. Individual self-insurers.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY KRS 342.260, 342.340, 342.345

NECESSITY AND FUNCTION: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to prepare administrative regulations considered necessary to carry on the work of the Department of Workers' Claims and to carry out the provisions of KRS Chapter 342. This administrative regulation establishes minimum requirements for individual employers who self-insure their workers' compensation liability.

Section 1. Definitions. (1) "Cessation liability security" means the security covering liability associated with anticipated claims occurring upon cessation of all operations of an individual self-insurer in the state.

(2) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(3) "Employer" means any employer subject to the Kentucky Workers' Compensation Act.

(4) "Guarantor" means a parent company whose financial statement is used by the applicant to obtain self-insurance status.

(5) "Service organization" means a person or entity which provides services including, but not limited to, claims adjustment, safety engineering, computation of statistics, preparation of loss or tax reports, purchase of excess insurance, and preparation of any other self-insurance reports as may be required by law.

(6) "Specific excess insurance" means an insurance policy which insures the amount of any claim from any one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

Section 2. Certification. No person, party, or employer shall act as or hold itself out as an approved individual self-insurer unless the employer has been approved by the commissioner. All certifications issued by the commissioner shall remain in effect on an annual basis, unless otherwise revoked or suspended pursuant to Section 11 of this administrative regulation.

Section 3. Application. (1) Every initial application for individual self-insurance shall be submitted to the commissioner on form SI-02 and shall include:

(a) The employers' name, location of its principal office, date of organization, identification of its immediate parent organization, if any, and its ultimate parent, the percentage shareholder ownership of its immediate parent organization, identification of a fiscal year and federal identification number. Any subsidiaries or contractors which are to be covered under the application, or who are already self-insured are to be identified and their relationship to the applicant described fully;

(b) A statement of the principal business activities engaged in Kentucky by the applicant including a list of site locations and number of employees at each site;

(c) The proposed specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or binder must be received five (5) days prior to certification of self-insurance;

(d) Copies of the proposed surety deposit or letter of credit instruments required by Section 5 of this administrative regulation. The surety must be received by the commissioner prior to certification to self-insure;

(e) A schedule of projected workers' compensation claim liabilities and annual payment requirements for the three (3) years preceding the application;

(f) An estimate of annual payroll and a statement of loss runs on form SI-08;

(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

(i) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent corporation on form SI-01;

(j) Copies of Kentucky adjusting licenses of the applicant's employees who are to be responsible for administration and adjustment of Kentucky workers' compensation claims, and a statement setting forth the qualifications of any service organization;

(2) An applicant may perform, if qualified, any and all of the functions of a service organization or may contract with a service organization to perform these functions. An applicant's or service organization's employees and agents must be duly licensed to perform those functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than thirty (30) days prior to the proposed inception date of self-insurance. Upon receipt of an application, the commissioner shall approve or reject status as a self-insurer within thirty (30) days.

Section 4. Approval. (1) In determining whether an applicant is eligible for self-insurance and in establishing the amount of surety required, the commissioner shall consider but is not limited to the following factors:

(a) The financial strength of the applicant or guarantor;

(b) The excess insurance policy and self-insured retention;

(c) The experience of the service organization;

(d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;

(e) Profit and loss history;

(f) Workers' compensation loss history of the applicant;

(g) The prospect of increased losses by the employer's cessation of operations in Kentucky;

(h) The number of employees and degree of hazard to which employees are exposed;

(i) Safety programs; and

(j) Use of an approved managed care plan for treatment of injured workers.

(2) In order to be certified as an individual self-insurer, the applicant or guarantor must have a net worth of at least $5,000,000.

(3) Approval shall be granted only if the commissioner finds the applicant has complied with all sections of this administrative regulation and is satisfied that the persons responsible for the operations of the applicant are financially stable, competent, and experienced in the administration of workers' compensation self-insurance.

Section 5. Specific Excess Insurance and Surety Requirements. (1) Specific excess insurance shall be purchased with a limit of at least $10,000,000 per occurrence.

(2) To be eligible to write specific excess insurance for individual self-insurers in Kentucky, a casualty insurance company on its latest financial statement shall reflect a minimum policy holder surplus of not less than $15,000,000. The casualty insurance company shall have demonstrated excellent overall performance and a strong ability to meet their obligations to policy holders over an extended period of time.

(3) Each employer who qualifies for a self-insurance certificate shall, prior to the certificate being issued, provide security in the form of a continuous surety bond on Form SI-03 or by irrevocable letter of credit on form SI-04, in an amount specified by the commissioner, but not less than $500,000. In fixing the amount of security the commissioner shall consider all relevant factors including liability associated with anticipated claims occurring upon the cessation of all operations by the individual self-insurer in the state of Kentucky. The commissioner may direct that separate cessation liability be deposited pursuant to Section 8 of this administrative regulation. The amount shall be reviewed and recalculated at the same times as the primary security.

(4) In lieu of a bond with security or letter of credit, the employer deposit cash or securities through submission of SI-05 in an amount specified by the commissioner, but not less than $500,000. Any securities which are deposited must be eligible under the laws of Kentucky for investment by insurance companies.

Section 6. Coverage of Subsidiary or Related Corporations. A

corporation having wholly owned subsidiaries may submit one (1) joint application to the commissioner, provided the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and its subsidiaries. A joint application shall be accompanied by a certificate of the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all the workers' compensation claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty (30) written notice to the commissioner.

Section 7. Examination and Review of Filings. A certified public accountant duly qualified and licensed under the laws of Kentucky may be employed by the Department of Workers' Claims for the purpose of reviewing and analyzing the filings of individual self-insurers, and applicants for self-insurance, required under this administrative regulation. The duties of the certified public accountant shall include:

(1) Analysis of each application for certification as an individual self-insurer, including financial statements and workers' compensation claims experience. The certified public accountant shall provide the commissioner with a written summary of the analysis together with a recommendation that the application be granted, denied, or resubmitted, as appropriate;

(2) Periodic examination of the workers' compensation claims, reports of accidents, and related information provided by each individual self-insurer. If the certified public accountant concludes that the workers compensation liability of the individual self-insurance is not adequately secured, appropriate remedial action or revocation of the certificate shall be recommended; and

(3) Review of the filings of each employer holding a self-insurance certificate to determine whether the filings are complete and timely. If any deficiency is found it shall be reported in writing to the commissioner.

Section 8. Cessation Liability Security. (1) Cessation liability security is distinct from the primary security required in Section 5 of this administrative regulation.

(2) Cessation liability security will be called for payment of claims only after all other security posted by the individual self-insurer has been exhausted.

(3) Cessation liability security may be issued in one (1) or more of the following forms:

(a) A surety bond or insurance policy issued by a casualty insurance company qualified pursuant to Section 5 of this administrative regulation;

(b) An escrow account; or

(c) An irrevocable letter of credit.

(4) In the event that an individual self-insurer secures its workers' compensation obligation by obtaining standard workers' compensation insurance or by joining an approved self-insurance group, the commissioner may release the cessation liability security, effective as of the date of the employers acquiring other coverage.

Section 9. Annual filings. (1) Sixty (60) days prior to the end of each self-insurance year, the following information and reports shall be filed with the commissioner:

(a) A certified audited financial statement of the individual self-insured and any guarantor;

(b) Total payroll for the prior year, the projected payroll for the next year by quarter, and other information reasonably requested by the commissioner, including relevant claim data.

(2) At least ten (10) days prior to the end of each self-insurance year, the individual self-insurer shall file proof of specific excess insurance with the commissioner;

(3) If the annual required filings are not timely made, the self-insurance certificate shall not be renewed.

Section 10. Change in Ownership; Subsidiaries; Mergers and Acquisitions. (1) In the event of a change in majority ownership, the individual self-insurer shall notify the commissioner within thirty (30) days of that change. A new application to self-insure shall be filed upon a change in ownership.

(2) If any employer is added, merged, acquired, or otherwise brought within the self-insurance coverage, or if contractors or subcontractors are brought within the coverage, the individual self-insured shall notify the commissioner within thirty (30) days and the adequacy of the surety bond will be reviewed and may be increased accordingly.

(3) If the payroll of the individual self-insurer during any quarter exceeds 125 percent of the projection previously filed, the individual self-insurer shall immediately report that change to the commissioner and the surety bond requirements may be reviewed and the bond may be increased accordingly.

Section 11. Revocation or Modification of Certification. (1) Should the commissioner receive information furnishing reasonable grounds to believe that the individual self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under the Workers' Compensation Act or this administrative regulation, a show cause order shall be issued to the individual self-insurer detailing the purported deficiency and setting a time and place for hearing.

(2) The commissioner may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The individual self-insurer is operating in contravention from its submitted application or is in material violation of this administrative regulation;

(b) The individual self-insurer or parental guarantor is no longer of such financial stability as to assure its ability be to meet its obligations for the payment of workers' compensation benefits;

(c) In the event the commissioner suspends or revokes any individual self-insurer's certification, the commissioner may appoint one (1) or more individuals or professional corporation as a receiver to conduct the ongoing affairs of the individual self-insured.

(3) Any person aggrieved by a failure of the individual self-insured employer to observe those requirements of subsection (2) of this section may request a hearing by filing a written request with the commissioner setting forth the basis of the purported failure. Upon receipt of a request the commissioner shall issue a notice of hearing to be held no sooner than ten (10) days and no later than thirty days (30) after such notice.

(4) Self-insurance certification may be revoked by the commissioner after a hearing in compliance with the following procedures:

(a) The commissioner may issue a show cause order setting forth the grounds of revocation and setting a hearing in not less than ten (10) days.

(b) The commissioner, during the pendency of any appeal or request for hearing, may utilize the surety deposit provided by the individual self-insurer to make any payments of workers' compensation benefits which are currently due for which payments are not being made by the individual self-insurer or its service organization. The application for hearing shall briefly state the grounds on which the individual self-insurer is relying and the basis for relief to be sought at the hearing. The hearing shall be held within thirty (30) days after the filing of the application for hearing, unless postponed by mutual consent. The commissioner shall give written notice of the hearing not less than ten (10) days in advance, setting the date, time and place for the hearing, and specify the matters to be considered.

(c) Any party to the hearing shall have the right to appear in person or by counsel and to be present during the giving of all evidence and to have a reasonable opportunity to inspect all documentary and other evidence, and to examine and cross-examine witnesses, to present evidence in support of his interest and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence on his behalf. Testimony may

be taken orally or by deposition, and the parties shall have right of inducing evidence by interrogatories or by deposition. Formal rules of pleading or evidence need not be reserved in any hearing as long as procedural due process is afforded all parties. The commissioner shall cause a full stenographic record of the proceedings to be made.

(d) No later than thirty (30) days after the termination of hearing, the commissioner shall issue a written order addressing all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain a concise findings of fact and conclusions of law. The commissioner's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.

Section 12. Forms. (1) Forms, SI-01, SI-02, SI-03, SI-04, SI-05 and SI-08, (revised 3/15/95), are hereby adopted by reference.

(2) One (1) copy of Forms SI-01, SI-02, SI-03, SI-04, SI-05, and SI-08, (revised 3/15/95), is filed herewith, and incorporated by reference.

(3) Obtaining forms.

(a) Forms are available to the public at main and branch offices of the Department of Workers' Claims.

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

4. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive for this purpose.

Section 13. KAR 25:020, Self-Insurers, is hereby repealed.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: March 15, 1995

FILED WITH LRC: March 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 1:30 p.m., on April 24, 1995. Individuals interested in attending this hearing shall notify this agency in writing by April 19, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Marcy D. Ches, Staff Attorney, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: This regulation will affect individual self-insured employers under KRS 342.340(1). At present there are 260 self-insured employers in Kentucky. This new regulation replaces an existing regulation on the same subject.

(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 impact on the cost of living and employment is anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. To the extent that this proposed administrative regulation increases the minimum criteria required for a employer to be approved to self-insure its workers' compensation liabilities, the cost of doing business may be affected for some individual employers. The increased costs are not anticipated to be significant. The security bond amounts have been raised.

(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 paperwork requirements under this proposed regulation are essentially the same as under the regulation it will replace, 803 KAR 25:020. The forms utilized for the application to self-insure and maintaining a self-insurance certificate are the forms currently in use.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct or indirect costs or savings:

1. First year: The costs of printing the forms are not anticipated to increase and are currently minimal.

2. Continuing costs or savings: Printing costs are expected to remain minimal after the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commissioner pursuant to KRS 342.122.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky, and to the extent it more closely regulates individual self-insured employer, it should have a favorable economic impact.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations as he considers necessary to carry on the work of the department. This administrative regulation was deemed to be the most reasonable and efficient in setting forth the minimum requirements necessary so that only financially secure individual employers are approved to self-insure workers' compensation liability.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: No conflict known.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not appropriate because this proposed regulation applies equally to all employers seeking to self-insure or currently self-insured for workers' compensation purposes. There are different requirements for group self-insured employers.

LABOR CABINET
Department of Workers' Claims

803 KAR 25:026. Group self-insurers.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260, 342.340, 342.345, 342.350

NECESSITY AND FUNCTION: KRS 342.260 requires the commissioner to promulgate such rules and administrative regulations as are necessary to carry on the work of the Department of Workers' Claims and to implement the provisions of KRS Chapter 342. The function of this administrative regulation is to establish the procedure and minimum requirements through which groups of employers may join together to self-insure their workers' compensation liability. This administrative regulation covers the subject matter of 803 KAR 25:025, which is repealed.

Section 1. Definitions. (1) "Administrator" means an individual or legal entity engaged by a group self-insurance fund board of trustees to carry out the policies established by the self-insurance fund's board of trustees and provide day-to-day management of the self-insurance fund.

(2) "Aggregate excess insurance" means an insurance policy written on a claims incurred basis which insures statutory claims to a stated limit in excess of a specified percentage of the earned premium or in excess of the group retention amount.

(3) "Bona fide trade association" means an association of employers created for a noninsurance trade purpose and which has been operating in the state of Kentucky for at least two (2) years prior to its sponsorship of a group self-insurance fund.

(4) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(5) "Common interests" means that employers are engaged in similar activities, share common standard industrial classification codes and common risk factors.

(6) "Dividends" mean disbursements from surplus funds.

(7) "Earned premium" means the pro rated portion of the full, actual premium charged to the group members that is applicable to the group's accounting period or fiscal year.

(8) "Fiscal agent" means a person, or legal entity, other than a service organization or employees or agents of a service organization, designated by the trustees to receive, invest and disburse the self-insurance group's funds.

(9) "Group members" means employers who have joined a group self-insurance fund.

(10) "Group self-insurance fund" means the loss fund together with all other expenses of the group related to the self-insurance program.

(11) "Insolvent" or "insolvency" means the inability of a group self-insurance fund to pay its outstanding lawful obligations as they mature in the regular course of business, or which holds insufficient assets to prospectively pay all incurred workers' compensation benefits when due.

(12) "Loss fund" means the total amount of the retained liability for claims against the group members.

(13) "Premium" means the amount of money charged each member to fund the obligations and expenses of the group self-insurance fund.

(14) "Qualified actuary" means a member of the American Academy of Actuaries or a member of the Casualty Actuarial Society.

(15) "Service organization" means a person or entity which provides services including, but not limited to, claims adjustment, safety engineering, statistical compilation, preparation of premium charges, loss and tax reports, and other required self-insurance reports, administration of the fund, marketing services, placement of excess insurance, development of member payroll audits, administration of investments, and legal assistance.

(16) "Specific excess insurance" means an insurance policy which insures the amount of any claim from any one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

(17) "Surplus funds" means monies in the self- insurance fund in excess of all losses, reserves and other costs.

(18) "Trustees" means persons elected by the group members or appointed by the board of directors of the sponsoring trade association to oversee the administration of the group self-insurance fund.

Section 2. Certification. No person or entity shall act as, or hold itself out as, a workers' compensation group self-insurance fund unless the group has been certified to do so by the commissioner. All certifications issued by the commissioner shall remain in effect until revoked or suspended by the commissioner pursuant to Section 12 of this administrative regulation.

Section 3. Initial Application. (1) An application for certification as a workers' compensation group self-insurance fund may be filed on form SI-06 with the commissioner by a group of eleven (11) or more employers having common interests or membership in a bona fide trade association. Any group members having more than fifty (50) percent common ownership shall constitute one (1) group member. Each initial application shall set forth or be accompanied by:

(a) The fund's name, location of principal office, date of organization, name and address of each member, and the dates of the fiscal year for accounting purposes;

(b) A description of the group members' common interest or a description of the bona fide trade association including date of organization, articles of incorporation, and a history of the association's activities;

(c) A copy of the articles of association, articles of incorporation, trust agreement or bylaws of the proposed group self-insured fund. The group self-insurance fund's enabling documents shall describe the time and methodology by which premiums shall be determined, assessed and collected during regular operations and in the event of insolvency of the fund;

(d) The managed care and utilization review plans for the group self-insurance fund;

(e) Copies of any instruments by which the applicant or its agents have made any commitments to pay for any past or purchase any future goods or services;

(f) An executed copy of the indemnity agreement by which group members jointly and severally bind themselves to pay their workers' compensation liability;

(g) Identification by name, address, and term of the initial board of trustees, administrator, and service organization;

(h) The name of the custodian and the address where the group self-insurance fund's books and records will be kept;

(i) Copies of the policy or binders for the specific and aggregate excess insurance;

(j) Copies of surety deposits and fidelity bonds as required by Section 11 of this administrative regulation;

(k) A proposed schedule of premium rates and any plan by which rates will be modified. If employment classifications are to vary from those utilized by the National Council of Workers' Compensation Insurers, a description of each classification shall be presented;

(l) A schedule of projected annual premiums and expenses; and

(m) Financial statements for initial group members prepared by a certified public accountant demonstrating a combined net worth of no less than $5,000,000 for the group and the financial stability of each member.

(2) The premium of one (1) group member shall not exceed forty (40) percent of the estimated total premium for the group self-insurance fund.

(3) The first year's premium for the initial membership of the group self-insurance fund shall be no less than $750,000. Verification must be presented that twenty-five (25) percent of the initial estimated premium has been paid and deposited with the group's fiscal agent.

(4) The initial application must be filed no later than sixty (60) days prior to the proposed inception date of the group self-insurance fund.

(5) Certification as a group self-insurance fund shall be granted if the commissioner finds that the applicant has complied with all requirements of this administrative regulation; that the persons responsible for the affairs of the group self-insurance fund are financially stable, competent and experienced in the administration of workers' compensation self-insurance; and that the proposed group self-insurance fund has demonstrated the ability to meet all of its obligations. The commissioner shall consider the adequacy of the funding mechanisms, the presence of excess insurance, the financial strength of the participating members, the stability of the membership and the risks of the industry.

Section 4. Annual Filing. The following information and reports shall be filed by the group self-insurance fund with the commissioner on an annual basis:

(1) Within thirty (30) days prior to the expiration of each self-insurance year, the group self-insurance fund shall file:

(a) Proof of excess insurance coverage for the ensuing self-insurance year;

(b) Copies of all fidelity and surety bonds or surety deposits;

(c) A current listing of the group members of the fund;

(d) A schedule of proposed premiums by employment classifications; and

(e) Any material changes in administration or the service organization.

(2) Within 150 days after the close of a self-insurance year, the group self-insurance fund shall file:

(a) The actuarial information required by Section 5 of this administrative regulation;

(b) A certified audit report in conformity with generally accepted accounting principles; and

(c) Any other financial information requested by the commissioner.

(3) In the event the certified audit report reveals a fund deficit or inadequate reserves, within thirty (30) days of the certified audit report the trustees shall prepare and filed a plan of remedial action.

(4) Within 150 days of the end of each self-insurance year, the trustees shall furnish to the group members a statement setting forth all premiums, losses, expenses and distributions.

Section 5. Actuarial Reports. (1) On an annual basis, the group self-insurance fund shall file with the commissioner an actuarial opinion by a qualified actuary addressing the adequacy of current premium levels and setting forth the actuarial assumptions on which the opinion is based. The opinion should advise if the premium levels are adequate to provide financial resources to reasonably meet all of the fund's estimated liability for the payment of all workers' compensation benefits which were incurred during each fund year, including a reasonable allowance for incurred but not reported claims plus all administrative, marketing and reinsurance costs of the program.

(2) If in the opinion of the qualified actuary, the group self-insurance fund's current premium levels are not adequate to provide for the payment of all incurred losses and other related expenses, the fund's trustees shall adjust the rates and the plan by which premiums will be collected to the level estimated by the qualified actuary to be sufficient to cover all incurred liability and other expenses.

Section 6. Withdrawals and Terminations. (1) A member may withdraw from a group self-insurance fund upon sixty (60) days notice to the trustees.

(2) If a group self-insurance fund determines to terminate its self-insurance program, the trustees shall give thirty (30) days advance written notice by certified mail to the commissioner and each group member and shall pay no dividends without the written approval of the commissioner for three (3) years following the close of the last year in which it operated. The group shall demonstrate to the commissioner that it has made satisfactory arrangements for the continued payment and servicing of all outstanding claims.

Section 7. Trustees; Duties. (1) The Board of Trustees of the group self-insurance fund shall consist of no less than three (3) nor more than seven (7) persons, none of whom are to be officers, employees or agents of a service organization.

(2) The trustees on behalf of the group members shall be responsible for the administration of the group self-insurance fund, for the assessment and collection of premium, for disbursements from the group self-insurance fund, and investment of the fund's monies.

(3) The trustees may contract with a service organization, an administrator, or a fiscal agent to carry out the administration of the group self-insurance fund.

(a) A service organization, its employees and agents must be duly licensed to perform those functions for which a license is required under Kentucky law.

(b) Any contract with a service organization that includes the adjustment and settlement of claims shall include a requirement that the service organization will adjust to final conclusion any and all claims that result from an occurrence during the period for which the contract is effective.

(c) A revolving fund of not more than twenty (20) percent of estimated premiums may be established for use by a servicing organization for the payment of claims.

Section 8. Excess Insurance. (1) With the exception of group self-insurance funds qualifying under subsection (2) of this section, the trustees shall purchase aggregate excess insurance. The retained liability and other fixed costs of the fund shall not exceed 100 percent of the annual assessment of the group members, unless such amount over 100 percent is secured by unencumbered surplus monies. The limit of liability of the aggregate excess insurance shall be no less than $2,000,000 or fifty (50) percent of the earned premium, whichever is greater.

(2) A group self-insurance fund meeting all of the following conditions is not required to purchase aggregate excess insurance:

(a) The fund has been in continuous operation for at least five (5) years;

(b) The fund's annual premium has exceeded $5,000,000 in each of the three (3) preceding years; and

(c) Reserves and premium structure have been established so as to secure adequately all predictable losses.

(3) The trustees shall purchase specific excess insurance with a limit of at least $25,000,000 per occurrence.

(4) To be eligible to write excess liability coverage for group self-insurance funds, a casualty insurance company shall at all times maintain on file with the Kentucky Insurance Commissioner financial statements demonstrating assets, including surplus to policy holders, at least equal to the Insurance Department requirements of a carrier to do business in the state. The latest financial statement shall reflect a minimum policy holder surplus of not less than $15,000,000 and the carrier shall have demonstrated excellent overall performance and a strong ability to meet their obligations to policy holders over a long period of time.

Section 9. Fund Balances. (1) Prior to inception of each group member's self-insurance year, the trustees shall collect from that member twenty-five (25) percent of the estimated premium for the ensuing year. The balance of the estimated premium shall be collected in either quarterly or monthly installments. Each group

member's payroll shall be audited and an adjustment to premium shall be made accordingly.

(2) Disbursements from the fund shall be only for those purposes related to the group self-insurance fund. Dividends shall not be paid until at least twenty-four (24) months after the expiration of the self-insurance year and shall be paid only from surplus funds not required for payment of claims or other liabilities.

(3) The formula to be used for collection of premiums and for the distribution of dividends shall be determined by the trustees. Between group members the distribution may be based upon a formula which does not reflect an individual group member's claim experience.

(4) No trustees, fiscal agent or service organization shall utilize any monies of the group self-insurance fund for any purpose unrelated to workers' compensation. Borrowing any monies from the fund shall be prohibited. The trustees may, at their discretion, invest any surplus monies not needed for current obligations, but such investments shall be limited to U.S. government bonds, U.S. Treasury notes, investment share accounts in any savings and loan association whose deposits are insured by a federal agency, and certificates of deposit if issued by a duly chartered commercial bank. Such deposits in savings and loan associations and commercial banks shall be limited to institutions in the state of Kentucky and the safety of any investments which exceed the federally insured amounts shall be the responsibility of the trustees.

(5) Variation from the requirements of this section may be sought by application to the commissioner.

Section 10. Group Members. (1) The trustees shall not accept as a member of the group, any employer that does not have a net worth of at least two (2) times its estimated annual premium, unless such employer pays its full annual premium in advance. The trustees shall not accept as a member of the group any employer that does not meet all other qualifications for being a member of the group as set forth in the bylaws of the group.

(2) At the discretion of the trustees, the group self-insurance fund may include the Kentucky employees of foreign (out-of-state) employers.

(3) The trustees may suspend or expel any member from the group due to adverse claims experience or lack of cooperation with safety and loss prevention policies by giving the member and the commissioner thirty (30) days advance written notice. The trustees may suspend or expel any members from the group for nonpayment of premium, by giving the member and the commissioner ten (10) days advance written notice.

(4) The trustees shall report to the commissioner any attempt by any person as defined in KRS 342.0011 who knowingly, as defined in KRS 501.020, makes any false representation, including misrepresentation of hazards, classifications, payrolls, or other facts of an employer or its agent that are designed to cause a reduction in the employer's premium. The trustees shall secure from each member an agreement to report payroll in accordance with the rules and rating plan of the fund. Willful failure to properly report in accordance with the rules and rating plan is ground for expulsion pursuant to subsection 3 of this section.

(5) At least thirty (30) days prior to due date, the trustees shall notify each group member of all premium due, including adjustments. Failure by any member to pay the premium due within thirty (30) days of the notice may, result in immediate suspension or expulsion from the group by the trustees.

(6) The group shall be considered as an individual employer for all purposes of taxation and the individual members of the group shall not be exposed to tax liability other than liability existing as a result of the indemnity agreement with the other group members and the group self-insurance fund.

Section 11. Bonds. (1) The trustees and fund administrators shall provide a fidelity bond to the commissioner in the amount of not less than $300,000, which may be subject to a deductible not exceeding $10,000 for each trustee, each fund administrator and the administrator's employees.

(2) The fiscal agent shall provide a fidelity bond to the trustees of not less than fifty (50) percent or $1,000,000, whichever is lower, of the funds to be handled by the fiscal agent. This requirement shall be waived if the fiscal agent is a national bank.

(3) The service organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.

(4) In lieu of the bonds required under subsections (1), (2) and (3) of this section, the trustees may secure a fidelity blanket bond in an amount not less than fifty (50) percent of the self-insurance fund or $2,000,000, whichever is lower. The fidelity blanket bond shall include the trustees, personnel of the service organization and the fiscal agent, unless the fiscal agent is a national bank.

(5) The fund shall provide surety to the commissioner on form SI-03 in an amount no less than $250,000 or ten (10) percent of the annual premium as established in the most recent certified audit on file with the commissioner, whichever is greater.

(6) Any corporate surety, to be eligible for writing group self-insurance fund bonds in the state of Kentucky, shall be authorized by the Kentucky Insurance Commissioner to transact such business in the state, and its latest financial statement on file with the insurance commissioner shall at all times show assets, including surplus to policyholders, at least equal to the latest Insurance Department requirements for admission of a new company to do business in the state. On its latest financial statement, the corporate surety shall reflect a minimum policy holder surplus of not less than $15,000,000. The corporate surety shall have demonstrated excellent overall performance and a strong ability to meet their obligations to policy holders over a long period of time. No surety shall expose itself to any loss on any one (1) risk in an amount exceeding its current U.S. Treasury limit.

(7) The trustees may file a cash or cash equivalent security deposit on form SI-05 or bank letter of credit on form SI-04 in satisfaction of the surety requirement.

Section 12. Suspension, Revocation or Modification of Certification. (1) The commissioner may suspend, revoke or direct remedial actions regarding any group's certification as a group self-insurance fund if he finds any of the following conditions exist:

(a) The group self-insurance fund is operating significantly in contravention of the basic organizing documents of the group self-insurance fund or is in material violation of this administrative regulation or KRS Chapter 342;

(b) The group self-insurance fund is no longer financially responsible and may reasonably be expected to be unable to meet its current obligation to participants or employees of participants for the payment of workers' compensation medical and indemnity benefits; or

(c) There has been a significant and adverse change in the administration of the group.

(2) In the event the commissioner suspends or revokes any group self-insurance fund's certification, the commissioner may appoint one (1) or more individuals or professional corporations as a receiver to conduct the ongoing affairs of the group self-insurance fund. In the event the commissioner appoints a receiver to assume certain administrative responsibilities over the activities of the group, the trustees, service company and administrator shall cooperate with the commissioner or receiver and are required to reply promptly in writing to any inquiry from the commissioner or his representative, to make available and to deliver to the commissioner or his representative any books, accounts, documents, or other records or information in their custody and control. The receiver may take any action necessary and reasonable to preserve all of the group's assets and to insure timely payment of all workers' compensation benefits. The receiver may

consult with and obtain advice or professional services from appropriate experts or other third-party professionals.

(3) A group's certification as a group self-insurance fund may be suspended or revoked after compliance with the following procedures:

(a) The commissioner shall conduct a hearing upon a written application by any person or group aggrieved by an order of the commissioner. Written request for a hearing shall be filed within thirty (30) days after an order by the commissioner. The application for hearing shall briefly state the grounds on which the aggrieved party is relying and a basis for the relief sought. The hearing shall be held within thirty (30) days after the filing of the application for hearing, unless postponed by mutual consent. The commissioner shall give written notice of the hearing not less than ten (10) days in advance, stating the date, time and place for the hearing, and specify the matters to be considered.

(b) The commissioner, during the pendency of any appeal or request for hearing, may utilize the surety deposit provided by the group to make any payment of workers' compensation benefits which is currently due.

(c) Any party to the hearing shall have the right to appear in person or by counsel and to be present during the giving of all evidence and to have a reasonable opportunity to inspect all documentary and other evidence, and to examine and cross-examine witnesses, to present evidence in support of his interest and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence on his behalf. Testimony may be taken orally or by deposition, and the parties shall have such right of introducing evidence by interrogatories or by deposition as may be obtained in circuit court. Formal rules of pleadings or evidence need not be reserved in any hearing as long as procedural due process is afforded all parties. The commissioner shall cause a full stenographic record of the proceedings to be made.

(d) Thirty (30) days after the conclusion of the hearing, the commissioner shall make his order covering all matters involved at the hearing and serve a copy of the order upon each party which has appeared. The order shall contain concise findings of fact and conclusions of law. The final order may suspend, revoke or modify a group self-insurance fund's certification.

Section 13. Forms. (1) Forms SI-03, SI-04, SI-05 and SI-06, (revised 3/15/95), are hereby adopted by reference.

(2) One (1) copy of Forms SI-03, SI-04, SI-05, SI-06 (revised 3/15/95), is filed herewith, and incorporated by reference.

(3) Obtaining forms.

(a) Forms are available to the public at main and branch offices of the Department of Workers' Claims.

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

4. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

Section 14. 803 KAR 25:025, Joint self-insurers, is hereby repealed.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: March 15, 1995

FILED WITH LRC: March 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 1:30 p.m., on April 24, 1995. Individuals interested in attending this hearing shall notify this agency in writing by April 19, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Marcy D. Ches, Staff Attorney, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: This regulation will affect those employers who pool their liabilities for the purpose of qualifying as self-insurers under KRS 342.350(4). At present there are 18 self-insurance groups representing over 10,000 employers in Kentucky. This proposed regulation replaces an existing regulation on the same subject.

(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 impact on the cost of living and employment is anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. The cost of surety bonding will increase because the bond amount is increased. The cost of excess insurance will increase because the limits of the coverage requirements are being increased to the extent that the requirements are raised. The cost of doing business may be affected for some group self-insurance funds. The increased costs are not anticipated to be significant.

(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 paperwork requirements under this proposed regulation are essentially the same as under the regulation it will replace, 803 KAR 25:026. The forms utilized for the application to self-insure and maintaining a self-insurance certificate are the forms currently in use.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct or indirect costs or savings:

1. First year: The costs of printing the forms are not anticipated to increase and are currently minimal.

2. Continuing costs or savings: Printing costs are expected to remain minimal after the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None; no effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Workers' Compensation Funding Commissioner pursuant to KRS 342.122.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will be implemented throughout the state of Kentucky, and to the extent it more closely regulates group self-insured employers, it should have a favorable economic impact.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations as he considers necessary to carry on the work of the department. This administrative regulation was deemed to be the most reasonable and efficient in setting forth the minimum requirements necessary so that only financially secure groups are approved to self-insure their workers' compensation liability.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

(c) If detrimental effect would result, explain detrimental effect: No effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: No conflict known.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not appropriate because this proposed regulation applies equally to all group employers seeking to self-insure or currently self-insured their workers' compensation liability. There are different requirements for individual self-insured employers.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 55:095. Prescription for Schedule II controlled substance - facsimile transmission or partial filling.

RELATES TO: KRS 218A.070, 218A.180, 218A.200, 902 KAR 55:080, 21 CFR 1306.05, 1306.11 to 1306.15

STATUTORY AUTHORITY: KRS 194.050, 218A.250

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

Section 1. Definitions. (1) "Home infusion pharmacy" means a pharmacy which compounds solutions for direct administration to a patient in a private residence, long-term care facility or hospice setting by means of parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion.

(2) "Long-term care facility" means a nursing home, skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded.

Section 2. Transmission by Facsimile of a Prescription for a Schedule II Controlled Substance. (1) A prescription prepared in accordance with KRS 218A.180, 21 CFR 1306.05 and 902 KAR 55:080 for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by a practitioner or the practitioner's agent to a home infusion pharmacy by facsimile.

(2) A prescription prepared in accordance with KRS 218A.180, 21 CFR 1306.05 and 902 KAR 55:080 for a Schedule II controlled substance for a resident of a long-term care facility may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3) The facsimile prescription shall serve as the written prescription for seven (7) calendar days. Within seven (7) calendar days after transmitting a facsimile prescription for a Schedule II controlled substance, the prescribing practitioner shall cause the written prescription to be delivered to the dispensing pharmacy.

Section 3. Partial Filling of a Prescription for a Schedule II Controlled Substance. (1) Except as provided in subsection (2) of this section a pharmacist may partially fill a prescription for a controlled substance listed in Schedule II if the pharmacist:

(a) Is unable to dispense the full quantity prescribed;

(b) Makes a notation of the quantity dispensed on the face of the written prescription; and

(c) Dispenses the remaining portion of the prescription within seventy-two (72) hours of the first partial filling. No further quantity shall be dispensed without a new written prescription.

(2) A written prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a documented terminal illness may be dispensed in partial quantities, including but not limited to individual dosage units if:

(a) The pharmacist records on the face of the prescription "terminally ill" or "LTCF patient" or words of similar meaning;

(b) The pharmacist records on the back of the written prescription or on another appropriate record, uniformly maintained and readily retrievable, the following data:

1. The date of the partial dispensing;
2. The quantity dispensed;
3. The remaining quantity authorized to be dispensed; and
4. The identification of the dispensing pharmacist;

(c) The pharmacist contacts the practitioner prior to dispensing the partial quantity if there is any question whether the patient is terminally ill;

(d) The pharmacist determines that each subsequent partial dispensing is necessary;

(e) The total quantity dispensed in all partial dispensings does not exceed the quantity prescribed; and

(f) No dispensing occurs beyond sixty (60) days from date of issuance of the prescription.

RICE C. LEACH, MD, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: March 14, 1995

FILED WITH LRC: March 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held April 21,1995 at 9 a.m. in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by April 16,1995. If no notification of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. 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 to: William K. Moore, Deputy Counsel, Office of the Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: 3200 pharmacists are affected by this regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There is no reporting and no additional paperwork required by this regulation.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the administrative agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the general fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because of conflicts with state statute and regulations.

(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 permits the filling and dispensing of certain prescriptions in a more timely manner.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: If the regulation is not implemented, certain prescriptions will take longer to be dispensed to the patient because the pharmacist must have a written prescription in hand before the drugs can be delivered.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied because the regulation applies to any pharmacist who fills prescriptions for Schedule II controlled substances for the types of patients listed in the regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 21 CFR 1306.11 and 1306.13.

2. State compliance standards. This regulation allows prescriptions for Schedule II controlled substances to be partially filled for patients who are in a long term care facility or are terminally ill. In addition, certain prescriptions for Schedule II controlled substances may be dispensed upon the receipt of a facsimile prescription. The prescriber has five business days to send the original written prescription to the pharmacy.

3. Minimum or uniform standards contained in the federal mandate. The corresponding federal regulations allow for partial filling of prescriptions for Schedule II controlled substances for patients who are in a long term care facility or are terminally ill as well as for the facsimile transmission of certain prescriptions for Schedule II controlled substances.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal regulations do not require the prescriber to send the original prescription to the pharmacy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are imposed to decrease the risk of drug diversion. In addition, 902 KAR 55:080 requires that all written prescriptions for controlled substances bear the original signature.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:605. Medicaid procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 CFR 435.530, 435.531, 435.540, 435.541, 435.914, 435.916, 42 USC 1396a,b,d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program.

Section 1. Eligibility Determination Process. (1) Eligibility shall be determined prospectively except that for retroactive coverage, eligibility shall be determined retrospectively. To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria as set forth in 907 KAR 1:004 and 1:011 for the appropriate month of coverage.

(2) Each decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall be required to:

1. Furnish verification of financial and technical eligibility as set forth in 907 KAR 1:004 and 1:011; and

2. Give written consent to those contacts necessary to verify or clarify any factor pertinent to the decision of eligibility.

(b) When informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information at the time requested shall be considered a failure by the applicant or

recipient to present adequate proof of eligibility.

(3) Eligibility for Medicaid shall be effective no later than the third month prior to the month of application if:

(a) A Medicaid service was received; and

(b) Technical and financial eligibility requirements were met as set forth in 907 KAR 1:004 and 1:011.

(4) Eligibility for qualified medicare beneficiary (QMB) coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as set forth in 907 KAR 1:004 and 1:011.

Section 2. Continuing Eligibility. The recipient shall be responsible for reporting within ten (10) days any change in circumstances which may affect eligibility. In addition, eligibility shall be redetermined:

(1) Every twelve (12) months; or

(2) When a report is received or information is obtained about a change in circumstances.

Section 3. Determination of Incapacity or Permanent and Total Disability. (1) A determination that a parent with whom the needy child lives is incapacitated, or that the individual requesting Medicaid due to disability is both permanently and totally disabled, shall be made by the medical review team following review of both medical and social reports except as listed in subsection (2) or (3) of this section.

(2) A parent shall be considered incapacitated without a determination from the medical review team if:

(a) The parent declares physical inability to work;

(b) The worker observes some physical or mental limitation; and

(c) The parent:

1. Is receiving supplemental security income (SSI); or

2. Is age sixty-five (65) or over; or

3. Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 1382c or 416 by either the Social Security Administration or the medical review team; or

4. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

5. Is receiving retirement, survivors, and disability insurance (RSDI) benefits, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or

6. Is receiving Veterans Administration (VA) benefits based on 100 percent disability, as verified by an award letter; or

7. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician is also requested to indicate if incapacity existed as of the application date.

(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:

(a) Receives RSDI or railroad retirement benefits based on disability; or

(b) Received SSI based on disability during any portion of the twelve (12) months preceding the application month and discontinuance was due to income or resources, not to improvement in physical condition; or

(c) Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 416 or 1382C by the Social Security Administration; or

(d) Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition.

MASTEN CHILDERS, II, Commissioner and Secretary

APPROVED BY AGENCY: March 9, 1995

FILED WITH LRC: March 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 1995 at 9 a.m. in the Health Services Auditorium, Health Services Building, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All potential and actual Medicaid recipients.

(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: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(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: See Item #10.

(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: The administrative regulation is being promulgated to create an individual subject matter Medicaid regulation. The subject matter was previously included in a Department for Social Insurance regulation, 904 KAR 2:040. The regulation does not include any policy changes.

(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 1369a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

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

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

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

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:610. Medicaid right to apply and reapply.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 116.048, 194.050, 205.520, 42 CFR 435.906, 435.907, 435.909, 435.911, 435.912, 42 USC 1396a, b, d, 1973gg-10,

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth provisions relating to the procedure by which an application for Medicaid coverage is filed. KRS 116.048 designates the cabinet to have responsibility for the administration of public assistance programs as a voter registration agency in accordance with 42 USC 1973gg-10. Therefore, this administrative regulation sets forth policy and procedure necessary to provide an eligible Medicaid recipient the opportunity to register, or to decline from registering, to vote.

Section 1. Right to Apply or Reapply. (1) Each individual wishing to do so shall have the opportunity to apply or reapply for Medicaid through the Department for Social Insurance (DSI).

(2) An individual eligible for Aid to Families with Dependent Children (AFDC), State Supplementation or Supplemental Security Income (SSI) through the Social Security Administration shall be eligible for Medicaid without a separate application.

(3) An individual applying on the basis of age, blindness or disability shall not be eligible as a medically needy individual, under 907 KAR 1:011, if his income and resources are within SSI limits. Denial of assistance by the Social Security Administration for SSI for technical reasons shall also be considered a denial for Medicaid.

Section 2. Application Process. (1) An application shall be considered to have been made when the individual or his representative has signed, under penalty of perjury, the application form prescribed by the DSI or the Social Security Administration, for SSI, and the application has been received at the appropriate office.

(2) An application shall also be considered to be made based on the date of contact with DSI or the Social Security Administration for SSI, by a person with a physical or mental impairment who needs special accommodation due to his impairment.

(3) If the applicant is unable to come to the office to apply, he may designate an authorized representative to apply for him or request a home visit to complete the application process.

(4) The applicant may be assisted by an individual of his choice in the application process and may be accompanied by this individual in all contacts with the agency.

(5) Deaf and hard of hearing services shall be provided in accordance with 900 KAR 1:070.

(6) Interpreter services shall be provided for persons who do not speak English, utilizing procedures and forms specified by 900 KAR 1:070.

Section 3. Who May Sign an Application. (1) An application for Medicaid shall be signed by the individual requesting assistance, the relative with whom the child lives, or an interested party acting on behalf of the applicant.

(2) An application for Medicaid for children in foster care or private child caring institutions shall be signed by the representative of the agency to which the child is committed or the institution in which the child is placed.

Section 4. Where Applications are Filed and Processed. (1) The application may be filed at any DSI office and shall be processed in the county of residence except that any application for SSI and Medicaid shall be filed in the service area office of the Social Security Administration.

(2) If an individual is applying for nursing facility or psychiatric facility services, the DSI office in the county where the facility is located shall take and process the application.

(3) If an individual is applying in a county other than the county of residence and is hospitalized, the DSI office in the county of hospitalization shall take the application and transfer the pending application to the county of residence, and the DSI office in the county of residence shall process the application using the original application date.

(4) If an individual is applying in a county other than the county of residence and is not hospitalized, the DSI office in the receiving county shall partially complete the application, transfer the application to the county of residence on the same day the application is taken, and explain to the applicant that the application shall be processed in the county of residence. The DSI office in the county of residence shall schedule a face-to-face interview and process the application using the original application date.

(5) If a Kentucky resident is temporarily out of state, a letter from the applicant, an interested party or an out-of-state agency shall be accepted as the initiation of the application process when an emergency arises from accident or sudden illness, care and services are needed immediately, and the individual's health would be endangered if he undertook to return to the state. Upon notification of the emergency, the official application form shall be forwarded to the initiating party.

Section 5. Action on Applications. (1) A decision shall be made on each Medicaid application within forty-five (45) days, except that for applications requiring a disability determination, sixty (60) days shall be allowed.

(2) Time frame exceptions:

(a) If the applicant is cooperating but is unable to obtain necessary verification for an eligibility decision to be made; or

(b) If the delay is beyond the control of staff (such as failure or delay on the part of the applicant or examining physician or because of some administrative or other emergency that could not be controlled by staff).

(3) The case record shall document the cause for the time standard delay.

(4) Failure to process an application within the above time frame shall not be used as the basis for denial.

Section 6. Voter Registration. (1) An applicant or recipient meeting all of the following criteria shall be provided the opportunity to complete an application to register to vote or update his current voter registration:

(a) Be age eighteen (18) or over;

(b) Be present in the office at the time of the interview or if a change of address is reported; and

(c) Not be registered to vote or not registered to vote at his current address.

(2) An individual not included in the Medicaid application shall not be registered to vote in this process, including a payee only; an authorized representative; or an individual acting as a responsible party.

(3) An individual providing voter registration services who seeks to unlawfully influence an applicant's political preference or party registration as prohibited by KRS 116.048(4) could be fined or imprisoned, not to exceed five (5) years, or both.

(4) Forms and information utilized in the voter registration process shall remain confidential and used only for voter registration purposes.

(5) Only Board of Elections officials may view forms and information utilized directly in the voter registration process.

(6) Completion of the voter registration form is only an application to apply to register to vote. The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the applicant.

Section 7. Materials Incorporated by Reference. (1) Forms necessary for application for benefits under the Medicaid Program are incorporated effective April 1, 1995. These forms include the PA-1, revised October 1992; PA-1A, revised March 1991; PA-1C, revised October 1991; PA-1P, revised April 1992; PA-1UP, revised May 1991; and the KIM-100, revised March 1994.

(2) These forms may be reviewed at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m. Copies may be obtained upon payment of an appropriate fee which shall not exceed approximate cost.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: March 8, 1995

FILED WITH LRC: March 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 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 April 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. 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 potential and actual Medicaid recipients.

(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: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(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: See item #10.

(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: The administrative regulation is being promulgated to create an individual subject matter Medicaid regulation. The subject matter was previously included in a Deparmtnet for Social Insurance regulation, 904 KAR 2:035. The regulation does not include any policy changes.

(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.

KENTUCKY HEALTH POLICY BOARD

909 KAR 1:040. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.310, 216B.990

STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 216B.075

NECESSITY AND FUNCTION: KRS 216B.040 requires the Kentucky Health Policy Board to promulgate administrative regulations outlining the certificate of need review procedures and to establish criteria for the issuance of certificates of need. These administrative regulations set forth the requirements for batching applications, for review of the applications, for the issuance of advisory opinions for public hearings on the applications and for "show cause" hearings on noncompliance.

Section 1. Definitions. (1) "Cost escalation" means an increase in the capital expenditure authorized on a certificate of need which has not been the subject of an obligation as defined in KRS 216B.015(26).

(2) "Defined geographic area" means the area and population the proposal seeks to serve.

(3) "Division of Licensing and Regulation" means the Cabinet for Human Resources, Office of the Inspector General, Division of Licensing and Regulation.

(4) "Emergency circumstances" means natural disasters, fire, vandalism, structural or mechanical failure, or other circumstances affecting existing health facilities and services that pose an imminent threat to the life, health, or safety of any citizen of the Commonwealth if not acted upon immediately.

(5) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(6) "Long-term care beds" means those beds located in a nursing facility, nursing home, skilled nursing beds, intermediate care beds, Alzheimer disease facility beds, and personal care beds.

(7) "Medically underserved" means those populations or geographic areas as designated by the board in the state health plan.

(8) "Proposed service area" means the geographic area and population the applicant proposes to serve.

(9) "Public information channels" means the Office of Communications in the Cabinet for Human Resources.

(10) "Show cause hearing" means a hearing before the board or its designee at which a person is required to explain or demonstrate why the person should not be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

Section 2. Criteria. In determining whether to issue or deny a certificate of need, an applicant shall provide and the board shall utilize the following information:

(1) Consistency with state health plan and any biennial state budget authorizations and limitations directly affecting the proposal.

(2) Need and accessibility.

(a) The defined geographic area's need for the proposed services;

(b) Accessibility of proposed service to the defined population, particularly those with an inability to access such services and those designated in the state health plan as medically underserved;

(c) The extent to which the health professions' schools in the area have access to the services for training purposes;

(3) Interrelationships and linkages.

(a) The relationship of the proposed service with the existing health care system of the defined geographic area and the state.

(b) The relationship, including the organizational relationship, of the proposed health service with ancillary or support services.

(c) The efficiency and appropriateness of the use of similar existing services and facilities to meet identified needs.

(4) Costs, economic feasibility, and resource availability.

(a) The availability of less costly or more effective alternatives to the proposal;

(b) The immediate and long-term financial feasibility of the proposal;

(c) The probable impact of the proposal on:

1. The applicant's costs and charges for providing health services; and

2. The costs and charges of other providers in the defined geographic area.

(d) The availability of resources, including health care personnel, management personnel, and funds for capital and operating needs;

(e) For construction or renovation projects, costs and methods of the project, including the costs and methods of energy provisions;

(f) The effect of competition on the supply of health services being reviewed and whether the approval of the application may unnecessarily increase the cost of health care to the public;

(g) Improvements or innovations in the proposed financing and delivery of health services that foster competition and promote quality and cost effectiveness;

(5) Quality of services.

(a) The quality of care provided by the applicant in the past, or

(b) The qualifications of the persons responsible for the quality of care to be provided;

(c) Any detrimental effects of the proposal on the quality of similar services in the area, including those associated with decreased utilization; and

(d) The ability of the applicant to comply with applicable licensure requirements.

Section 3. Letter of Intent. (1) At least thirty (30) days prior to submitting an application for a certificate of need, an applicant shall file a letter of intent with the board or its designee on Letter of Intent Form Number 1.

(2) A letter of intent shall be valid for one (1) year.

(3) If an application is denied by the board or withdrawn, the applicant shall file a new letter of intent before resubmitting an application.

(4) If an application is withdrawn before the board makes a final decision, the applicant shall file a new letter of intent before resubmitting an application.

(5) A letter of intent shall not be required from an applicant

requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation.

Section 4. Application for Certificate of Need. (1) Upon receipt of a letter of intent, the board or its designee shall provide the applicant with:

(a) Written acknowledgement of receipt of the letter of intent; and

(b) Copies of:

1. "Certificate of Need Application Form Number 2A"; or

2. "Certificate of Need Application for Ground Ambulance, Air Ambulance and Nonemergency Health Transportation Services Form Number 2B".

(2) The applicant shall file an original and three (3) copies of a certificate of need application together with the prescribed fee set forth in 909 KAR 1:050 with the board or its designee on or before the deadlines established by Section 5 of this administrative regulation.

(3)(a) Fifteen (15) days after receipt of an application, the board or its designee shall:

1. Notify the applicant that the application is completed; or

2. Request specific additional information.

(b) If an application is not complete, the applicant shall:

1. Complete the application by submitting the requested specific additional information; or

2. Notify the board that its application shall be processed as submitted.

(4) Upon receipt of an applicant's response, the board or its designee shall:

(a) Declare an application complete; and

(b) Notify the applicant of the beginning of the review.

(5)(a) Public notice of review shall include all applications deemed complete six (6) or more working days before the scheduled date of the applicable public notice.

(b) After an application has been declared complete, an applicant may not submit additional information to be made part of the public record unless the information is introduced at a hearing.

(6)(a) Public notice of review shall include:

1. The schedule for the review; and

2. The period during which a public hearing may be requested by the applicant and other affected persons.

(b) The board or its designee shall provide notice through public information channels.

(c) The board or its designee shall mail notice to mayors, county judge executives, and all known providers of similar services in the proposed service area.

(d) The applicant shall ensure that notice is published in one (1) newspaper of general circulation in the proposed service area pursuant to KRS 424.120.

Section 5. Review of Certificate of Need Application. (1) Batching review cycles shall be as follows:

Type of Proposal	Applications shall be filed by third Wednesday of:	Month of public notice, ninety (90) days prior to decision date:	Month and day of decision, third Wednesday of:
(a) Hospital, psychiatric, rehabilitation, chemical dependency and psychiatric residential treatment facilities, freestanding ambulatory surgical center, birthing center.	October, January, April, July	November, February, May, August	February May, August, November
(b) Skilled nursing, nursing home, intermediate care, personal care, nursing facility, and Intermediate Care, Mental Retardation, and Developmentally Disabled facility.	November, May	December, June	March, September
(c) Transplantation, magnetic resonance imaging, lithotripter, radiation therapy, cardiac catheterization, open heart surgery, and new technological developments	December, June	January, July	April, October
(d) Day health care center, ambulatory care clinic, rehabilitation agency, hospice, home health or home health/hospice	October, January, May, July	November, February, June, August	February, May, September, November
(e) Ambulance, nonemergency health transportation, and air ambulance providers.	November, January, April, June, August	December, February, May, July, September	March, May, August, October, December

(f) All mobile services except those covered under specialized equipment and services	October, December, February, April, June, August	November, January, March, May, July, September	February, April, June, August, October, December

(g) Any proposals not listed above shall be placed in the most appropriate cycle as determined by the board.

(h) Any proposals granted nonsubstantive review status as specified in KRS 216B.095(3)(a)(b)(c)(d)(e)(f) shall be processed in accordance with KRS 216B.095(1)

(2) The board or its designee shall notify the applicant by certified mail, and any party to the proceeding by regular mail, of the final action on a certificate of need application.

(3) Written notification of approval shall include:

(a) Verification that the criteria have been met;

(b) If the application is inconsistent with any criteria, the reasons for approval despite the inconsistency; and

(c) Notice of appeal rights.

(d) The amount of capital expenditure authorized, where applicable.

(4) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(5) An application that is not declared complete within a year from the date of filing shall expire and shall not be reviewed.

(6) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months, absent a showing of significant change in circumstances, as determined by the board.

Section 6. Certificate of Need Hearings. (1) The applicant or any affected person may request a hearing on an application. Notice of hearing shall be mailed by certified mail to the applicant and parties requesting the hearing no later than twenty (20) days before the date of the hearing. The content of the notice shall conform to KRS 13B.050.

(2) The board or its designee shall provide the following notice of the date, time, and location of the hearing:

(a) Members of the public through public information channels; and

(b) Mailed to county judge executives, mayors and all known providers of similar services in the proposed service area.

(3)(a) A hearing request may be withdrawn by written request filed with the board, or its designee and shall be accepted if it is received by the board at least three (3) working days before the scheduled hearing date.

(b) A public hearing shall be cancelled if all persons who requested the hearing agree in writing to its cancellation; agreement of other affected persons shall not be required.

(4) Preliminary conference. The board or its designee may convene a preliminary conference. The purposes of the conference are to formulate and simplify the issues, identify additional information and evidence needed for the hearing, and dispose of pending motions. Any petitions to intervene filed pursuant to KRS 13B.060 shall also be considered. A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record. The board or its designee may tape record the conference or have a stenographer present. During the preliminary conference, the board or its designee may:

(a) Instruct the parties and others who have indicated an intent to participate in the hearing to:

1. Formulate and submit a list of genuine contested issues to be decided at the hearing;

2. Identify potential witnesses using Form Number 3 and the subject matter of their testimony;

3. Serve subparagraphs 1 and 2 of this paragraph on all parties by mail; and

4. Raise and address issues that can be decided before the hearing.

(b) Submit any exhibits and documents that they wish to introduce at the hearing and list them on Form Number 4 and serve them on all parties to the hearing.

(c) Prescribe the manner and extent of the participation of the parties or persons who shall participate.

(d) Formulate and submit stipulations to facts, laws, and other matters.

(e) Rule on any pending motions for discovery or subpoenas.

(f) Require any additional information relevant to the application requested by the board and any information or evidence to be gathered by discovery shall be filed no less than seven (7) days before the hearing and copies shall be served on all known parties.

(g) Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(5) Public hearing. The board or a member of the board designated by the chairman shall convene the hearing and serve as hearing officer at the hearing upon the application. In no event shall a member of the board act as hearing officer on any application in which he has a conflict of interest as defined in KRS 13B.040 or 45A.340. Any party may file with the chairman a petition for removal based upon a conflict of interest supported by affidavit in accordance with KRS 13B.040(2)(a).

(6) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Every party appearing shall enter an appearance by stating their name and address. The hearing officer shall rule on preliminary matters appropriate for disposition prior to receipt of any evidence.

(7) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090. Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(a) The hearing officer may allow testimony or other evidence on

issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed. He may act to exclude irrelevant, immaterial or unduly repetitious evidence, and may question any party or witness.

(b) The hearing officer is not bound by the Kentucky rules of evidence and may allow hearsay evidence in his discretion if it is relevant to the issue.

(c) The applicant may be allowed to open and close the presentation of evidence and arguments. The hearing officer shall designate the order of presentations in the preliminary order.

(d) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If the hearing officer determines that the hearing will be expedited and the interests of the parties will not be prejudiced any part or all of the evidence may be received in written form. Written testimony of a witness in the form of questions and answers or a narrative statement may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.

(e) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original. Documents to be considered for acceptance shall be filed with the hearing officer and other parties at least seven (7) days before the hearing.

(f) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any reference document shall be precisely identified.

(g) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time, not to exceed the ten (10) days after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(8) Within ten (10) days after the conclusion of the hearing, the hearing officer shall forward a copy of the recommended decision by regular mail to each party. The original hearing decision shall be filed in the administrative record maintained by the board.

(9) Within fifteen (15) days of the date of the recommended order, the parties may file written exceptions to the recommended order with the board. If no exceptions are filed, the recommended order will become final on the day of decision as indicated in Section 5(1) of this administrative regulation. If exceptions are filed, the board shall consider the written exceptions before issuing a final order.

Section 7. Requests for Reconsideration. (1) The board shall act upon requests for reconsideration filed pursuant to KRS 216B.090 within thirty (30) days following receipt of a request. If no exceptions are filed, the order will become final and the board will issue a CON.

(2) If reconsideration is granted, a hearing before a hearing officer designated by the board shall be held within thirty (30) days of the decision, and a final decision by the board shall be issued no later than thirty (30) days following the hearing.

Section 8. Maintenance of Administrative Record. The board shall maintain an administrative record of its hearings which shall conform to the requirements of KRS 13B.130.

Section 9. Conditions Relative to Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (f), the following proposals may be granted nonsubstantive review status:

(a) Technical modifications to an approved certificate of need;

(b) Emergency circumstances. An applicant acting under this subsection may proceed to relieve any emergency circumstances as defined in Section 1(4) of this administrative regulation provided the board is notified in writing prior to the action, and an application is submitted within thirty (30) days of the occurrence of the emergency.

(2) Procedures for nonsubstantive review.

(a) The original certificate of need application and three (3) copies with a request for nonsubstantive review shall be submitted to the board.

(b) Within fifteen (15) days of the receipt of the application, the board shall:

1. Notify the applicant that the application is complete; or

2. Request specific additional information.

(c) If an application is not complete, the applicant shall:

1. Complete the application by submitting specific additional information; or

2. Notify the board that its application shall be processed as submitted.

(d) Upon receipt of an applicant's response, the board shall:

1. Declare an application complete; and

2. Notify the applicant of the beginning of the review.

(e) The board shall review all documents submitted by the applicant to determine whether the application conforms to the stated grounds for nonsubstantive review and whether the project is necessary to meet the circumstances thereby described.

(f) No later than ten (10) days after an application has been declared complete, the board's decision on a request for nonsubstantive review shall be mailed to the applicant. Notice of a decision to conduct a nonsubstantive review shall be given to the third party payors and members of the public through public information channels, and mailed to newspapers, county judge executives, mayors, and other known affected persons in the proposed service area.

(g) A proposed or final decision order and supporting documents shall be presented to the board for its approval.

(h) If a certificate of need is denied following a nonsubstantive review and the applicant requests a formal review, the filing of the request for nonsubstantive review shall be considered to constitute compliance with any requirement for a letter of intent. The applicant shall provide all information requested in the application that pertains to the formal review process no later than the relevant deadline as provided in Section 5 of this administrative regulation.

(i) Any hearing requested by an affected person will be conducted according to Section 6 of this administrative regulation.

Section 10. Conditions Relative to Certificate of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) A certificate of need approved for establishment of a new facility or the replacement of an existing facility is valid only for the location stated on the certificate.

(3) Any person found by the board to have violated KRS 216B.0615 shall be subject to the penalties for Class B misdemeanors set forth in KRS 532.090(b), 534.040(2)(b), and 534.050(1) as amended.

(4) A certificate of need holder shall notify the board of any reduction or termination of a health service or a reduction in bed capacity for an approved project no later than the first progress report after the decision to make the change has been determined.

Section 11. Show Cause Hearings. (1) The board may conduct a show cause hearing in order to determine whether there has been a violation of KRS Chapter 216B or these administrative regulations, and may assess penalties if willful violations are found. The accused violator may present evidence to assist the board in determining whether such a violation has occurred.

(2) Prior to convening a show cause hearing, the board or its designee shall give the certificate of need holder twenty (20) days' notice of its intent to conduct a hearing. The notice shall advise the

holder of the allegations against him, of any facts determined to exist which support the existence of the allegation, and the statute or administrative regulation alleged to have been violated.

(3) The board, shall convene the hearing and shall allow the holder to establish through testimony or other evidence any grounds in support of its position that no action should be taken by the board.

(4) Within ten (10) days of the conclusion of the hearing, the board shall issue a final decision and order on the matter. A copy of the final decision shall be mailed to the holder or his legal representative with the original hearing decision filed in the administrative record maintained by the board.

Section 12. Cost Escalations. (1) A certificate of need shall be required for an escalation of the capital expenditure authorized by an approved certificate of need if there is a substantial change in the project or the escalation exceeds the following limits:

(a) Twenty (20) percent of the capital expenditure authorized or $100,000, whichever is greater, if the project's capital expenditure is less than $500,000;

(b) Twenty (20) percent of the capital expenditure authorized for projects with a capital expenditure of $500,000 to $4,999,999;

(c) Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, for projects with a capital expenditure of $5,000,000 to $24,999,999;

(d) Five (5) percent of the amount in excess of $25,000,000, plus $3,000,000, for projects with a capital expenditure of $25,000,000 to $49,999,999.

(e) Two (2) percent of the amount in excess of $50,000,000, plus $4,250,000, for projects with a capital expenditure of $50,000,000 or more.

(2)(a) Requests for administrative cost escalations shall be submitted to the board or its designee on Form #6 (Cost Escalation).

(b) The requests shall include:

1. Amount of the escalation;

2. Factors causing the escalation; and

3. Information confirming that the scope of the project as originally approved has not changed and that funds have not been obligated in excess of the approved capital expenditure.

(c) The board or its designee shall review all requests for administrative cost escalations and shall notify the certificate of need holder within thirty (30) days of receipt whether the requested escalation meets the requirements of subsection (1) of this section.

(3) The certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 909 KAR 1:050.

(4) The board may conduct a show cause hearing in order to determine whether a certificate of need holder has willfully obligated capital expenditure beyond the amount authorized, and may assess penalties if willful obligations are found.

Section 13. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on "Progress Report Form #8" at the six (6) month intervals specified in this section.

(2)(a) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(b) The board or its designee shall review a progress report and shall:

1. Determine whether the required elements have been completed; and

2. If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(3) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Division of Licensing and Regulation;

(b) A final cost breakdown has been submitted; and

(c) Documentation that services are being provided to all of the licensed service area has been submitted.

(4) Until a project is deemed complete by the board, the board may require:

(a) The submission of additional reports; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(5)(a) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder, or were not the result of action or inaction of the holder.

(b) If the board determines that required elements have not been completed for reasons other than those set forth in paragraph (a) of this subsection, it shall notify the holder of the certificate of need, in writing, it has determined to revoke the certificate of need.

(c) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing to show cause why the certificate of need should not be revoked.

(6) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the purchase of equipment only: a copy of the purchase order;

(b) Projects involving the acquisition of real property: evidence of an option to acquire the site;

(c) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(7) For projects other than long-term care not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(8) For projects other than long-term care not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, where applicable.

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(9) For projects other than long-term care not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and that construction has begun.

(10) For projects other than long-term care not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(11) For projects other than long-term care not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and if required that the appropriate license

has been approved for the health care service or facility.

(12) For projects other than long-term care not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the board or its designee with a written statement showing cause why the certificate should not be revoked. The board may defer revocation action upon a showing by the certificate holder that the project will be completed on a revised schedule. The board or its designee may require additional progress reports.

(13) For projects involving long-term care beds:

(a) The first progress report shall include:

1. Copy of deed or lease of land for projects requiring acquisition of real property;

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include: documentation that beds in projects for conversion of beds are licensed.

(14) For construction projects:

(a) Schedule for project completion with projected dates;

(b) Documentation of final financing;

(c) Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

(d) Enforceable construction contract.

(15) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion;

(16) For projects not involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensure and Regulation.

(17) The board or its designee may grant no more than two (2) extensions of six (6) months for good cause shown when the certificate holder of long-term care beds has failed to comply with the above relevant progress report requirements;

(18)(a) Within six (6) months following licensure of a project for which a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(b) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

Section 14. Revocation of Certificates of Need. The board may act to revoke a certificate of need at any time in accordance with the requirements of KRS 216B.086.

Section 15. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine that they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The board or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review will be initiated;

(b) Request for information necessary for the review to which the board does not have ready access; and

(c) A deadline for response to the request for information.

(4) The board or its designee shall notify the certificate of need holder of any finding that it is not in compliance with the terms of its certificate of need, and shall provide the certificate of need holder with a reasonable period of time in which to demonstrate a good faith effort to remedy the specified deficiencies.

(5) The board may institute disciplinary proceedings, including but not limited to revocation of the certificate of need for willful failure to comply with the terms of a certificate of need as determined by a biennial review.

(6) The board shall notify the Division of Licensing and Regulation of any adverse findings under this subsection.

Section 16. Advisory Opinions. (1) Requests for advisory opinions shall be completed on Form Number 9 (Advisory Opinion).

(2) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(3) The board or its designee may require verification of information and request additional documentation.

(4) The board or its designee shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an opinion or of receipt of additional information.

(5) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter and disseminated through public information channels.

(6) An affected person may request a public hearing regarding an advisory opinion from the board in writing within thirty (30) days of the public notice of the advisory opinion. If a public hearing is not requested, the advisory opinion shall be the final action of the board. Failure to request a public hearing shall not constitute a failure to exhaust administrative remedies.

Section 17. Material Incorporated by Reference. (1) The following forms necessary for the administration of the certificate of need program are hereby incorporated by reference:

(a) Letter of Intent (Form #1).

(b) Certificate of Need Application (Form #2A).

(c) Certificate of Need Application for Ground Ambulance, Air Ambulance and NonEmergency, Health Transportation (Form 2b).

(d) Certificate of need application for change of location, replacement, or cost escalation (Form #2C).

(e) Witness List (Form #3).

(f) Exhibit List (Form #4).

(g) Notice of Appearance (Form #5)

(h) Cost Escalation (Form #6)

(i) Six (6) Month Progress Report (Form #7).

(j) Advisory Opinion Request (Form #8).

(k) Acquisition of a Health Facility, Notice of Intent (Form #9).

(2) These forms may be inspected and copied at the Kentucky Health Policy Board, 275 E. Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 18. 902 KAR 20:004, Certificate of need process, is hereby repealed.

JACK B. HALL, Chairman

APPROVED BY AGENCY: March 14, 1995

FILED WITH LRC: March 15, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 25, 1995, at 10 a.m. at the Health Services Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 20, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written

comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack B. Hall, Chairman, Kentucky Health Policy Board, 3572 Iron Works Pike, Lexington, Kentucky 40511, (606) 281-1213.

After April 1, 1995, Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-4312.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack B. Hall

(1) Type and number of entities affected: All applicants for certificates of need, holders of outstanding certificates of need and persons requesting certificate of need advisory opinions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. A reduction of personal out-of-pocket costs for health care is one of the major intended outcomes of the health care reforms mandated in House Bill 250 enacted by the 1994 General Assembly and of the Certificate of Need Program. Employment typically increases when certificates of need are approved.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No comments have been received from the public indicating that the cost of doing business will be affected by this administrative regulation. Lower health care costs, a goal of the certificate of need program, would result in a lower 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 contains new progress report requirements for persons issued certificates of need for long-term care facilities as mandated by Senate Bill 243. All other compliance, reporting, and paperwork requirements remain essentially as they are currently.

2. Second and subsequent years: This administrative regulation contains new requirements for certificate of need compliance reviews as required by House Bill 250. These reviews will begin two years after implementation of certificates of need. All other requirements remain essentially as they are currently.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will not result in any new costs to the promulgating body.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: See above.

(b) Reporting and paperwork requirements: This administrative regulation contains new progress report requirements for long-term care projects and requirements for compliance of future certificate of need projects.

(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. Revenue will also be obtained through certificate of need application fees.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation affects the entire state. Successful control of health care costs through certificates of need will have a positive economic impact.

(b) Kentucky: See above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative were available. KRS 216B.2905 and 216B.040 empower the board to promulgate administrative regulations regarding the certificate of need 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: Decreased costs and increased access to services, goals of certificate of need, will result in a positive impact on public health. There is no effect on environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Increased health care costs and limited access would have a detrimental effect on public health.

(c) If detrimental effect would result, explain detrimental effect: See above. Access barriers will result in less than optimal personal health status for Kentuckians.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplicative: 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: This administrative regulation is the successor to 902 KAR 20:004 which specified certificate of need process requirements for the Interim Office of Health Planning and Certification.

(11) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all entities statewide.

KENTUCKY HEALTH POLICY BOARD

909 KAR 1:050. Certificate of need application fee schedule.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990(2)

STATUTORY AUTHORITY: KRS 13A.350, 216B.040

NECESSITY AND FUNCTION: KRS 216B.040 authorizes the Health Policy Board to establish, by administrative regulation, and collect reasonable application fees for certificates of need. This administrative regulation provides a fee schedule for certificate of need applications.

Section 1. (1) Certificate of need applications not proposing a capital expenditure or proposing a capital expenditure of $0 - $49,999 shall be assessed an application fee of $100.

(2) Certificate of need applications which propose a capital expenditure of $50,000 - $500,000 shall be assessed an application fee at a rate of .002 of the capital expenditure.

(3) Certificate of need applications which propose a capital expenditure of $500,001 - $10,000,000 shall be assessed a base fee of $1,000 plus an additional fee of .001 of the capital expenditure.

(4) Certificate of need applications which propose a capital expenditure of $10,000,001 and above shall be assessed a base fee of $6,000 plus an additional fee of .0005 of the capital expenditure.

Section 2. All fees shall be computed to the nearest dollars. Application fees shall be submitted with the application. Applications shall not be deemed complete until the application fee has been paid. Application fees shall be refunded only if notice of withdrawal of the application is received by the chairman of the board within five (5) working days of the date the application is received by the chairman of the board.

JACK B. HALL, Chairman

APPROVED BY AGENCY: March 14, 1995

FILED WITH LRC: March 15, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 25, 1995, at 10 a.m. at the Health Services Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 20, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack B. Hall, Chairman, Kentucky Health Policy Board, 3572 Iron Works Pike, Lexington, Kentucky 40511, (606) 281-1213.

After April 1, 1995, Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-4312.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack B. Hall

(1) Type and number of entities affected: All applicants for certificate of need.

(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 and to the extent available from the public comments received: Although there could be a minimal increase in health care cost in the geographical area if a project results in a large application fee which is passed on to patients who use the facility or service, this should not be significant enough to effect cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Any person or health facility proposing to establish or expand a health facility or health service will be required to pay the assessed fee which will depend on the capital expenditure of the project. However, the fees are placed in a Trust and Agency Account which is used to offset the cost of operating the 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: Compliance is monitored in that applications are not declared complete for public notice until the required fee is submitted. The filing fee is being increased to adjust for inflation since the current fees were set in 1990 and to more adequately fund the program. The recent changes in the provision of health care resulting in an increase in outpatient and in home treatment and a decrease in inpatient (hospitalization) care have resulted in fewer applications with a large capital expenditure being submitted. The amount of the capital expenditure does not necessarily determine the time that is required to process the application. Competition in health care has increased the number of public hearings which adds to the administrative costs of processing an application.

2. Second and subsequent years: No change from the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will not result in any new costs to the promulgating body but will result in increased fees collected.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: See above.

(b) Reporting and paperwork requirements: There will be no change in method of notifying applicants and collecting the fees.

(4) Assessment of anticipated effect on state and local revenue: There will be an increase in the fees collected which are paid to Kentucky State Treasurer. In 1994, 55% of the applicants paid the minimum fee of $100; therefore, the limit for paying a minimum fee has been decreased from $150,000 to $49,999 and the additional fees increased accordingly. As stated in (2)(c), the capital expenditure does not indicate the complexity of the application. The amount of the increase cannot be projected due to the moratorium on CON applications which has been in effect for 3 years and is scheduled to expire this year.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget of the Commonwealth as established in House Bill 2 enacted by the 1994 General Assembly and revenue generated from these fees.

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

(a) Geographic area in which administrative regulation will be implemented: No public comments have been received on this regulation.

(b) Kentucky: See above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to leave the fees at the current level; however, fees collected have usually been below 20% of the total cost of operating the program which is not sufficient since most of the CON projects are generating revenue for the applicants. The fees should contribute more toward the cost of processing applications.

(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 will be no effects on public health and environmental welfare of any area in Kentucky.

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

(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: This regulation is the successor to 902 KAR 20:135 which was promulgated by the former Commission for Health Economics Control in Kentucky in September, 1990.

(11) TIERING: Is tiering applied? Yes. Tiering was applied because applications have different amounts of capital expenditures and fees are based on the capital expenditures.

KENTUCKY HEALTH POLICY BOARD

909 KAR 1:060. Licensure hearings.

RELATES TO: KRS 216B.105

STATUTORY AUTHORITY: KRS 13A.350, 216B.040

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 authorize the Kentucky Health Policy Board to provide a due process hearing and issue a final determination on all actions by the Cabinet for Human Resources to deny, revoke, modify or suspend a license. This administrative regulation sets forth the hearing procedure for licensure actions.

Section 1. Notice of Action and Request for Hearing. Any applicant or licensee who has been notified of the cabinet's decision to deny, revoke, modify or suspend a license to operate a health facility or health service may request an evidentiary hearing for the purpose of appealing the cabinet's decision. The request must be filed with the chairman of the board within thirty (30) days of the date of mailing of notice of the cabinet's decision.

Section 2. Notice of Hearing. The board shall provide the appellant with notice of date, time and location of the hearing by certified mail at least thirty (30) days before the date of the hearing.

Section 3. Disqualification of Hearing Officer. No hearing officer or board member shall participate in any hearing in which he or she has had within the past twelve (12) months preceding the hearing, any ownership, employment, staff, fiduciary, contractual, creditor, personal, or consultative relationship with the applicant or licensee.

Section 4. Hearing Procedure. (1) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090. Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(a) The hearing officer may allow testimony or other evidence on issues that may arise during the course of the hearing, including any additional petitions for intervention which may be filed. The hearing officer may act to exclude irrelevant, immaterial or unduly repetitious evidence, and may question any party or witness.

(b) The hearing officer is not bound by the Kentucky rules of evidence and may allow hearsay evidence in his discretion if it is relevant to the issue.

(c) The applicant or licensee may be allowed to open and close the presentation of evidence and arguments. The hearing officer shall designate the order of presentations, in the preliminary order.

(d) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If the hearing officer determines that the hearing will be expedited and the interests of the parties will not be prejudiced, any part or all of the evidence may be received in written form. Written testimony of a witness in the form of questions and answers or a narrative statement may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.

(e) A written or oral statement from any party, or a statement or resolution of a political subdivision, trade association, civic organization or other organization may be received without cross examination, but will be considered only as argument, and not as proof of any matter addressed in these documents.

(f) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original. Documents to be considered for acceptance shall be filed with the hearing officer and other parties at least seven (7) days before the hearing.

(g) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any reference document shall be precisely identified.

(h) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time, not to exceed the (10) days after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(2) In lieu of an evidentiary hearing, the parties to a proceeding, with the consent of the board or designated hearing officer, may file written stipulations of relevant facts. The board or hearing officer may decide the appeal on the basis of such stipulation or may schedule a hearing and take such further evidence as it deems necessary.

(3) The board or designated hearing officer may, at its discretion, grant a continuance of a hearing in order to secure necessary evidence.

Section 6. Findings and Recommendations. (1) After the hearing, the hearing officer or the board shall prepare written findings of fact and recommendations with a synopsis of the evidence contained in the record on the issues involved. If the applicant or licensee fails to appear and prosecute the appeal, the board or hearing officer may dismiss or recommend dismissal of the appeal.

(2) The board shall send findings and recommendations by certified mail to the applicant or licensee and to the licensing agency, who may submit exceptions within ten (10) days of receipt.

(3) If the hearing is before a designated hearing officer, within thirty (30) days from the conclusion of the hearing the hearing officer shall transmit the findings and recommendations to the board.

(4) The board shall make its final decision at the first meeting following receipt of the hearing officer's findings and recommendations, but not less than ten (10) days after transmission of the findings and recommendations by the applicant or licensee pursuant to subsection (2) of this section.

(5) The decision of the board shall be final for purposes of judicial appeal, as set forth in KRS 216B.115, upon mailing of notice of the board's decision.

Section 7. 902 KAR 20:126, Certificate of need process, is hereby repealed.

JACK B. HALL, Chairman

APPROVED BY AGENCY: March 14, 1995

FILED WITH LRC: March 15, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 25, 1995, at 10 a.m. at the Health Services Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by April 20, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack B. Hall, Chairman, Kentucky Health Policy Board, 3572 Iron Works Pike, Lexington, Kentucky 40511, (606) 281-1213.

After April 1, 1995, Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-4312.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack B. Hall

(1) Type and number of entities affected: All licensees, and potential licensees, of health facilities and health services operating within the Commonwealth.

(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 and to the extent available from the public comments received: There is no anticipated impact on the cost of living and employment in any geographical area in the Commonwealth as a result of this 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 comments have been received from the public indicating that the cost of doing business will be affected by this regulation. If the cost of doing business is affected at all, it will be in the form of fees and costs (including legal fees) involved in participating in licensure hearings before the board.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Compliance, reporting and paperwork requirements concerning licensure hearings are expected to be the same as they are at the present time.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will not result in any new costs or savings or the promulgating body.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: See above.

(b) Reporting and paperwork requirements: This regulation allows for the submission of written testimony and written stipulation of facts, in certain cases, in lieu of live testimony. This may result in additional written work requirements by the promulgating body in the form of written responses in the form of additional orders.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget of the Commonwealth as established by House Bill 2 enacted by 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) Geographic area in which administrative regulation will be implemented: No public comments have been received, and no economic effects are expected.

(b) Kentucky: See above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were available. KRS Chapters 261 and 216B, and in particular KRS 216B.040 and 216B.105, empower the board to promulgate regulations regarding the licensure function of the board.

(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 is no effect on environmental welfare. It is expected that public health in the immediate geographical area of served by a particular licensee, as well as public health within the entire Commonwealth, will be positively impacted because the procedures followed in conducting and overseeing licensure hearings will ensure more uniformity in overseeing compliance with licensure requirements, and with the overall licensure process.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Substandard health care and inconsistent enforcement of health facilities and health services would have a detrimental effect on public health.

(c) If detrimental effect would result, explain detrimental effect: See above. In addition, this regulation ensures that the due process rights of licensees and potential licensees are protected in the course of appealing initial decisions to revoke, suspend, modify or deny licenses.

(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 follows and supersedes 902 KAR 20:126, which specified procedures to be followed in licensure hearings.

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation applies equally to all entities statewide.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the March 6, 1995

The March meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 6, 1995, at 10 a.m. in Room 149 of the Capitol Annex. Representative Jesse Crenshaw, Chairman, called the meeting to order, and the secretary called the roll. The minutes of the February 1, 1995 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman; Senators John David Preston, Nick Kafoglis, Fred Bradley; Representatives Woody Allen, Jim Bruce and Tommy Lee.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines.

Guests: Richard Casey, Jane Stewart, KHEAA; Jennifer Hays, John Scott, Paul D. Jones, Kenton Ball, Dana Mayton, Kim Burse, Revenue Cabinet; Don Mullis, Angela C. Robinson, Gail Prewitt, Mary Lassiter, Finance and Administration Cabinet; Bill Pettus, State Board of Podiatry; Mark Cramer, Jeffery Sole, Tom Bennett, Rebecca Games, Don Walker, Department of Fish and Wildlife Resources; Alan Hamilton, Don L. Notter, Donna G. Dutton, Department of Agriculture; Marjorie Mullen, Diana Andrews, Natural Resources and Environmental Protection Cabinet; Sarah Jackson, Division of Charitable Gaming; Susan Alley, Department of Corrections; Paul D. Hampton, Mike Roscoe, Kevin Noland, Ed Reidy, David Thurmond, Department of Education; Sue G. Simon, Department of Vocational Rehabilitation; Carl H. Montgomery, Department of Insurance; Charles E. McCoy, Kentucky State Building & Construction Trades Council; Judy Walden, Department of Housing, Buildings and Construction; Cookie Whitehouse, Anne Hager, Karen Doyle, Cabinet for Human Resources; Cindy Rausch; Jim Carloss, Kentucky Academy Eye Surgeons; Tim Kimmel, Ed O'Daniel, Kentucky Distillers Association; Bill Doll, Kentucky Medical Association; Robert L. Barnett, Kentucky Pharmacists Association; Tod Griffin, Kentucky Retail Federation; Mike Ridenour, John Brazel, Kentucky Chamber of Commerce; Roger Grim, Kentucky Association of Career Colleges & Schools; Mike Helton, MMLEK; Stephen A Bondi, Jim Beam Brands Co.; Matthew J. Zimmermann, American Brands, Inc.; Carl Breeding, Breeding, McIntyre & Cunningham; Dandridge F. Walton, Charter Medical.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Revenue Cabinet: Income Tax, General Administration

103 KAR 15:090. Computing the amortization deduction for intangible assets. Secretary Burse stated that: (1) this administrative regulation related to the General Assembly's rules of statutory construction and its past practice with regard to retroactivity of legislation; (2) if retroactive application was intended, previous legislation updating the state internal revenue code by adopting the federal internal revenue code, such as that enacted at the 1982 Regular Session, expressly provided for retroactive application; and (3) considering possible federal tax changes, standard rules should be followed in the passage of legislation in order to: (a) clearly establish: 1. what tax provisions have been enacted; 2. whether retroactive application is intended; and 3. the consequences of such provisions; and (b) provide for accurate revenue estimates of the impact of code changes and updates.

Paul Jones, Revenue Cabinet stated that: (1) the 1993 Revenue Reconciliation Act enacted Section 197 of the Federal Internal Revenue Code which changed the rules governing the amortization of intangible assets for federal income tax purposes by: (a) providing that all amortizable assets were to be amortized over a 15 year period; (b) for certain assets, this increased the amortization period from 5 to 15 years; (c) allowing good will to be amortized in the same manner as other intangible assets; (d) making the amortization changes generally effective for federal income tax purposes for intangible assets acquired after August 10, 1993, the enactment date of the federal Revenue Reconciliation Act; and (e) permitting taxpayers to elect for retroactive application of the amortization changes for assets acquired after July 25, 1991; (2) House Bill 107: (a) adopted the provisions of Section 197 for Kentucky purposes, by amending the federal code referenced in Kentucky statutes to the federal code in effect December 31, 1993; (b) in its final version, deleted language that expressly provided for retroactive application of the federal code that it adopted; (c) provided that it would apply only for taxable years beginning after December 31, 1993; and (3) because the language providing for retroactive application of the code adopted by House Bill 107 was deleted, this administrative regulation was proposed to clarify that Section 197 provisions were effective for Kentucky income tax purposes only for taxable years beginning after December 31, 1993.

Senator Bradley stated that he was concerned about Cabinet communications relating to the effect on taxpayers if this administrative regulation is found deficient and expires such as reassessment.

In response to Representative Bruce's question for an explanation of why, and on whose recommendation, the language providing for retroactive application of the code adopted by House Bill 107 was deleted, was deleted, Mr. Jones stated that: (1) on reconsideration by Appropriations and Revenue Committee in February of the Regular Session, a request to delete the language was approved because many 1993 income tax returns already had been filed with the understanding that the previous code was in effect for 1993 returns; and (2) that accountants had asked for the deletion. Secretary Burse stated that this was the most appropriate approach since House Bill 107 had been enacted so late into the period during which tax returns would be prepared and filed.

In response to questions by Senator Preston: (1) Secretary Burse stated that, if the provisions were given retroactive effect: (a) the Cabinet could not state the specific financial impact on the state's tax revenue in specific dollar amounts; (b) a substantial impact would result for taxpayers who would be required to file amended returns for the tax period; and (2) Mr. Jones stated that: (a) the number of taxpayers affected if retroactive application of the adopted code was permitted could not known, because a taxpayer would have to amend his return according to the new 15 year amortization rule if he: 1. acquired intangible assets after August 10, 1993 and before January 1, 1994; and 2. had amortized those assets on his 1993 return under the previous code; (b) in addition to the amortization of good will, other provisions affecting taxpayers related to the increase of the: 1. Section 179 first year expense deduction from $10,000 to $17,500; and 2. life of non-residential real property for depreciation purposes from 28 to 40 years; (c) the acquisition of goodwill would arise on the purchase of a company in which a certain amount of the purchase price was allocated between the tangible assets, and the intangible assets, of which one could be the goodwill of the company, and another could be a covenant not to compete; and (d) such intangibles previously were required to be amortized under a period shorter than the 15 year period permitted by Section 197; and (e) the deletion from House Bill 107 of the provision providing for retroactivity showed legislative intent that Section 197 not be given retroactive effect.

Mr. O'Daniel stated that: (1) the code does not require action by the Cabinet; (2) the impact or retroactive application of Section 197 would be determined by the number of taxpayers who make the election provided for by Section 197; (3) the General Assembly

adopted the entire federal internal revenue code because: (a) Section 1 of House Bill 107 defines the federal internal revenue code as the federal code in effect on December 31, 1993; (b) excludes only amendments subsequent to December 31, 1993; (c) does not specifically exclude any provision in the federal internal revenue code as it existed on December 31, 1993; (4) contrary to the provisions of House Bill 107, this administrative regulation: (a) provides that the federal internal revenue code as it existed on December 31, 1993, except for the part of Section 197 that benefits taxpayers by permitting the depreciation of certain intangible assets, acquired after July 25, 1991, over a 15 year period, is adopted; (b) deprives taxpayers of this for intangibles acquired after July 25, 1991 and before January 1, 1993; (5) Cabinet determination against retroactive application embodied in this administrative regulation is the creation of new law, the amendment of a statute enacted by the General Assembly; (6) the administrative regulation would be more consistent with the legislation, if it allowed the taxpayer to bring forward the amortization and retain it as a 15 year entitlement; (7) Section 3 of House Bill 107 provides that its provisions shall apply for tax years beginning December 31, 1993, except as otherwise provided; (8) the Section 197 amortization election is "except as otherwise provided"; (9) unless House Bill 107 specifically excluded a part of Section 197, the amortization allowance could not be denied; (10) rather than adopt each provision of the federal internal revenue code, the General Assembly specifically adopted the federal internal revenue code as it existed on December 31, 1993; (11) to exclude part of Section 197 would require the statement of a specific exclusion in House Bill 107, which was not made by the General Assembly; and (12) since House Bill 107 does not specifically exclude any portion of Section 197, it permits a taxpayer to elect to amortize under Section 197 by filing an amended return with the Cabinet.

In response to a question by Senator Preston, Mr. O'Daniel stated that the issue related to: (1) amendments made by the Revenue Reconciliation Act to the federal internal revenue code prior to December 31, 1993; and (2) the adoption of such amendments through the adoption of the federal internal revenue code without a specific exclusion of retroactivity.

In response to questions by Senator Preston, Mr. Kimel stated that Section 197 was amended to permit: (a) amortization of certain intangible assets that previously were not amortizable; and (b) taxpayers to elect to amortize assets, that were amortizable prior to the amendment, to be amortized over a longer period; (c) the Revenue Reconciliation Act was effective August, 1993; and (d) Section 1(3) of House Bill 107, defining the federal internal revenue code that was adopted as the code in effect on December 31, 1993, included the Revenue Reconciliation Act amendments.

In response to questions by Senator Preston, Mr. Ball stated that: (1) the Cabinet's interpretation affects all taxpayers, and is not restricted to taxpayers making the Section 197 election; (2) retroactive application would affect other parts of the code, such as the increase in: (a) Section 179 first year expense deduction from $10,000 to $17,500; and (b) the life of non-residential real property for depreciation purposes from 28 to 40 years; (3) House Bill 107 was not expressly retroactive, and KRS 446.080 specifically provides that a statute shall not be given retroactive effect unless it expressly provides for retroactive effect; (4) in Hamilton v. Desperado Fuels, the Kentucky Supreme Court, in construing KRS 446.080, held that when a statute created new rights or duties, it should be presumed that the legislature intended prospective application of the statute; and (5) while the Cabinet supported the initial provision for retroactive application, the General Assembly rejected retroactive application because taxpayers had filed returns under the previous code.

Senator Preston stated that the reason for the deletion of the retroactive provision was policy, but that the issue of retroactive application had to be determined by the meaning of the language of House Bill 107. Mr. Ball stated that: (1) Section 3 of House Bill 107 does not refer to Section 197 of the federal code; and (2) "except as otherwise provided" refers to Section 2 of House Bill 107 that deleted a specific reference to the depreciation sections of the state code, and made them effective on a different date.

In response to a question by Senator Preston relating to the language in Section 1(3) that defines the internal revenue code as the federal internal revenue code in effect on December 31, 1993, Mr. Ball stated that the election provisions are: (1) part of the effective date provisions of the internal revenue code of 1993; (2) not part of Section 197 , that does not contain an election provision; and (3) contained in the notes in an amendment to the effective date provision, and are not treated as part of the substance of the Code. In response to a question by Senator Preston concerning the effective dates in the federal internal revenue code, Mr. Ball stated that the: (1) federal code was generally effective for assets acquired after August 10, 1993; (2) election is contained in an exception to this general rule, as a special rule, for intangible assets acquired after July 25, 1991; and (3) that deletion of the retroactive provision of House Bill 107 precluded adoption of the effective date provisions regarding Section 197.

With regard to retroactivity by implication, Mr. Ball stated that if any part of House Bill 107 is permitted to affect a tax year beginning or ending before the effective date of House Bill 107: (1) the legislation is made retroactive without the express provision for retroactive application required: (a) by KRS 446.080; and (b) for a determination by the Cabinet to give retroactive effect to the code; and (2) the Cabinet would not have a clear rule as to whether the code was or was not to be given retroactive effect.

Secretary Burse stated that unless the rules relating to retroactive application of legislation were clear, the Cabinet would be faced with serious problems in the adoption by the state of the expected changes in federal legislation relating to the amendments of the federal tax code.

In response to a question by Chairman Crenshaw, Mr. Ball stated that: (1) if the language in House Bill 107 adopting the federal internal revenue code as it existed on December 31, 1993 is construed to mean that the effective date provisions of the federal code were adopted, this would require adoption of the effective date provision permitting retroactive election of the sections of Section 197 relating to amortization of certain intangibles; (2) if adoption of the whole federal internal revenue code which contains retroactive provisions would mean that a retroactive provision had been adopted, contrary to the requirement of KRS 446.080 that retroactive application is possible only if the bill enacted by the General Assembly expressly provides for retroactive application.

With regard to a question by Senator Bradley relating to the increase in the Section 179 first year expense deduction from $10,000 to $17,500, Mr. Jones stated that a determination that House Bill 107 should be applied retroactively would: (1) not result in assessments against taxpayers who claimed the $17,500 deduction; (2) result in a recognition of the higher deduction for 1993 taxable year, and would permit taxpayers to file an amended return to claim a larger deduction; and (3) result in an assessment because retroactive application of the Section 197 provisions would result in an increase in the: (a) amortization period from 5 to 15 years; and (b) life of non-residential real property for depreciation purposes from 28 to 40 years.

Representative Lee stated that KRS 446.080 applied only to Kentucky statutes, and not to federal statutes that provide for retroactive application and are adopted by the General Assembly. Representative Lee asked if it was the Cabinet's position that, pursuant to KRS 446.080, the Cabinet could promulgate an administrative regulation excluding or prohibiting retroactive effect of the bill's provisions if: (1) a bill did not specifically provide for retroactive effect, the Cabinet could promulgate an administrative regulation excluding or prohibiting retroactive effect of the bill's provisions; and (2) the legislature adopted any federal legislation that provided for retroactive effect of its provisions, the Cabinet could promulgate an administra-

tive regulation prohibiting retroactive effect of the bill's provisions. Mr. Ball stated that: (1) this was the Cabinet's position; (2) the Cabinet believes that, without an express provision by the General Assembly that legislation be given retroactive effect, the Cabinet could not promulgate an administrative regulation that permitted retroactive application of the legislation, even for retroactive application of federal legislation that provided for retroactive application; and (3) the effective dates relating to retroactive application in federal law adopted by Kentucky are superseded by the requirement of KRS 446.080 that a statute contain a specific provision for retroactive application.

In response to a question by Senator Kafoglis, Mr. Ball stated that the phrase, "except as otherwise provided", in House Bill 107: (1) did not relate to Section 1, the code update, or Section 3, the effective date provisions; and (2) related to Section 2, the depreciation changes, which would not be changed for taxable years beginning after December 31, 1993.

Senator Preston stated that: (1) the legal arguments appeared finely balanced because one was based on the bill's provision that adopted the federal code in effect on December 31, 1993, while the other was based on the requirement of KRS 446.080 for a specific provision for retroactive application; (2) it appeared that the legislature deleted the retroactive provision because it did not want it to be applied retroactively because many taxpayers had filed their returns based on the previous code and because of opposition by accountants; and (3) while the intent of the legislature may not have been expressed as clearly as one would like, the intent of the General Assembly appears to have been that retroactive application not be permitted because of the short period from enactment to the due date for filing tax returns.

Mr. O'Daniel stated that: (1) "except as otherwise provided" was not restricted to Section 2; (2) if "except as otherwise provided" was limited to Section 2, House Bill 107 would specifically have provided "except as otherwise provided in Section 2"; (3) "except as otherwise provided" is broad, and appears to mean except as otherwise provided in the federal internal revenue code that was adopted by House Bill 107, the act applies for taxable years beginning after December 31, 1993; (4) without the legislature so directing, general language, such as "except as otherwise provided" cannot be restricted to only one portion of a bill; and (5) not only the Cabinet, but the taxpayer, must be able to understand the rules and what legislation contains or means; (6) as written, the legislation would appear to a taxpayer to permit the amortization, and other adjustments, provided for by Section 197.

Mr. Kimel stated that: Mr. Steven Schultz, the head of the state and local tax section of the Kentucky Society of Certified Public Accountants, stated to him that the Society's support of the deletion of the retroactive provision was: (1) intended to remove the burden that would be imposed on a taxpayer to file amended returns for every provision of the code adopted by the state; and (2) was not intended to prevent or preclude a taxpayer from making the election contained in Section 197. In response to a question by Chairman Crenshaw, Mr. O'Daniel stated that, while there would be some benefit for approximately two distillers, he could not estimate the amount that would be lost under this administrative regulation by: (1) taxpayers in general; or (2) the approximately distillers.

Chairman Crenshaw asked Cabinet personnel if: (1) denial of retroactive application, that may have resulted from an error in drafting or amendments deemed necessary because of the lateness of the legislative session, would reduce the amortization period from 15 to 12 years; and (2) those who would be adversely affected could be accommodated so they could receive the full amortization period provided for by Section 197. Mr. Jones stated that: (1) for Kentucky tax purposes, taxpayers would have an amortization period of 12 and one-years, rather than 15 years; and (2)(a) upon the disposition of an intangible asset, the different amortization periods under Kentucky and federal codes will result in a difference in the adjusted basis of the asset; (b) upon recognition of the gain for Kentucky tax purposes, the Kentucky adjusted basis could be greater than the federal adjusted basis; and (c) for Kentucky tax purposes, the loss of depreciation would be recovered upon the sale of the asset because of the lesser gain reported for Kentucky tax purposes than was reported for federal tax purposes. Mr. Kimel stated that: (1) the belief that taxpayers will be hurt because they make an election that will change certain assets from 5 year amortizable assets to 15 year amortizable assets is not the case;(2) because it is an election provision, generally the taxpayers who would make the election are those who have acquired a significant asset that would not have been amortizable in the past; (3) taxpayers, such as distillers, that have made a significant acquisition such as a trade name, have acquired assets that are not quickly disposed of, and are generally held for a long period of time or never disposed of; (4) the inability to deduct for the two or two and one-half year period, means that there is a significant loss of the benefit of two and one half years' deduction upon sale of the intangible; and (5) the distillers had offered, as alternatives, Cabinet permission to: (a) allow a catch-up in 1994, although not permitting the amendment of previous returns as is permitted under federal regulations; or (b) in 1994, to begin a 15 year amortization period until 2009 or 2010. Mr. Ball stated that: (1) an accommodation raised the issue of which part of the code would be made retroactive; (2) the Cabinet could not legally provide for retroactive application of part of the code that was adopted; (3) following the rules regarding retroactive application established by KRS 446.080, the Cabinet could not agree to the suggested accommodations because they would result in: (a) retroactive application of part of the code; and (b) requests by others for special treatment by retroactive application of additional parts of the code; and (4) it would be impossible to determine which parts had, or had not been, selectively adopted retroactively. Mr. Kimel stated that: (1) retroactive application is not being requested, since the election provisions are contained only in Section 197, which section was adopted by the legislature; (2) retroactivity permitting the amendment of previous returns was not being requested since he believed the legislature had adopted the election provision of Section 197. Mr. O'Daniel asked why this administrative regulation was written to apply only to Section 197, if the Cabinet was concerned about retroactive application of other provisions of the code. Mr. Ball stated that Section 197 was the subject of this administrative regulation because the fundamental change in the federal code was Section 197 that allowed amortization for assets not previously not amortizable.

Senator Kafoglis asked those who opposed the administrative regulation why the provision providing for retroactive application was deleted, if it was the intent of the legislature to permit retroactive application. Mr. O'Daniel stated that the: (1) only legislative intent is the legislative intent actually expressed in the enacted legislation; (2) the specific legislation enacted by the General Assembly provided for the election found in Section 197; and (3) even though language specifically providing for retroactive application was deleted, the phrase "except as otherwise provided" refers to except as otherwise provided by the legislation, and the legislation enacted, the adoption of the federal internal revenue code, which permits the election.

Senator Preston stated his problem with the argument against this administrative regulation is that the: (1) write off an intangible asset is permitted under Section 197; (2) theory of depreciation is that an asset depreciates over a period of time and then has no value, and that a taxpayer is permitted to write off a certain amount of the cost of that item over a period of time to compensate for this loss of value; (3) intangible assets that now may be depreciated, such as goodwill, will not depreciate or lose value over time, lessening the merits of the argument that depreciation of intangible assets should be allowed; and (4) problem arises from the wholesale adoption of the federal internal revenue code.

In response to a question by Chairman Crenshaw, Representative Lee stated that the section of KRS Chapter 446 to which he had

earlier referred was KRS 446.080. In response to Chairman Crenshaw's question, Mr. O'Daniel stated that he did not agree with the Cabinet's position that, under the provisions of KRS 446.080, the legislature could supersede the effective date established in federal legislation adopted by Kentucky, if a specific provision providing for retroactive fact was not contained in the state legislation that adopted the federal act. Secretary Burse stated that if a specific provision providing for retroactive application was not required, the state could not otherwise ensure the limitation of federal legislation it adopted.

Senator Bradley stated that neither side could provide the Subcommittee with the financial effects of the positions they advocated, and suggested that, in the future, those supporting and opposing administrative regulations with a financial impact would be prepared to present information and a reasonable estimate on the administrative regulation's financial impact to the Subcommittee.

Senator Kafoglis stated that he was inclined, from a policy point of view, to agree with those who opposed the administrative regulation. He added that he would vote to approve the administrative regulation, because: (1) he did not believe that the Subcommittee should vote on policy; (2) KRS 446.080 required a specific provision for retroactive application; and (3) the deletion by the General Assembly from House Bill 107 of the provision providing for retroactive application.

The Subcommittee approved the amendment of this administrative regulation to: (1) delete Section 2, establishing definitions, because definitions were not required since applicable statutes contained necessary definitions; and (2) delete the abbreviations for "Internal Revenue Code" and insert the full term in lieu thereof.

The Subcommittee approved a motion that this administrative regulation complied with statutory authority.

Board of Podiatry

201 KAR 25:011. Approved schools; examination application; fees. This administrative regulation was amended to comply with KRS 13A.110, to incorporate by reference the "Application for Examination" which the Board requires to be submitted.

Department of Fish and Wildlife Resources: Game

301 KAR 2:049. Seasons for furbearers and small game on specific areas. This administrative regulation was amended as follows: (1) Section 2(1)(b) was amended to clarify the type of garment and coloration that is permitted; and (2) Sections 2(1)(c), and 3(5)(a),(20)(b),(27)(b)2. were amended to comply with KRS 13A.222(4)(b) which requires the use of shall to express a duty or obligation.

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game. Sections 2(1),(2),(8), 4(1), and 10(1) were amended to comply with KRS 13A.222(4)(b) which requires the use of "shall" to express a duty or obligation.

Hunting and Fishing

301 KAR 3:028. Applying for disability hunting and fishing licenses. This administrative regulation was amended as follows: (1) the format of Section 1(1) was amended to make it clearer, pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a); (2) "Kentucky residents" was added in various subsections of Section 2, and deleted in Section 2(1),(2),(3),(5) for clarity and consistency, pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a);.and (3) the incorporation by reference statement was deleted from Section 3(4) and placed in a new section, Section 4.

Economic Development Cabinet: Department of Agriculture: Livestock Sanitation

302 KAR 20:010. Definitions. This administrative regulation was amended to: (1) delete substantive requirements from the definition of "Official Brucellosis Vaccinate", to comply with KRS 13A.222(4)(e) which restricts a definitions section to definitions; (2) delete language prohibited by KRS 13A.222(4)(c); and (3) insert the definition of "cull pig" pursuant to KRS 13A.222(4)(e).

302 KAR 20:020. General requirements. This administrative regulation was amended to: (1) insert a cross-reference to 302 KAR 20:065; (2) express duties or obligations with "shall", pursuant to KRS 13A.222(4)(b); and (3) reformat various sections of the administrative regulation to make them more readable pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a).

302 KAR 20:040. Entry into Kentucky. This administrative regulation was amended to: (1) express duties or obligations with "shall" pursuant to KRS 13A.222(4)(b); (2) reformat various sections of the administrative regulation to make them more readable pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a); and (3) make a grammatical change by deleting "or" and inserting "for" at the Department's request.

302 KAR 20:055. Brucellosis vaccination, testing and branding requirements. This administrative regulation was amended to: (1) express duties or obligations with "shall" pursuant to KRS 13A.222(4)(b); (2) reformat various sections of the administrative regulation to make them more readable pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a); and (3) express discretionary powers with "may" pursuant to KRS 13A.222(4)(b).

302 KAR 20:065. Sale and exhibition of Kentucky origin livestock in Kentucky. This administrative regulation was amended to: (1) express duties or obligations with "shall" pursuant to KRS 13A.222(4)(b); (2) reformat various sections of the administrative regulation to make them more readable pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a); (3) add the article "the" where necessary to make the administrative regulation more readable; and (4) delete the tuberculosis testing requirement for goats entering the Commonwealth for sale or exhibition at the agencies request.

302 KAR 20:070. Stockyards. This administrative regulation was amended to: (1) delete prohibited words like "said", "aforesaid" and "such", pursuant to KRS 13A.222(4)(c); (2) delete the reference to both masculine and feminine pronouns pursuant to KRS 13A.222(4)(j); (3) add the article "the" where necessary to make the administrative regulation more readable; and (4) express duties or obligations with "shall" pursuant to KRS 13A.222(4)(b).

302 KAR 20:210. Pseudorabies surveillance. This administrative regulation was amended to: (1) delete a substantive requirement from the definition of "pseudorabies monitored feeder pig herd" and insert the requirement as a new Section 2; (2) delete "shall" before "means" in each subsection of the definitions section of this administrative regulation.

302 KAR 20:220. Pseudorabies: eradication and control. Representative Lee asked if these administrative regulations would relieve the burden on the Kentucky's farmers.

Department personnel responded that under these administrative regulations, the: (1) brucellosis testing requirements are somewhat reduced; and (2) brucellosis calfhood vaccination program has been made voluntary rather than mandatory.

Senator Kafoglis asked why the tuberculosis testing requirement for goats was being eliminated.

Department personnel responded that: (1) there had been no cases of tuberculosis in goats for many years; and (2) the testing was burdensome to the farmer under the circumstances.

This administrative regulation was amended to: (1) delete a substantive requirement from the definition of "pseudorabies monitored feeder pig herd", to comply with KRS 13A.222(4)(e) which restricts a definitions section to definitions; and (2) insert this requirement as a new Section 2.

Justice Cabinet: Charitable Gaming

500 KAR 11:015 (& E). Permanent licensure. This administrative regulation was amended: (1) to comply with KRS 13A.222 to delete prohibited words; and (2) Section 4(1) was redrafted to clarify that the "form specified in Section 5(1) of this administrative regulation" shall refer to both the application for "initial

and renewal" licenses.

500 KAR 11:025 (& E). Quarterly reports. This administrative regulation was amended to comply with KRS 13A.222 to delete prohibited words.

Department of Corrections: Office of the Secretary

501 KAR 6:110. Roederer Correctional Complex. This administrative regulation was amended: (1) to comply with KRS 13A.222(4)(b), which requires the use of "shall" to express a duty or obligation, in: (a) RCC 02-01-03; (b) RCC 02-02-05; (c) RCC 06-01-01; (d) RCC 11-03-01; (e) RCC 13-04-01; and (f) RCC 22-01-01; (2) in RCC 02-01-03: (a) to add KRS 196.270 to the References; and (b) to delete E., which deleted the establishment of a staff canteen.

501 KAR 6:140. Bell County Forestry Camp. This administrative regulation was amended to: (1) add KRS refiners in BCFC 13-09-01; (2) in BCFC 13-10-01: (a) add OSHA and CFR citations; and (b) comply with KRS 13A.222(4)(b) which requires the use of "shall" to express a duty or obligation; and (3) to include a citation for adult basic education in BCFC 19-01-01.

Department of Education: Office of District Support Services: Pupil Transportation

The following three administrative regulations were amended to add a CFR citation to the "RELATES TO" section to comply with the drafting requirements of KRS Chapter 13A. Kevin Noland appeared before the Subcommittee representing the Cabinet.

702 KAR 5:030 & E. Superintendents' responsibilities. This administrative regulation was also amended to delete KRS 157.320 and in lieu thereof insert KRS 189.540 in the "STATUTORY AUTHORITY" section to cite the intended statute.

702 KAR 5:040 & E. District boards' responsibilities. This administrative regulation was also amended to delete KRS 157.320 and in lieu thereof insert KRS 189.540 in the "STATUTORY AUTHORITY" section to cite the intended statute.

702 KAR 5:080 & E. Bus drivers' qualifications; responsibilities.

Bureau of Learning Results Services: Assistance and Intervention Services

703 KAR 3:060 & E. Procedures for determine rewards and sanctions. Kevin Noland and Ed Reedy appeared before the subcommittee representing the department. Mr. Noland explained the amendment being presented, to expand the chart of reward levels by specifying each level.

This administrative regulation was amended in Section 7 to specifically list reward levels 5 through 50, rather than implying them, to comply with the drafting requirements of KRS Chapter 13A.

Cindy Rausch appeared before the subcommittee speaking in opposition to this administrative regulation. Ms. Rausch expressed her concern that the Department of Education determined what schools were "successful schools" and announced those schools before this regulation came before this committee for approval. She stated that the Department seems to have disregarded the committee's authority to approve regulations. She questioned how the Department can use this regulation before it has been approved.

Ms. Rausch stressed as most important "the fact many serious questions and issues have been raised regarding the accuracy, reliability and validity of the measurement tool that was used to determine 'successful students' and 'successful schools.'" She cited KRS 158.6455: "It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success."

She referred to two recent reports which raised the question of whether or not KIRIS can accurately measure either students or schools. She stated that because of KRS 158.6455 success must be determined accurately and fairly and stated that since there is serious doubt among researchers whether KIRIS can do that, this regulation does not conform to legislative intent or statutory authority.

She stated that "using KIRIS (the assessment tool) is not fair to schools or teachers who may indeed deserve rewards, but will not receive them because of an inaccurate tool used to measure and determine 'success.'"

On a motion to approve this administrative regulation and a roll call being called for, motion passed 4 to 2.

Department of Insurance: Health Insurance Contracts

806 KAR 17:070. Filing procedures for health insurance rates.

Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:100. The Kentucky Building Code.

Plumbing

815 KAR 20:120. Water supply and distribution.

Cabinet for Human Resources: Department for Social Insurance: Food Stamp Program

904 KAR 3:041. Food Stamp Employment and Training Program. This administrative regulation was amended to comply with KRS 13A.222 to delete prohibited words.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Kentucky Higher Education Assistance Authority: Kentucky Loan Program

11 KAR 3:015. Borrower eligibility. Richard Casey and Jane Stewart appeared before the subcommittee representing the Authority. After this administrative regulation was approved a few questions were asked. Senator Kafoglis asked the amount of money in default. Ms. Stewart stated that a gross amount of $136 million had been in default but the outstanding net amount at this time is $60 million. To Senator Kafoglis' question concerning payment of this net amount, Mr. Casey stated that student loans typically improve with age.

Senator Kafoglis asked if the agency were being aggressive enough. Mr. Casey stated that they use every effort to collect these loans and are as aggressive as any state in the nation. He stated that there are currently approximately 3,000 lawsuits in process, as well as garnishments and tax offsets.

Chairman Crenshaw asked if they were simply complying with a federal requirement. He also asked what protective devices the agency uses when a person in default on a loan requests another loan. Mr. Casey replied that they do not lend money, they insure the loans. He stated that they have to follow federal rules and added that rehabilitation is a benefit to the system. He said that all are eligible to apply but don't automatically qualify. They have to meet several criteria. Ms. Stewart added that those who have been in default, to be reconsidered, have to make twelve consecutive payments before they qualify for a new loan, and at that point the loan is purchased by a private lender.

Kentucky Higher Education Assistance Authority

11 KAR 4:050. Set off of authority claims.

Finance and Administration Cabinet: Underwriter and Bond Counsel Selection Process

200 KAR 21:010 (& E). Procedure for prequalification of underwriters and bond counsel for state bond issues.

200 KAR 21:020 (& E). Evaluation factors for bond counsel and underwriters.

200 KAR 21:030 (& E). Calculating the preference for Kentucky bond counsel firms for state bond issues.

200 KAR 21:040 (& E). Selection of national comanaging underwriters.

200 KAR 21:050 (& E). Establishment of rates to reimburse underwriters for counsel.

Personnel Pilot Programs

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

Department of Agriculture: Livestock Sanitation

302 KAR 20:185. Equine infections anemia positive horses.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Air Quality - General Administrative Procedures

In response to a question from Representative Bruce, cabinet personnel stated that these administrative regulations have been promulgated to comply with, and do not exceed, federal minimum requirements.

401 KAR 50:010. Definitions and abbreviations of terms in 401 KAR Chapters 50, 51, 53, 55, 57, 61, 63, and 65.

Air Quality - New Source Requirements; Nonattainment Areas

401 KAR 51:001. Definitions and abbreviations of terms used in 401 KAR Chapter 51.

Air Quality - New Source Standards

401 KAR 59:001. Definitions and abbreviations of terms used in 401 KAR Chapter 59.

Air Quality - Existing Source Standards

401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61.

Air Quality - General Standards of Performance

401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63.

Air Quality - Mobile Source-related Emissions

401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65.

Workforce Development Cabinet: Department of Vocational Rehabilitation: Independent Living Rehabilitation

781 KAR 2:011. Repeal of Department of Vocational Rehabilitation independent living rehabilitation services administrative regulations.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:130. House sewers and storm water piping; methods of installation.

The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:

Department of State: Registry of Election Finance: Reports and Forms

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

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

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

32 KAR 1:140E. Cash contributions.

Department of Personnel: State Employee Benefit Fund

101 KAR 4:010E. Health and other benefits.

Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

781 KAR 1:010. Department of Vocational Rehabilitation appeal procedures.

Department for the Blind

782 KAR 1:040. Appeal procedures for applicants and clients.

Cabinet for Human Resources: Department for Medicaid Services

907 KAR 1:016E. Psychiatric hospital services.

907 KAR 1:671E. Conditions of medical provider participation; enrollment, documentation of services, disclosure, claims processing, withholding overpayments, appeals process, and sanctions.

Kentucky Health Policy Board: Administration

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

The Subcommittee adjourned at 12:30 p.m. until April 3, 1995 at 10 a.m. in Room 149 of the Capitol Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of February 15, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of February 15, 1995, having been referred to the committee on February 15, 1995, pursuant to KRS 13A.290(6):

201 KAR 9:005
201 KAR 20:085
902 KAR 45:110
909 KAR 1:010 & E
909 KAR 1:070E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None.

The following administrative regulations were deferred pursuant to KRS 13A.300: None.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of Feburary 22, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of February 22, 1995, having been referred to the Committee on February 3, 1995, pursuant to KRS 13A.290(6) and comply with KRS Chapter 13A:

Department of Fish and Wildlife Resources
301 KAR 2:221
301 KAR 2:222
301 KAR 2:223
301 KAR 2:224
Department of Agriculture
302 KAR 20:180
Natural Resources and Environmental Protection Cabinet: Division for Air Quality

401 KAR 50:072	401 KAR 57:050
401 KAR 57:015	401 KAR 57:055
401 KAR 57:021	401 KAR 57:130
401 KAR 57:025	401 KAR 57:270
401 KAR 57:030	401 KAR 57:300
401 KAR 57:035	401 KAR 63:070
401 KAR 57:045	

Department for Surface Mining Reclamation and Enforcement

405 KAR 5:001	405 KAR 5:045	405 KAR 5:075
405 KAR 5:015	405 KAR 5:050	405 KAR 5:080
405 KAR 5:021	405 KAR 5:055	405 KAR 5:085
405 KAR 5:030	405 KAR 5:060	405 KAR 5:095
405 KAR 5:035	405 KAR 5:065	405 KAR 5:096
405 KAR 5:038	405 KAR 5:070	405 KAR 7:095

405 KAR 5:040

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

405 KAR 16:200
405 KAR 18:200

The wording of the amendments to these administrative regulations is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the Wednesday, February 22, 1995, meeting, which are hereby incorporated by reference.

AMENDMENTS TO 405 KAR 16:200 AND 18:200

Page A-1

1. The list of species on page A-1 has been arranged according to the scientific name of the species, consistent with the form of page A-2.
2. The common name for Carya cordiformis has been corrected from "Sweet Pignut hickory" to "Bitternut hickory."
3. For Native pecan, the spelling of the scientific name has been corrected from "Carya illinoensis" to "Carya illinoinensis."
4. For Mockernut hickory, the scientific name has been corrected from "Carya tomentosa" to "Carya alba."
5. For Sawtooth oak, the scientific name "acutissima" has been inserted.
6. For Chinquapin oak, the spelling of the scientific name has been corrected from "Quercus muhlenbergii" to "Quercus muehlenbergii."
7. Cherrybark oak Quercus pagoda has been added to the list.
8. For Quercus rubra, the common name has been corrected from "Red oak" to "Nothern Red oak."
9. For Shumard oak, the spelling of the scientific name has been corrected from "Quercus ahumardii" to "Quercus shumardii."

Page A-2.

10. Shining sumac and Winged sumac, which are common names for the same species, have been combined into a single entry and the scientific name has been corrected from "Rhus copallina" to "Rhus copallinum."
11. For Staghorn sumac, the scientific name has been corrected from "Rhus typhinia" to "Rhus hirta."
12. For Lowbush blueberry, the listing has been broadened from the single species "Vaccinium vacillans" to all Vaccinium species, "Vaccinium spp."

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of March 2, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of March 2, 1995, having been referred to the Committee on February 3, 1995, pursuant to KRS 13A.290(6):

702 KAR 3:020
702 KAR 4:160
702 KAR 4:170

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 2, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS
Meeting of March 10, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Licensing and Occupations during its meeting of March 10, 1995, having been referred to the Committee on March 7, 1995, pursuant to KRS 13A.290(6):
500 KAR 11:015 (&E)
500 KAR 11:025 (&E)

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 10, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates J2

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 J15

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 J29

The Subject Index is a general index of regulations published in VOLUME 21 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	21 Ky.R Page No.	Effective Date

VOLUME 20

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12 KAR 1:120E	3166	5-13-94
Replaced	3323	8-24-94
12 KAR 1:125E	3166	5-13-94
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12 KAR 1:130E	3167	5-13-94
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12 KAR 1:135E	3167	5-13-94
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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 1:150E	3169	5-13-94
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12 KAR 1:155E	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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401 KAR 42:060E	2530	2-15-94
401 KAR 42:070E	2530	2-15-94
401 KAR 42:080E	2531	2-15-94
907 KAR 1:023E	3185	4-29-94
Replaced	3395	8-17-94

ORDINARY REGULATIONS:

12 KAR 1:111	3322	8-24-94
12 KAR 1:115	3322	8-24-94
12 KAR 1:120	3323	8-24-94
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Amended	2140	
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