ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 21, NUMBER 11
MONDAY, MAY 1, 1995

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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 2613-2615 of this Administrative Register for the next meeting.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1994 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

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

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $48 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Second class postage paid at Frankfort, Kentucky. POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - May 1, 1995 at 10 a.m.
Room 149, Capitol Annex

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

EXECUTIVE BRANCH ETHICS COMMISSION

Ethics Commission

9 KAR 1:015. Adjudicatory proceedings.
9 KAR 1:020. Complaints.
9 KAR 1:030. Adjudicatory hearings.
9 KAR 1:035. Posthearing procedure.

DEPARTMENT OF STATE
Registry of Election Finance

Reports and Forms

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)

TOURISM CABINET
Department of Fish and Wildlife

Game

301 KAR 2:172. Deer hunting seasons and requirements.
301 KAR 2:174. Deer hunting zones.
301 KAR 2:178. Deer hunting on wildlife management areas.

ECONOMIC DEVELOPMENT CABINET
Department of Agriculture

Pesticides

302 KAR 31:015. Certification. (Deferred from April)

JUSTICE CABINET

Charitable Gaming

500 KAR 11:001E. Definitions.
500 KAR 11:030E. Charity game ticket standards.
500 KAR 11:040E. Bingo standards.
500 KAR 11:050E. Raffle standards.
500 KAR 11:060E. Tipping prohibited.
500 KAR 11:070E. Exempt activities.
500 KAR 11:080E. Special charity fundraising event.
500 KAR 11:090E. Special limited charitable games.
500 KAR 11:100E. Division employees prohibited from playing charitable games.

Department of Corrections

Office of the Secretary

501 KAR 6:050. Luther Luckett Correctional Complex.
501 KAR 6:130. Western Kentucky Correctional Complex.

TRANSPORTATION CABINET

Office of Minority Affairs

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.
600 KAR 4:020. The disadvantaged, minority and women business enterprises program.

Department of Highways

Traffic

603 KAR 5:191. Repeal of 603 KAR 5:190. (Not Amended After Hearing)

Division of Planning

603 KAR 9:010. Railroad crossing closure procedure. (Not Amended After Hearing)
603 KAR 9:020. Automatic gates of railroad/highway crossings. (Amended After Hearing)

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. (Not Amended After Hearing)

School Administration and Finance

702 KAR 3:120. Uniform school financial accounting system. (Not Amended After Hearing)

702 KAR 3:130. Internal accounting.

Bureau of Learning Results Services

Learning Results Services

703 KAR 4:010. The formula for determining successful schools. (Deferred from April)

Office of Learning Programs Development

Office of Instruction

704 KAR 3:035. Annual professional development plan.

LABOR CABINET

Department of Workers' Claims

803 KAR 25:010. Procedure for adjustments of claims. (Repeals 803 KAR 25:011)

803 KAR 25:021. Individual self-insurers. (Repeals 803 KAR 25:020)

803 KAR 25:026. Group self-insurers. (Repeals 803 KAR 25:025)

Department of Housing, Buildings and Construction

Plumbing

815 KAR 20:070. Plumbing fixtures.

CABINET FOR HUMAN RESOURCES

Department for Health Services

Emergency Medical Services and Ambulance Service Providers

902 KAR 14:060E. Nonemergency health care transportation services. (Deferred from April)

902 KAR 14:070E. License procedures and fee schedule for ambulance service providers and tiered response emergency medical services.

902 KAR 14:080E. Ground ambulance service providers. (Repeals 902 KAR 20:117)

902 KAR 14:090E. Air ambulance service providers. (Repeals 902 KAR 20:155)

Controlled Substances

902 KAR 55:095. Prescription for Schedule II controlled substance facsimile transmission or partial filling.

Department for Employment Services

Unemployment Insurance

903 KAR 5:290E. Employer contribution rates.

Department for Social Insurance

Public Assistance

904 KAR 2:001. Definitions.

904 KAR 2:015E. Supplemental programs for the aged, blind and disabled. (Deferred from April)

904 KAR 2:016. Standards for need and amount; AFDC.

904 KAR 2:017E. Job opportunities and basic skills (JOBS) child care and supportive services. (Deferred from April)

904 KAR 2:020. Child support enforcement program: confidentiality and cooperative agreements.

904 KAR 2:035E. Right to apply and reapply. (Deferred from April)

904 KAR 2:116. Home energy assistance program.

904 KAR 2:380. Child support enforcement program application process.

904 KAR 2:390. Child support enforcement program paternity establishment.

904 KAR 2:400. Establishment, review, and modification of child support.

904 KAR 2:410. Child support collection and distribution.

904 KAR 2:440. Discount Option Program. (Amended After Hearing) (Deferred from April)

Food Stamp Program

904 KAR 3:010. Definitions.

904 KAR 3:030E. Application process. (Deferred from April)

904 KAR 3:050E. Claims and additional administrative provisions.

904 KAR 3:060E. Administrative disqualification hearings and penalties.

Department for Social Services

Children's Residential Services

905 KAR 7:250E. Kentucky educational collaborative for state agency children.

Department for Medicaid Services

Medicaid Services

907 KAR 1:009 (& E). Physicians' services. (Not Amended After Hearing) (Agency Requests Deferral)

907 KAR 1:010 (& E). Payments for physicians' services. (Not Amended After Hearing) (Agency Requests Deferral)

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

907 KAR 1:016E. Psychiatric hospital services. (Deferred from March)
907 KAR 1:605. Medicaid procedures for determining initial and continuing eligibility.
907 KAR 1:610. Medicaid right to apply and reapply.

Department for Mental Health and mental Retardation Services

Mental Health

908 KAR 2:090 & E. Decriminalization of mental illness. (Amended After Hearing)

KENTUCKY HEALTH POLICY BOARD

Administration

909 KAR 1:040. Certificate of Need process. (Repeals 902 KAR 20:004)
909 KAR 1:050. Certificate of Need application fee schedule.
909 KAR 1:060. Licensure hearings. (Repeals 902 KAR 20:126)
909 KAR 1:070 (& E). Data reporting by health care providers. (Amended After Hearing)

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Date: March 17, 1995
Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 4:040**, Educational institution participation requirements.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Sections 1 - 14 of the administrative regulation governing the subject matter listed above, particularly, modifying it such that approval of the institution by the U.S. Secretary of Education will serve as the standard by which to determine the administrative and financial capability of the institution.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995, at 10 a.m., at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 30, 1995, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to educational institution participation requirements is KRS 164.740, 164.748(4), (6) and (13) and 34 Code of Federal Regulations Part 668 subparts A, B, D, E and F.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 4:040, as follows: The above cited administrative regulation currently provides a detailed and extensive set of standards and requirements applicable to educational institutions, constituting preconditions for participation in Kentucky Higher Education Assistance Authority programs. Those conditions include submission of substantial, independently verifiable documentation. The Kentucky Higher Education Assistance Authority intends to amend those sections of the administrative regulation to accept certification of participation by the U.S. Secretary of Education in lieu of those documentation requirements.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed amendment is necessary to simplify the process for consideration of institution participation and ensure that the standards accord with federal regulations dealing with the same subject matter.

(d) The benefits expected from the administrative regulation are: The process for approval of institutions for participation will be streamlined, and any potential ambiguity between state and federal regulations will be eliminated.

(e) The administrative regulation will be implemented as follows: Participating educational institutions shall be required to submit only evidence of approval by the U.S. Secretary of Education in order to participate in KHEAA-administered programs.

Date: March 17, 1995
Kentucky Higher Education Assistance Authority

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

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 5(1) and the addition of Section 10 of the administrative regulation governing the subject matter listed above, particularly, eliminating the disbursal of KTG funds to any individual who is incarcerated in any federal or state penal institution.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995, at 10 a.m., at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 30, 1995, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to a KTG Grant is KRS 164.744(2), 164.753(4), 164.780, 164.785.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 5:140, as follows: Section 5(1) of the above cited administrative regulation currently provides that a KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books. The Kentucky Higher Education Assistance Authority intends to delete that section of the administrative regulation and to add Section 10. No KTG funds shall be disbursed to any individual who is incarcerated in any federal or state penal institution.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed amendment is necessary to make incarcerated individuals in federal or state penal institutions ineligible for KTG funds.

(d) The benefits expected from the administrative regulation are: Use of limited KTG funds for applicants, who are not convicted criminals, attending private colleges in Kentucky.

(e) The administrative regulation will be implemented as follows: Participating educational institutions shall not disburse KTG funds to any individual incarcerated in a federal or state penal institution.

Date: March 17, 1995
Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 5:145**, CAP Grant award determination procedure.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 4(1) and the addition of Section 9 of the administrative regulation governing the subject matter listed above, particularly, eliminating the disbursal of CAP Grant funds to any individual who is incarcerated in any federal or state penal institution.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995, at 10 a.m., at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 30, 1995, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to a CAP Grant is KRS 164.744(2), 164.753(4), (5).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 5:145, as follows: Section 4(1) of the above cited administrative regulation currently provides that a KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant in combination with financial assistance received from other sources, exceed the student's actual cost for tuition, fees, and books. The Kentucky Higher Education Assistance Authority intends to delete that section of the administrative regulation and to add Section 9. CAP Grant funds shall not be disbursed to any individual who is incarcerated in any federal or state penal institution.

(c) The Necessity and Function of the proposed administrative regulation is as follows: The proposed amendment is necessary to make incarcerated individuals in federal or state penal institutions ineligible for CAP Grant funds.

(d) The benefits expected from the administrative regulation are: Use limited CAP Grant funds for applicants, who are not convicted criminals, attending postsecondary institutions in Kentucky.

(e) The administrative regulation will be implemented as follows: Participating educational institutions shall not disburse CAP Grant funds to any individual incarcerated in a federal or state penal institution.

KENTUCKY AGRICULTURAL EXPERIMENT STATION

Date: April 10, 1995
Kentucky Agricultural Experiment Station
Division of Regulatory Services
University of Kentucky

(1) The subject matter of the proposed administrative regulation, **12 KAR 7:010**, is procedures for holding administrative hearings.

(2) The Division of Regulatory Services intends to promulgate an administrative regulation governing the procedure for administrative hearings by the division.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995, at 10 a.m. EDT at the Regulatory Services Building, Alumni Drive and University Drive, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 before May 30, 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: Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

(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 Regulatory Services at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authorities for the promulgation of an administrative regulation relating to procedure for holding administrative hearings are KRS 250.081, 250.421, 250.571, 250.825, and 250.780.

(b) The administrative regulation that the division intends to promulgate will not amend an existing administrative regulation. This regulation establishes the requirements for conducting administrative hearings by the Division of Regulatory Services.

(c) The necessity and function of the proposed administrative regulation is as follows: To detail in regulation form the procedures that will be used by the Division of Regulatory Services in conducting administrative hearings that will assure due process rights to all parties.

(d) The benefits expected from administrative regulation are: Most cases involving violations of the feed, fertilizer, seed, creamery license, or tobacco seedlings laws can be resolved through informal discussions, educational efforts, and problem-solving procedures. The proposed administrative regulation permits an informal proceeding as a first step in identifying and solving a possible regulatory violation. If the informal proceeding does not result in a resolution, the proposed regulation then provides the process for conducting a formal hearing.

(e) The administrative regulation will be implemented as follows: See discussion in 7(d) above.

STATE BOARD OF ELECTIONS

Date: April 14, 1995
State Board of Elections

(1) The subject matter of the new administrative regulation, **31 KAR 4:100**, is criteria which county boards of election may use to determine whether persons nominated to serve as precinct election officers are qualified to serve in that capacity.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 1995, at 9 a.m. at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to criteria for evaluating persons nominated to serve as precinct officers is KRS 117.045(2).

(b) The administrative regulation that the Board of Elections intends to promulgate will not amend an existing administrative regulation. It will establish criteria that may be used by county boards of election in determining whether persons nominated to serve as precinct election officers are qualified to serve in that capacity.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to assist county boards of election in determining whether persons nominated to serve as precinct election officers are qualified to serve in that capacity.

(d) The benefits to be expected from the administrative regulation are: Existing regulations do not provide criteria by which county boards of election may evaluate persons nominated to serve as precinct election officers. This regulation will set forth objective criteria that may be used by county boards of election in determining whether persons nominated to serve as precinct election officers are qualified to serve in that capacity based on the past performance of the person.

(e) The administrative regulation will be implemented as follows: In evaluating whether a person nominated to serve as a precinct election officer is qualified to serve in that capacity, the county board of elections may consider the following: (i) whether the person has a history of refusing to follow election procedures while serving as a precinct election officer in the past; or (ii) whether the person has demonstrated a complete lack of understanding of proper election procedures while serving as a precinct election officer in the past. The county board of elections may refuse to appoint a person nominated to serve as a precinct election officer if it determines that the person is not qualified based on either of the foregoing considerations.

Date: April 14, 1995
State Board of Elections

(1) The subject matter of the new administrative regulation, **31 KAR 4:110**, is the granting of approval by the State Board of Elections to a county to establish a precinct containing less than 350 registered voters.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 1995, at 9 a.m. at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the circumstances under which the State Board of Elections will grant approval to a county to establish a precinct containing less than 350 registered voters is KRS 117.055(2).

(b) The administrative regulation that the Board of Elections intends to promulgate will not amend an existing administrative regulation. It will set forth the circumstances under which the State Board of Elections will grant approval to a county to establish a precinct containing less than 350 registered voters.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to set forth under what circumstances the State Board of Elections will grant approval to a county for a precinct containing less than 350 registered voters.

(d) The benefits to be expected from the administrative regulation are: This regulation will set forth under what circumstances the State Board of Elections will grant approval for a precinct containing less than 350 registered voters.

(e) The administrative regulation will be implemented as follows: A county board of elections shall receive approval from the State Board of Elections to establish a precinct containing less than 350 registered voters if it submits a written request to the State Board of Elections demonstrating either of the following:

(a) That combining the subject precinct with an adjoining precinct would create an undue hardship on the voters of the precinct because of geographic impediments in the precinct or the distance from the precinct to the closest polling place in an adjoining precinct; or

(b) That combining the subject precinct with an adjoining precinct would create an undue hardship on the voters of the precinct because there is a large percentage of the voters in the precinct who are disabled or elderly.

A written request for approval must be accompanied by supporting evidence of the need for such approval including a map of the precinct. Nothing in the administrative regulation will affect the requirement that the county board establish precincts so that no boundary of a precinct crosses a boundary set forth in KRS 117.055(1).

REGISTRY OF ELECTION FINANCE

Date: March 20, 1995
Registry of Election Finance

(1) **32 KAR 1:150** - Maximum contributions to be received by gubernatorial slates.

(2) The Kentucky Registry of Election Finance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 1995, at 9:30 a.m., at 140 Walnut Street, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the maximum contributions to be received by gubernatorial slates is KRS 121.020(7).

(b) The administrative regulation that the Registry of Election Finance intends to promulgate will not amend an existing regulation. It will replace 32 KAR 1:150 & E which relates to the maximum contributions to be received by gubernatorial slates.

(c) The necessity and function of the proposed administrative regulation is as follows: The Public Financing Campaign Act of 1992 established a program of partial public financing for gubernatorial campaigns under which a slate which agrees to accept public funds transfers and abide by specified contribution and expenditure limits may receive matching funds based on qualifying contributions. Minimum and maximum thresholds are established by statute, but the statutes do not clearly specify whether a participating slate may raise more than the maximum threshold qualifying amount. The Registry previously promulgated 32 KAR 1:110E which attempted to specify the total amount of contributions a slate may raise. However, during the review process, questions arose with regard to the specific provisions of that emergency administrative regulation which necessitated substantial changes. Because 32 KAR 1:110E was filed as an emergency administrative regulation which would not be replaced by an ordinary regulation, it could not be amended through the usual process. It is therefore necessary to promulgate a new emergency administrative regulation to replace 32 KAR 1:110E which will be withdrawn prior to filing this regulation with the Administrative Regulations Compiler.

This emergency regulation differs from 32 KAR 1:110E in that it requires all contributions in excess of the maximum threshold limit to be returned to contributors instead of providing the campaign with an option to either return the contributions to contributors or deposit them into the Election Campaign Fund. It further provides additional scenarios in which a slate may receive contributions and make expenditures up to $1.8 million in the primary.

(d) The benefits expected from this administrative regulation are: This administrative regulation will provide guidance to slates of candidates for Governor and Lieutenant Governor as to the circumstances under which fundraising must stop at $600,000 and when more than that amount may be raised.

(e) The administrative regulation will be implemented as follows: This emergency administrative regulation will be implemented by determining if, on the 30th day preceding the primary election, a slate which has qualified to receive matching transfers is opposed by a slate which has failed to meet the minimum threshold requirement of $300,000 in contributions. If the opposing slate has reached the minimum threshold amount, the qualifying slate will then be entitled to receive matching transfers and shall be required to return all contributions in excess of $600,000 to contributors. If the opposing slate has not reached the minimum threshold amount, the qualifying slate shall be entitled to retain all contributions received up to $1.8 million and may make expenditures for the primary election not to exceed $1.8 million, but the qualifying slate shall not be entitled to receive matching transfers.

FINANCE AND ADMINISTRATION CABINET
Office of Finance Management and Economic Analysis

Date: April 6, 1995
Office of Financial Management and Economic Analysis
Finance and Administration Cabinet

(1) Regulation Number and Title: **200 KAR 15:010**. Formula for allocation of private activity bonds.

(2) The Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, intends to promulgate an amendment to the administrative regulation listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for May 25, 1995, at 10 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 22, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail a written request to the following address: Gordon L. Mullis, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request from the Office of Financial Management and Economic Analysis at the address listed above.

(7) Information relating to the proposed amendment.

(a) The statutory authority for the promulgation of an administrative regulation relating to the allocation of private activity bonds is KRS 103.286.

(b) The proposed amendment to 200 KAR 15:010 will provide that private activity bonds will no longer be allocated on a first-come, first-served basis. The following amendments to the regulation are proposed:

(1) Section 2 will be amended to further distinguish the allocation of volume cap for state issuers to 40% and the allocation of volume cap for local issuers to 60%, and to provide that the state issuer pool revert to a single pool on July 1 of each year. It will also be amended to eliminate the first-come, first-served policy, until October 1 of each year.

(2) Sections 4 and 5 will be amended to allow each project a 90-day period after the award of allocation to file a notice of issuance, or December 15, whichever is earlier.

(3) A new section will be added to establish a limit of 10% of the local issuer pool which any one project from the local issuer pool can be allocated volume cap.

(4) A new section will be added to establish the following criteria by which each project requesting cap from the local issuer pool will be evaluated:

(a) Creation of new jobs, as well as preservation of existing jobs by the project;

(b) Average salary per employee proposed for the project;

(c) Capital investment in Kentucky being made as a result of the project;

(d) Unemployment rate in the county of the project;

(e) State economic development incentives awarded to the project, if any.

(5) A new section will be added to establish quarterly meetings of the Kentucky Private Activity Bond Allocation Committee.

(6) Section 11 will be amended to require that the Kentucky Private Activity Bond Allocation Committee review and allocate all requests for volume cap. No delegation of staff will be provided except for in cases of surplus or carry forward allocations for which the committee gives specific authority to staff.

(c) The necessity and function of the proposed amendment is as follows: 200 KAR 15:010 establishes an allocation process for private activity bonds. This proposed administrative regulation will establish a more efficient and equitable process for the allocation of private activity bonds.

(d) The benefits expected from the proposed amendment are: The proposed amendment will allow the allocation of private activity bonds in a manner which will best achieve the issuance of private activity bonds, foster economic development within the Commonwealth, and promote the general welfare of its citizens and the public purposes of the Commonwealth.

(e) This amended administrative regulation will be implemented as follows: All state bond counsel firms and state agencies which have expressed an interest in Kentucky private activity bond volume cap will be provided with the revised procedures to the application process.

Office of the Secretary

Date: March 24, 1995
Finance and Administration Cabinet
Office of the Secretary

(1) **200 KAR 22:030**. Comprehensive Employment Manual of the Department for Vocational Rehabilitation for use in the Pilot Personnel Program.

(2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 1995, at 10 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 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 May 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 18A.430(1)(a), (b), and (c).

(b) The proposed regulation will promulgate the comprehensive employment manual of the Department of Vocational Rehabilitation for use in the Pilot Personnel Program as required by KRS 18A.430(1).

(c) The "Necessity and Function" of the proposed administrative regulation is as follows: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This regulation promulgates the comprehensive employment manual of the Department of Vocational Rehabilitation for use in the Pilot Personnel Program.

(d) The benefit expected from this proposed administrative regulation is as follows: The Comprehensive Employment Manual specifies the terms and conditions of employment for employees of the Department of Vocational Rehabilitation which are participating in the Pilot Personnel Program as required by KRS 18A.430(1).

(e) This administrative regulation will be implemented by the Personnel Steering Committee by notifying the Department of Vocational Rehabilitation when the regulation is made effective with a recommendation that the Comprehensive Employment Manual be made available to all employees participating in the Pilot Personnel Program.

KENTUCKY STATE BOARD OF ACCOUNTANCY

Date: March 24, 1995
Kentucky State Board of Accountancy

(1) **201 KAR 1:064**. Verification of experience for teaching (New).

(2) The Kentucky State Board of Accountancy 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 May 30, 1995, at 9 a.m., at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

(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 May 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority of the promulgation of an administrative regulation relating to verification of experience for teaching is KRS 325.261(2)(b) and 325.240.

(b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will not amend an existing administrative regulation. It will quantify the teaching requirements which may qualify toward a certified public accountant candidates experience requirement.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This regulation will explain how college teaching experience is supervised and reported to the State Board of Accountancy.

(d) The benefits expected from administrative regulation are: College instructors may use college teaching experience to become a certified public accountant.

(e) The administrative regulation will be implemented as follows: The proposed regulation will define 24 semester hours of teaching as equivalent to one year of public accounting.

Date: March 24, 1995
Kentucky State Board of Accountancy

(1) **201 KAR 1:300**. Rules of professional conduct.

(2) The Kentucky State Board of Accountancy 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 May 30, 1995, at 9 a.m., at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

(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 May 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority of the promulgation of an administrative regulation relating to rules of professional conduct is KRS 325.240.

(b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will amend 201 KAR 1:300, Rules of professional conduct. It will allow the acceptance of commissions in certain circumstances, update the referenced professional standards of practice, change client records to comply with KRS 325.420, and revise form of practice and name to comply with current statutory business organizations.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To update the standards of practice to comply with current statutes and national practice measures.

(d) The benefits expected from administrative regulation are: To allow CPA firms to accept commissions in certain limited circumstances, improve financial reporting, and allow the certified public accountants and certified public accounting firms to practice in compliance with other state laws.

(e) The administrative regulation will be implemented as follows: Published in newsletter to all licensed Kentucky certified public accountants.

KENTUCKY BOARD OF NURSING

Date: March 29, 1995
Kentucky Board of Nursing

(1) **201 KAR 20:240**. Fees for applications and for services.

(2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995 at 10 a.m. (EDT) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received at least twenty (20) days prior to May 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

2. "I will not attend the 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 General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:240, as follows: One fee will be increased and one new fee added.

(c) The necessity and function of the proposed administrative regulation is as follows: An increase in the fee is needed to fund the continued operations of the agency.

(d) The benefits expected from the administrative regulation are: The continued operation of the agency.

TOURISM CABINET
Department of Fish and Wildlife Resources

Date: April 14, 1995
Tourism Cabinet
Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:111**

(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 May 30, 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 May 30, 1995, the public hearing will be cancelled.

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

(b) 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 150.015, 150.025, 150.390.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:111 as follows: It will adjust hunting season dates for deer and turkey on federal areas.

(c) The necessity and function of the proposed administrative regulation is to adjust dates so that hunting days fall on weekends and to require state deer tags be attached to deer taken at Land Between the Lakes.

(d) The benefits expected from the administrative regulation are improved hunter safety and better wildlife management at federal areas.

(e) This administrative regulation will be implemented by joint enforcement and informational efforts of the department and the federal areas involved.

TOURISM CABINET
Department of Fish and Wildlife Resources

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

(1) Regulation Numbers and Titles: **301 KAR 6:001,** Definitions for 301 KAR Chapter 6; **301 KAR 6:010**, Vessel numbering and registration; **301 KAR 6:020**, Boating safety equipment; **301 KAR 6:030**, Waterway safety requirements; **301 KAR 6:040**, Zoning or marking of waterways.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations governing boating registration, required equipment and safe operations is KRS 235.280 and 235.320

(b) The administrative regulations that the department intends to promulgate will not amend existing administrative regulations. They are repromulgations of prior administrative regulations necessitated by the transfer of the Division of Water Patrol from the Department of Natural Resources to the Department of Fish and Wildlife Resources. These administrative regulations contain the substance of 402 KAR 4:010 through 402 KAR 4:190, which will be repealed. The administrative regulations have been reformatted and reworded to meet the current requirements of KRS Chapter 13A. The only substantive change has been the addition of an idle speed zone on the Ohio River adjacent to downtown Cincinnati.

(c) The necessity and function of the proposed administrative regulations is to implement the statutorily mandated system of boat registration; to bring Kentucky into compliance with nationwide standards for boat equipment and boating safety requirements; and to designate certain waters of the Commonwealth where special boating restrictions apply.

(d) The benefits expected from the administrative regulation are the protection of life and property on Kentucky's waterways by requiring safety equipment and safe operating procedures.

(e) The administrative regulation will be implemented as follows: Their provisions will be publicized to the boating public through brochures and media outlets, and they will be enforced by the Division of Water Patrol and other law enforcement agencies.

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT CORPORATION

Date: April 14, 1995
Purchase of Agricultural Conservation Easement Corporation

(1) The subject matter of this proposed regulation, **302 KAR 100:010**, will be to establish policies and procedures for determining agricultural conservation easement, or other authorized property interest, purchase priorities.

(2) The Purchase of Agricultural Conservation Easement (PACE) Corporation 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 May 30, 1995 at 1 p.m. (ET), in the conference room of the Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort,

Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 30, 1995, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Department of Agriculture, Attention: Commissioner Ed Logsdon, Capital Plaza Tower, 7th Floor, 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 Purchase of Agricultural Conservation Easement (PACE) Corporation, c/o Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to policies and procedures for determining agricultural conservation easement, or other property interest, purchase priorities is KRS 262.908.

(b) The administrative regulation that the Purchase of Agricultural Conservation Easement Corporation intends to promulgate will not amend an existing regulation. It will establish standards for evaluating potential agricultural lands for purchase and determining purchase priorities.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 262.908 authorizes the Purchase of Agricultural Conservation Easement Board to implement a Purchase of Agricultural Conservation Easement Program in the Commonwealth. This regulation will establish standards and procedures for evaluating potential lands for purchase and prioritizing those lands on which conservation easements or other authorized property interests are to be acquired.

(d) The benefits expected from the administrative regulation are: The regulation will establish fair, equitable, objective, nondiscriminatory procedures for determining easement, or other property interest, purchase priorities.

(e) The regulation will be implemented by the Board of Directors of the Purchase of Agricultural Conservation Easement Board, and necessary staff employed by the board, in making its decisions regarding the prioritizing of potential agricultural lands for acquisition.

Date: April 14, 1995

Purchase of Agricultural Conservation Easement Corporation

(1) The subject matter of this proposed regulation, **302 KAR 100:020**, will be to establish policies and procedures for purchasing agricultural conservation easements or other property interests in agricultural lands.

(2) The Purchase of Agricultural Conservation Easement (PACE) Corporation 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 May 30, 1995 at 1 p.m. (ET), in the conference room of the Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 30, 1995, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Department of Agriculture, Attention: Commissioner Ed Logsdon, Capital Plaza Tower, 7th Floor, 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 Purchase of Agricultural Conservation Easement (PACE) Corporation, c/o Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to policies and procedures for purchasing agricultural conservation easements or other property interests in agricultural lands is KRS 262.908.

(b) The administrative regulation that the Purchase of Agricultural Conservation Easement Corporation intends to promulgate will not amend an existing regulation. It will establish policies and procedures for the acquisition of agricultural conservation easements or other property interests in agricultural lands.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 262.908 authorizes the Purchase of Agricultural Conservation Easement Board to implement a Purchase of Agricultural Conservation Easement Program in the Commonwealth. This regulation will establish policies and procedures for the acquisition of these easements, or other property interest, from landowners in the Commonwealth.

(d) The benefits expected from the administrative regulation are: The regulation will establish policies and procedures for the acquisition of agricultural conservation easements and other property interests enabling the retention of lands currently in agricultural use for continued agricultural land uses.

(e) The regulation will be implemented by the Board of Directors of the Purchase of Agricultural Conservation Easement Board, and necessary staff employed by the board, in its acquisition of lands currently in agricultural use.

SOIL AND WATER CONSERVATION COMMISSION

Date: March 14, 1995
Soil and Water Conservation Commission

(1) Subject matter and title of administrative regulation. **416 KAR 1:010**. Administration of Kentucky soil erosion and water quality cost-share fund. This administrative regulation establishes the cost-share assistance program established by KRS 146.080 to 146.121. The administrative regulation is promulgated to provide assistance to persons engaged in agricultural or silvicultural production in implementing best management practices for such purposes as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; and reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution.

(2) The Soil and Water Conservation 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 May 30, 1995 at 9 a.m., Eastern Time, at State Office Building Auditorium, 501 High 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 May 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Steve Coleman, Soil and Water Conservation Commission, 691 Teton Trail, 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 Soil and Water Conservation Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulation 416 KAR 1:010 is KRS 146.080 to 146.121.

(b) The administrative regulation that the Soil and Water Conservation Commission intends to promulgate will not amend any existing regulation. The administrative regulation is promulgated to provide assistance to persons engaged in agricultural or silvicultural production in implementing best management practices for such purposes as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; and reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 146.110 to 146.121 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky soil erosion and water quality cost-share fund. The fund provides cost-share assistance to persons engaged in agriculture and silviculture production for implementation of best management practices for such purposes as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; and reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program.

(d) The benefits expected from administrative regulation are: The cost-share assistance program will aid persons engaged in agricultural or silvicultural production in implementing best management practices.

(e) The administrative regulation will be implemented as follows: The program will be administered by the Soil and Water Conservation Commission and the local conservation districts. They will work together to present the program throughout Kentucky, to maximize the participation by persons engaged in agricultural or silvicultural production. The commission and the local conservation districts will assist applicants in applying for cost-share assistance, and in implementing best management practices.

JUSTICE CABINET
Department of Corrections

Date: April 13, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 2:020**, Class D felons.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet,

Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035, 197.020 and 532.100.

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

1. Add definition for First Incarceration Shock Treatment (FIST).

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

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

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

Date: April 13, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 2:040**, Definitions.

(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 May 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035, 197.020 and 532.100.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 2:040, as follows:

1. Amended for allowing a computer listing of Class D felons and their transfer to county jails when funds and beds are available.

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

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

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

Date: February 10, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 2:050**, Definitions.

(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 May 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

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

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

(7) Information relating to the proposed administrative regulation.

(a) he statutory authority for the promulgation of this administrative regulation is KRS 196.035, 197.020 and 532.100.

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

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

(c) The Necessity and Function of the proposed administrative regulation is: To bring the Class D felon program into compliance with budget restraints and staff responsibilities.

(d) The benefits expected from the administrative regulation are: To comply with statutory authority and legislative funding.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with the methods of housing Class D felons in jails as set forth in the amendments.

Date: April 13, 1995
Justice Cabinet
Department of Corrections

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 1995 at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

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

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

(7) Information relating to the proposed administrative regulation.

a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035, 197.020 and 532.100.

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

1. Amended to allow Class D felons to apply for the First Incarceration Shock Treatment Program.
2. Amended to state that jails will be paid $1.75 per day for routine medical care.

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

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

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

JUSTICE CABINET
Department of Corrections

Date: April 13, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: Religious programs, public official notification of release of an inmate and victim notification.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

(1) Religious programs (23.1) shall be added to reflect the institutions' religious programs for inmates including program coordination and supervision, opportunities to practice the requirements of one's faith, and use of community resources.

(2) Public official notification of release of an inmate (25.2) shall be amended to comply with recent legislation.

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

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

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

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

Date: April 13, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:030**, Kentucky State Reformatory: Inmate master file; records audit; Americans with Disabilities Act Inmate Program access; Substance Abuse and Chemical Dependency Program.

(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 May 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:030, as follows:

1. Inmate master file (06-00-01) shall be amended to conform policy with required LRC language, better define the process of maintaining documents placed in the inmate master file and update reference section.

2. Records audits (06-00-02) shall be deleted as it is being incorporated into another policy.

3. Americans with Disabilities Act Inmate Program access (14-00-02) shall be added to provide inmates and staff with a guideline in assisting inmates with disabilities.

4. Substance Abuse and Chemical Dependency Program (24-00-02) shall be amended to clarify the guidelines for participating in the Substance Abuse Program.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Kentucky State Reformatory 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: April 13, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:120**, Blackburn Correctional Complex: Storage of expunged records, records-release of information, offender records, reporting inmates misconduct following favorable recommendation by the Parole Board, storage, control and accountability of flammable, toxic, caustic and other hazardous materials, facility furnishings; exit and emergency lights and noncombustible containers, short-term temporary holding area, barber shop services, sick call and pill call, administration and authority for health services, medical alert system, dental services, suicide prevention and intervention program, use of pharmaceutical products, psychiatric and psychological services, handling of mentally retarded inmates and transfers, first aid kits.

(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 May 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:120, as follows:

1. BCC storage of expunged records (06-01-01) shall be amended with word changes throughout to bring this policy into compliance with LRC regulations.

2. BCC records-release of information (06-02-01) shall be amended with word changes throughout to bring this policy into compliance with LRC regulations, converted ACA Standards numbers from 2nd to 3rd Edition.

3. BCC offender records (06-02-02) shall be amended to reflect the changes in the procedural requirements for open and closed records to maintain confidentiality and word changes throughout to bring this policy into compliance with LRC regulations, converted ACA Standards numbers from 2nd to 3rd Edition.

4. BCC reporting inmate misconduct following favorable recommendation by the Parole Board (06-03-01) shall be amended with word changes throughout to bring this policy into compliance with LRC regulations.

5. BCC storage, control and accountability of flammable, toxic, caustic and other hazardous materials (08-06-01) shall be amended to delete Portion Pac Products and change location title of where sanitation and hygiene supplies are stored, and word changes throughout to bring this policy into compliance with LRC regulations, and to convert ACA Standards numbers from 2nd to 3rd Edition.

6. BCC facility furnishings; exit and emergency lights and noncombustible containers (08-07-01) shall be amended to reflect word changes throughout to bring this policy into compliance with LRC regulations, convert ACA Standards numbers from 2nd to 3rd Edition.

7. BCC short-term temporary holding area (10-01-02) shall be amended to reflect the changes in the procedural requirements for the temporary holding area.

8. BCC barber shop services (12-05-01) shall be amended to include who will be responsible for the inventory on all barber equipment, word changes throughout to bring this policy into compliance with LRC regulations and to convert ACA Standards numbers from 2nd to 3rd Edition.

9. BCC sick call and pill call (13-01-01) shall be amended to reflect the procedures for first aid protocol when problems arise on weekends, holidays or after hours.

10. BCC administration and authority for health services (13-02-01) shall be amended to reflect who the nurse supervisor is responsible to, word changes throughout to bring this policy into compliance with LRC regulations and to convert ACA Standards numbers from 2nd to 3rd Edition.

11. BCC medical alert system (13-05-01) shall be amended to reflect the reference to intrasystems transfers with medical alert conditions, word changes throughout to bring this policy into compliance with LRC regulations and to convert ACA Standards numbers from 2nd to 3rd Edition.

12. BCC dental services (13-10-01) shall be amended to include the dentist beeper number.

13. BCC suicide prevention and intervention program (13-11-01) shall be amended to delete a designated staff as BCC suicide prevention program coordinator, word changes throughout to bring this policy into compliance with LRC regulations and to convert ACA Standards numbers from 2nd to 3rd Edition.

14. BCC use of pharmaceutical products (13-12-01) shall be amended to reflect the area as to where inmates are to report to receive their medication.

15. BCC psychiatric and psychological services, handling of mentally retarded inmates and transfers (13-22-01) shall be amended to delete the reference of Northpoint Training Center as an evaluation site by a licensed psychologist.

16. BCC first aid kits (13-23-01) shall be amended to include the chapel office and maintenance office to receive first aid kits and delete the procedures office from list, word changes throughout to bring this policy into compliance with LRC regulations and to convert ACA Standards

numbers from 2nd to 3rd Edition.

(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: April 13, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:170**, Green River Correctional Complex: Procedures officer; duty officer responsibilities; smoking: GRCC facility; information system; special management unit; food service general guidelines; food service: security; dining room guidelines; food service: meals; food service: menu, nutrition and special diets; health requirements of food handlers; food service: inspections and sanitation; food service: purchasing, storage and farm products; inmate visiting; inmate correspondence and privilege mail; inmate telephone communications; classification and assessment; meritorious housing; inmate work programs; educational programs.

(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 May 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:170, as follows:

1. GRCC procedures officer (01-05-01) shall be established to outline the guidelines and procedures for the procedures officer assignment at the Green River Correctional Complex.

2. GRCC duty officer responsibilities (01-09-01) shall be established to outline the guidelines and procedures for the duty officer assignment at the Green River Correctional Complex.

3. GRCC smoking: GRCC Facility (01-10-01) shall be established to outline the guidelines and procedure for smoking at the Green River Correctional Complex.

4. GRCC information system (05-01-01) shall be established to outline the information system at the Green River Correctional Complex.

5. GRCC special management unit (10-01-01) shall be established to outline the guidelines and procedures for the special management unit at the Green River Correctional Complex.

6. GRCC food service guidelines (11-01-01) shall be established to outline the general guidelines of the food service department at the Green River Correctional Complex.

7. GRCC food service security (11-02-01) shall be established to outline the security guidelines of the food service department at the Green River Correctional Complex.

8. GRCC dining room guidelines (11-03-01) shall be established to outline the dining room guidelines for the food service department at the Green River Correctional Complex.

9. GRCC food service: meals (11-04-01) shall be established to outline the guidelines and procedures for meals in the food service department at the Green River Correctional Complex.

10. GRCC food service: menu, nutrition and special diets (11-04-02) shall be established to outline the guidelines and procedures for the menu, nutrition and special diets in the food service department at the Green River Correctional Complex.

11. GRCC health requirements of food handlers (11-06-01) shall be established to outline the guidelines of health requirements of food handlers in the food service department at the Green River Correctional Complex.

12. GRCC food service: inspections and sanitation (11-07-01) shall be established to outline the guidelines for inspections and sanitation in the food service department at the Green River Correctional Complex.

13. GRCC food service purchasing, storage and farm products (11-08-01) shall be established to outline guidelines for purchasing, storage and farm products for the food service department at the Green River Correctional Complex.

14. GRCC inmate visiting (16-01-01) shall be established to outline the guidelines and procedures for inmates to receive visitors at the Green River Correctional Complex.

15. GRCC inmate correspondence and privilege mail (16-02-01) shall be established to outline the guidelines and procedures for inmate correspondence and privilege mail at the Green River Correctional Complex.

16. GRCC inmate telephone communications (16-03-01) shall be established to outline the guidelines and procedures for inmate

telephone communications at the Green River Correctional Complex.

17. GRCC classification and assessment (18-01-01) shall be established to outline the guidelines and procedures for inmate classification and assessment at the Green River Correctional Complex.

18. GRCC meritorious housing (18-02-01) shall be established to outline the guidelines and procedures for the operation of the meritorious housing unit at the Green River Correctional Complex.

19. GRCC inmate work programs (19-01-01) shall be established to outline the guidelines and procedures for the inmate work programs at the Green River Correctional Complex.

20. GRCC educational programs (20-01-01) shall be established to outline the guidelines and procedures for the educational programs at the Green River Correctional Complex.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Green River 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: May 1, 1995
Transportation Cabinet

(1) **600 KAR 1:070** relating to motor pool procedures and **600 KAR 1:120** relating to purchase of motor vehicles.

(2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations updating the procedures for using motor pool vehicles and establishing procedures for purchasing motor pool vehicles. Currently, the motor pool vehicles are purchased through the Finance Cabinet. However, the Governor's Executive Order #93-560 transferred the full control of motor pool vehicles to the Transportation Cabinet. Therefore, it is necessary to establish how the vehicles will be purchased as well as used.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995 at 2 p.m. local prevailing time, at 501 High Street, Room 1003, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 motor pool procedures is 1984 Acts Chapter 344 Section 1 and Chapter 406 Section 6, and Governor's Executive Order #93-560.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend existing administrative regulation 600 KAR 1:070 and create a new administrative regulation 600 KAR 1:120.

(c) The necessity and function of the proposed administrative regulation is as follows: Since the administration of the State Motor Pool is the responsibility of the Transportation Cabinet, this administrative regulation sets forth the procedures by which a state employee can use a motor pool vehicle and his resulting responsibility for the vehicle use. The new administrative regulation sets forth the procedures to be followed by the Transportation Cabinet in purchasing new vehicles for the State Motor Pool and the procedures and guidelines for other agencies to request new vehicles purchase.

(d) The benefits expected are: A continuation of the consolidation of the motor pool effort and an increase in state efficiency and effectiveness.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 10, 1995. This request does not have to be in writing.

Date: May 1, 1995
Transportation Cabinet

(1) **601 KAR 9:220**, Dealer license plates.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation to implement the provisions of HB 136 enacted by the 1994 General Assembly. It will specifically deal with the tiering of the number of dealer license plates which a licensed motor vehicle dealer may obtain based upon his motor vehicle sells.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995 at 10 a.m. local prevailing time, at the Motor Vehicle Commission Conference Room, 114 West Clinton Street, 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 May 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 dealer license plates is KRS 186.070.

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

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 186.070 gives the Transportation Cabinet the authority to issue and revoke dealer license plates. It further gives the cabinet the authority to promulgate administrative regulations governing the issuance and cancellations of the dealer license plates. During the 1994 General Assembly when House Bill 136 was considered, draft administrative regulations were presented with House Bill 136 for discussion purposes. The draft administrative regulation presented in 1994 closely approximates the intention of this administrative regulation regarding the issuance cancellation and revocation of dealer plates.

(d) The benefits expected are: Decrease in perceived abuse of the use dealer license plates.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 10, 1995. This request does not have to be in writing.

TRANSPORTATION CABINET

Date: May 1, 1995
Transportation Cabinet

(1) **601 KAR 12:110**, relating to the withdrawal of driving privilege for failure to appear in court pursuant to a citation or summons issued by a law enforcement officer.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation establishing the types of offenses which will be accepted by the Division of Driver Licensing in withdrawing an individual's driving privilege pursuant to KRS 186.570(1)(h). The statute is so broad that some persons have interpreted it as allowing the Transportation Cabinet to withdraw driving privilege for any offense for which the person failed to appear in court or failed to satisfy the court requirements in some way. The Transportation Cabinet has tried to consistently apply the statute only to those offenses which are highway-related and have some relationship to a motor vehicle or operator's license. It is now apparent that the offenses must be clearly delineated and the requirements made available to both the public and the courts.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995 at 1 p.m. local prevailing time, at 501 High Street, Room 1003, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing; and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 30, 1995, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to driving privilege withdrawal for failure to appear in court on a citation or summons is KRS 186.400 and 186.570.

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

(c) The necessity and function of the proposed administrative regulation relating to KRS 186.570(1)(h) is as follows: "KRS 186.570(1)(h) allows the Transportation Cabinet to withdraw the driving privilege of a person for failure to appear in court pursuant to a citation or summons issued by a law enforcement officer. The statute is so broad that some persons have interpreted it as allowing the Transportation Cabinet to withdraw driving privilege for any offense for which the person failed to appear in court or failed to satisfy the court requirements in some way. The Transportation Cabinet has tried to consistently apply the statute only to those offenses which are highway-related and have some relationship to a motor vehicle or operator's license. It is now apparent that the offenses must be clearly delineated and the requirements made available to both the public and the courts. That delineation will be set forth in this new administrative regulation.

(d) The benefits expected are: Consistency in the application of KRS 186.570(1)(h) and public awareness of the penalties for failure to satisfy a citation or summons.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 10, 1995. This request does not have to be in writing.

KENTUCKY BOARD OF EDUCATION

Date: April 13, 1995
Kentucky Board of Education

(1) **702 KAR 7:081**, Repeal of 702 KAR 7:080, Recruiting of student athletes prohibited, proposed administrative regulation. This proposed administrative regulation repeals 702 KAR 7:080, which prohibits the practice of recruiting students for the purpose of participating in athletics.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 30, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation to repeal the regulation relating to interscholastic athletics is KRS 156.070.

(b) The administrative regulation that the Department of Education intends to promulgate is a new administrative regulation. It will repeal 702 KAR 7:080, which prohibits the practice of recruiting students for the purpose of participating in athletics.

(c) The necessity and function of the proposed administrative regulation is to repeal 702 KAR 7:080, which is redundant of Kentucky High School Athletic Association Bylaw 10 on recruiting.

(d) The benefit expected from the administrative regulation is to preclude school personnel, parents, and others from having to review two sources in determining recruiting, which seems redundant and confusing.

Date: April 13, 1995
Kentucky Board of Education

(1) **702 KAR 7:091**, Repeal of 702 KAR 7:090, Requirements for coaches and other personnel staffing interscholastic programs, proposed administrative regulation. This proposed administrative regulation repeals 702 KAR 7:090, which sets forth requirements for coaches and other personnel staffing interscholastic athletic programs, including cheerleading squads.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 30, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation to repeal the regulation relating to interscholastic athletics is KRS 156.070.

(b) The administrative regulation that the Department of Education intends to promulgate is a new administrative regulation. It will repeal 702 KAR 7:090, which sets forth requirements for coaches and other personnel staffing interscholastic athletic programs, including cheerleading squads.

(c) The necessity and function of the proposed administrative regulation is to repeal 702 KAR 7:090, which is redundant of Kentucky High School Athletic Association Bylaw 27 on requirements for coaches.

(d) The benefit expected from the administrative regulation is to preclude school personnel, parents, and others from having to review two sources in determining requirements for coaches, which seems redundant and confusing.

Date: April 13, 1995
Kentucky Board of Education

(1) **704 KAR 3:470**, Ranking of certified school personnel.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1995, at 10 a.m. in the State Board 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 May 30, 1995, the public hearing will be cancelled.

(5) (a) Persons wishing to request a public hearing should mail their written request to the following address: Kevin M. Noland, Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3141.

(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 regulation to promulgate an administrative regulation governing a specific subject matter may 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 Board of Education at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to ranking of certified school personnel is KRS 157.390.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate will establish that the ranks shall meet the standards and requirements set by the Education Professional Standards Board for issuance and renewal of certification.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 157.390 authorizes the Kentucky Board of Education to adopt administrative regulations to classify teachers in rank. This administrative regulation defines the process and standards for the classification of teachers in rank for purposes of the state teacher salary schedule.

(d) The benefits expected from administrative regulation are: The Education Professional Standards Board has the authority to set the standards and requirements for issuance and renewal of certification. The administrative regulation states that the Kentucky Board of Education will accept these same standards and requirements for the classification of teachers in rank for purposes of the state teacher salary schedule.

(e) The administrative regulation will be implemented as follows: The regulations for issuance and renewal of teaching certificates are communicated to colleges and universities, to local school districts, and to certified personnel by the Office of Teacher Education and Certification. When approved programs of preparation are completed, applicants apply to the Division of Certification for the issuance and renewal of certification. A new certificate is issued showing the updated certification, the rank, and effective date of the rank. The school district employee files a copy of the new certificate with the employing school district which will use this to place the employee on the local school district salary schedule.

EDUCATION PROFESSIONAL STANDARDS BOARD

Date: March 20, 1995
Education Professional Standards Board

(1) **704 KAR 20:056**. Dating of certification.

(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 May 30, 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 May 30, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the 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 dating of certification is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will establish the procedure for dating of all certification-statements of eligibility, certificates, and certificates issued for the internship, as well as repeal the former regulation, 704 KAR 20:055.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 161.020 requires professional school personnel to hold a certificate of legal qualifications for the position. This administrative regulation establishes the effective and expiration dates for certification and repeals administrative regualtion 704 KAR 20:055.

(d) The benefits expected from administrative regulation are: The current regulation does not distinguish the procedure for establishing the effective and expiration dates of statements of eligibility and the certificates issued for the internship from that of certificates. The proposed administrative regulation will provide for issuing the statements of eligibility to conform with KRS 161.030 to insure that the statements for applicants who complete requirements during the fall semester of an academic year have the full period of duration as provided in 704 KAR 20:045. Also, the proposed regulation will establish the procedure for dating the certificates issued for the beginning teacher internship.

(e) The administrative regulation will be implemented as follows: The regulation will be implemented by the Division of Certification through the processing of applications for statements of eligibility, for issuing the certification for the beginning teacher internship, and for all other certification.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Date: April 14, 1995
Public Protection and Regulation Cabinet
Department of Insurance

(1) **806 KAR 47:010**: The subject matter of the proposed administrative regulation is the designation of a contact person by an insurer who will report to the Insurance Fraud Unit.

(2) The Public Protection and Regulation Cabinet, Department of Insurance, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 25, 1995, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if 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 May 25, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Attention: Carla H. Montgomery.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the designation and reporting of a contact person is KRS 304.2-110 and 304.47-050.

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will establish the requirements for designating a contact person to work with the Insurance Fraud Unit.

(c) The necessity and function of the proposed administrative regulation is as follows: Insurers are required to report suspected fraudulent insurance acts to the Insurance Fraud Unit pursuant to KRS 304.47-050. The Insurance Fraud Unit has to deal with numerous insurers. If the Insurance Fraud Unit can work with one contact person for each insurer, the unit can avoid confusion and numerous calls to the wrong person or department of the insurer.

(d) The benefits expected from the administrative regulation are: The Insurance Fraud Unit can be more efficient and effective when investigating a report of a fraudulent insurance act by contacting one person. The unit will have easier access to insurers and can communicate more effectively. Insurers will have better coordinated communications with the Insurance Fraud Unit and will avoid miscommunication.

(e) The administrative regulation will be implemented as follows: Each insurer will designate a contact person who will communicate with the Insurance Fraud Unit. The insurer will then report the name, address, and telephone number of the contact person to the Insurance Fraud Unit. The contact person will coordinate communication between the Insurance Fraud Unit and the insurer. All communications between the Insurance Fraud Unit and the insurer will pass through the contact person.

Date: April 14, 1995
Public Protection and Regulation Cabinet
Department of Insurance

(1) **806 KAR 47:020**: The subject matter of the proposed administrative regulation is the reporting requirements for insurers and others concerning suspected fraudulent insurance acts.

(2) The Public Protection and Regulation Cabinet, Department of Insurance, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 25, 1995, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if 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 May 25, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following: Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, to the attention of Carla H. Montgomery.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to reporting fraudulent insurance acts is KRS 304.2-110 and 304.47-050.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the specific requirements for insurers when they are reporting suspected fraudulent insurance acts.

(c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to KRS 304.47-050(2) insurers and other identified persons shall report suspected fraudulent insurance acts to the Insurance Fraud Unit. This administrative regulation assists the Insurance Fraud Unit and the reporters in implementing this statute. Insurers and others are informed when and how to report the suspected fraudulent insurance acts.

(d) The benefits expected from the administrative regulation are: If the suspected fraudulent insurance acts are reported within the fourteen (14) day time period, the Insurance Fraud Unit will be more efficient in their investigation. This may help avoid stale reports when evidence has disappeared or become impossible to trace to the guilty parties. If the reports are in writing and on prescribed forms for insurers, the information will be clear, concise, and uniform. The written report verifies that insurers and others have fulfilled their statutory duty under KRS 304.47-050(2).

(e) The administrative regulation will be implemented as follows: Every insurer shall report all suspected fraudulent insurance acts to the Insurance Fraud Unit on a prescribed form. Reports shall be within fourteen (14) days of determination of a suspected fraudulent insurance act. The Insurance Fraud Unit will receive the same information from all insurers and be able to promptly begin an efficient investigation. All others required to report fraudulent insurance acts shall report in writing to the Insurance Fraud Unit within fourteen (14) days of determination of a suspected fraudulent insurance act.

Date: April 14, 1995
Public Protection and Regulation Cabinet
Department of Insurance

(1) **806 KAR 47:030**: The subject matter of the proposed administrative regulation is the requirements for special investigative units established by insurers for the purpose of investigating fraudulent insurance claims.

(2) The Public Protection and Regulation Cabinet, Department of Insurance, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 25, 1995, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if 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 May 25, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Attention: Carla H. Montgomery.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to requirements for special investigative units is KRS.304.2-110 and 304.47-080.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will

establish requirements for insurers' special investigative units.

(c) The necessity and function of the proposed administrative regulation is as follows: Pursuant to KRS 304.47-080, insurers are required to maintain a unit to investigate fraudulent insurance claims. This administrative regulation requires certain policies and procedures to be implemented in these special investigative units established by insurers. The administrative regulation also requires insurers to report to the Insurance Fraud Unit information concerning the implementation of these policies and procedures for special investigative units.

(d) The benefits expected from the administrative regulation are: The administrative regulation will create uniformity among the special investigative units. It will insure that each insurer implements similar policies and procedures. The report filed by each insurer will demonstrate to the Insurance Fraud Unit that each insurer is complying with KRS 304.47-080 and the administrative regulation.

(e) The administrative regulation will be implemented as follows: Every insurer will implement the policies and procedures for their special investigative units. Then the insurers shall file a report with the Insurance Fraud Unit demonstrating how the policies and procedures have been implemented. This report will be further evidence of how insurers have complied with KRS 304.47-080.

Date: April 14, 1995
Public Protection and Regulation Cabinet
Department of Insurance

(1) **806 KAR 47:040**: The subject matter of the proposed administrative regulation is the filing of an annual report on fraudulent insurance acts for the preceding year.

(2) The Public Protection and Regulation Cabinet, Department of Insurance, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 25, 1995, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if 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 May 25, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Attention: Carla H. Montgomery.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to an annual report concerning fraudulent insurance acts is KRS 304.2-110 and 304.47-050.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the requirements for filing an annual report concerning fraudulent insurance acts.

(c) The necessity and function of the proposed administrative regulation is as follows: Insurers are required to report all suspected fraudulent insurance acts to the Insurance Fraud Unit pursuant to KRS 304.47-050. The administrative regulation requires that the company file an annual report which pulls together information about the reported fraudulent insurance acts that occurred in the preceding year. This is necessary to assist the Insurance Fraud Unit in determining the impact and effectiveness of the new fraud law. It also helps in tracking the amount of fraudulent insurance acts occurring and being reported.

(d) The benefits expected from the administrative regulation are: The Insurance Fraud Unit will be assisted in tracking the number of suspected fraudulent insurance acts versus the number of successful convictions. The Insurance Fraud Unit will be able to determine the effectiveness of the new law and demonstrate the efforts of insurers.

(e) The administrative regulation will be implemented as follows: Every insurer will file an annual report with the Insurance Fraud Unit. The report will provide statistics such as the number of claims, the number of cases reported to the Insurance Fraud Unit, the number of cases referred to prosecutors, and the number of convictions. The Insurance Fraud Unit will use this information to evaluate the new law and determine the effects of fraudulent insurance acts.

PUBLIC SERVICE COMMISSION

Date: April 12, 1995
Kentucky Public Service Commission

(1) Regulation Number and Title: **807 KAR 5:013**, Management and operation audits.

(2) The Kentucky Public Service Commission intends to promulgate a new administrative regulation relating to management and operation audits.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 26, 1995, at 11 a.m., Eastern Daylight Time, in Hearing Room 1, 730 Schenkel Lane, 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 May 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: Mr. Don Mills, Executive Director, Kentucky Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Public Service Commission at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to management and operations audits is KRS Chapter 13A, KRS 278.040(3) and 278.255(4).

(b) The administrative regulation the Public Service Commission intends to promulgate relates to periodic management and operations audits required under KRS 278.255. The regulation provides the procedural framework under which management audits by independent consultants shall be conducted. Section 2 provides that affiliated entities may be included in a utility's audit to the extent the affiliate's operations affect the utility. Section 3 sets out procedures for selection of an audit firm. Section 4 identifies information to be provided to the utility and staff by the auditing firm. Section 5 specifies the time for responses at various stages of the audit. Section 6 provides for supplemental reporting regarding the status of audit recommendations. Section 7 allows the commission to grant deviations from the regulation upon a showing of good cause.

(c) The Necessity and Function of the proposed administrative regulation is as follows: KRS 278.255 requires the promulgation of this administrative regulation to ensure the periodic review of the operations of utilities whose annual intra-Kentucky assessable revenue is 100 million dollars or more. Utilities with fewer revenues may also be audited. The regulation sets forth minimum requirements for management and operation audits to investigate management effectiveness and operating efficiency.

(d) The benefits expected from the proposed administrative regulations are: Benefits expected from the promulgation of this regulation include lower operating costs, more efficient use of available resources, and increased quality of service for customers served by the audited utilities. Utilities with annual intra-Kentucky assessable revenues less than 100 million dollars may also be audited under KRS 278.255 and this regulation and the potential benefits would remain the same.

(e) The administrative regulation will be implemented as follows: The administrative regulation will be implemented immediately after it becomes effective. As only one utility is audited at a given time, the regulation will be implemented on a utility by utility basis.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

Date: April 15, 1995
Cabinet for Human Resources
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 2:006**, Technical requirements; AFDC.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 1995 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, or Division of Management and Development, 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 technical requirements of the AFDC Program is KRS 194.050, 205.200(2), (3); 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 233.90, 233.100, and ACF-AT-

91-33, dated December 12, 1991 and ACF-AT-94-5, dated February 28, 1994.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:006, Technical requirements; AFDC. It will revise the current policy regarding desertion so that children are not penalized if they are removed from an undesirable home by a court or government agency, deserted by both parents or are already eligible in a two parent household when desertion occurs. Finally, we are making corrections to the language in this regulation to bring it into compliance with the American Disabilities Act (ADA) requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: The revisions to the deprivation of desertion will allow children to remain eligible for AFDC and a medical card when circumstances are beyond their control in terms of either them leaving the home or their parents leaving the home where they would currently be considered ineligible for thirty days. This policy is being revised at state option to provide continued benefits to children. The language changes are to bring the administrative regulation into compliance with ADA.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will provide continued benefits to children who might otherwise be considered ineligible. The amendment will also include language that is not offensive to those individuals having a disability.

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

(1) **904 KAR 3:100.** Restaurant certification for accepting food stamp coupons.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 31, 1995, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to restaurant certification for accepting food stamp coupons is KRS 194.050, 7 CFR 271.2, 278.2, PL 101-624, Food Stamp Program 92-05, Administrative Letter 031-92, Food Stamp Regional Policy Memo 2-073, Administrative Letter No. 046-092 and Food Stamp Policy Memo 2-082.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate is a new proposed administrative regulation. It will allow homeless persons participating in the Food Stamp Program to purchase meals from authorized meal providers.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the procedures used by the cabinet to certify restaurants that want to enter into an agreement with the cabinet to accept food stamp coupons from the homeless.

(d) The benefits expected from administrative regulation are: This administrative regulation will increase the accessibility of the program to homeless persons to improve their levels of nutrition.

Department for Medicaid Services

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

(1) **907 KAR 1:585,** Estate recovery.

(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 May 31, 1995 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Program Development and Budget, CHR Building, Third Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to relating to estate recovery are KRS 205.520 and 42 USC 1396p.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:585, and will implement guidelines recently issued by the Health Care Financing Administration regarding estate recovery.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation necessary to set forth procedures for estate recovery.

(d) The benefits expected from the administrative regulation are: The amendment of this regulation will allow the Department for Medicaid Services to comply with guidelines issued by the Health Care Financing Administration regarding estate recovery.

Date: April 14, 1995
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:705**, Demonstration project to implement regional managed care partnerships.

(2) The 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 May 31, 1995 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Program Development and Budget, CHR Building, 275 East Main Street, 3rd floor, 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 a demonstration project to implement regional managed health care partnerships is KRS 205.6320, 194.050, 205.6330, 205.6336, and Chapter 47, Appendix A, Part 1, Section G, 50, c.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will not amend an existing administrative regulation. It will, upon approval of the waiver by Health Care Financing Administration, permit the development of regional managed health care partnerships to design a service delivery network to serve a region's Medicaid population. Long term care services will not be included initially in this demonstration project. Mental health services will be included under a separate notice of intent.

(c) The necessity and function of the proposed administrative regulation is as follows: This new administrative regulation will set forth provisions of HB 250 related to cost containment of the Medicaid Program.

(d) The benefits expected from administrative regulation are: This new administrative regulation will permit health care providers the ability to design a service delivery network by region (as specified in the demonstration project). The service delivery network will reflect the region's health care infrastructure and will be geared to the unique needs of that medicaid population. This demonstration project will offer savings to the Medicaid Program while retaining stability and continuity of care to the nonlong-term care Medicaid recipients.

Date: April 14, 1995
Cabinet for Human Resources
Department for Medicaid Services

(1) **907 KAR 1:710**, Managed behavioral health care initiative.

(2) The 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 May 31, 1995 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services.

(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 a managed care initiative is KRS 205.6320, 194.050, 205.6336, Chapter 47, Appendix A, Part 1, Section G, 50, c.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will not amend an existing administrative regulation. It will, upon approval of the waiver by the Health Care Financing Administration, permit the development of managed behavioral health care utilizing regional mental health and mental retardation boards as managed care entities for mental health and substance abuse services.

(c) The necessity and function of the proposed administrative regulation is as follows: This new administrative regulation will set forth provisions of HB 250 related to cost containment of the Medicaid Program.

(d) The benefits expected from administrative regulation are: This new administrative regulation will permit regional mental health and mental retardation boards, through contracts with local mental health and substance abuse treatment professionals, agencies and facilities, to build a network of providers through which Medicaid recipients will receive managed behavioral health care services. These networks will provide continuity of care rather than services which are weighted toward restrictive inpatient care or outpatient services with gaps in intermediate levels of care and crisis stabilization services.

Department for Mental Health/Mental Retardation Services

Date: April 15, 1995
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:320**. Confidential record of treatment for federally assisted alcohol and other drug abuse programs.

(2) The Department for Mental Health/Mental Retardation 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 May 31, 1995, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may

call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the confidential record of treatment for alcohol and other drug abuse patients is KRS 194.050 and KRS Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will incorporate by reference the federal regulations 42 CFR Part 2 on the "Confidentiality of Alcohol and Drug Abuse Patient Records."

(c) The necessity and function of the proposed administrative regulation is as follows: To establish standards to assure the confidentiality of alcohol and other drug abuse patient records in federally assisted programs.

(d) The benefits expected from the administrative regulation are: Incorporating by reference the federal regulations 42 CFR Part 2 on the "Confidentiality of Alcohol and Drug Abuse Patient Records" will provide the Cabinet for Human Resources authority to enforce compliance with standards on the confidentiality of patient records for federally assisted alcohol and other drug abuse programs.

Date: April 15, 1995
Cabinet for Human Resources
Department for Mental Health/Mental Retardation Services

(1) **908 KAR 1:330**. Confidential record of treatment for nonfederally assisted alcohol and other drug abuse programs.

(2) The Department for Mental Health/Mental Retardation 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 May 31, 1995, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to May 31, 1995, the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the confidential record of treatment for alcohol and other drug abuse patients is KRS 194.050 and KRS Chapter 222.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will establish standards to assure the confidentiality of alcohol and other drug abuse patient records for nonfederally assisted programs.

(c) The necessity and function of the proposed administrative regulation is as follows: To assure that the alcohol and other drug abuse patient records in nonfederally assisted programs are kept confidential.

(d) The benefits expected from the administrative regulation are: Currently, there are no standards to assure the confidentiality of alcohol and drug abuse patient records within nonfederally assisted programs. Promulgation of this regulation to establish standards on confidentiality of patient records will ensure that client information regarding substance abuse will be kept confidential in nonfederally assisted programs and remove a deterrent for patients seeking services to address their alcohol and other drug abuse problem.

KENTUCKY HEALTH POLICY BOARD

Date: April 13, 1995
Kentucky Health Policy Board

(1) **909 KAR 1:080**, Accountable health plan certification. The subject matter of the proposed administrative regulation is the requirements for certification of accountable health plans.

(2) The board intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 25, 1995 at 1:30 p.m. EDT at the Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky in the first floor hearing room.

(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 May 25, 1995, 1:30 p.m. EDT, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood 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 Health Policy Board at the above address.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding the Kentucky Health Policy Board's administrative regulations may call toll free 1-800-648-6056 (V/TDD for hearing impaired) or 1-800-648-6057.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to accountable health plan certification is found in KRS 304.17A-070(2).

(b) The administrative regulation that the board intends to promulgate was filed as an emergency regulation in order to meet the statutory deadline of July 15, 1995 for full operation of the Kentucky Health Purchasing Alliance.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.17A-070(2) requires the Kentucky Health Purchasing Alliance to adopt administrative regulations for the certification of accountable health plans in consultation with the Kentucky Health Policy Board.

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

(e) The proposed administrative regulation will be implemented by allowing proposed accountable health plans to make application to the program.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
11 KAR 5:140E

This emergency administrative regulation establishes an increase in the award amount of the Kentucky Tuition Grant Program. It is necessary to promulgate this administrative regulation as an emergency administrative regulation to permit the awarding of grants and notifications to recipients in a timely manner to permit Kentucky students and their families to adequately plan for attendance at Kentucky educational institutions in the fall semester of 1995. Delay of awards and notifications pending the effective date of proposed ordinary administrative regulations would not afford adequate time for those individuals to plan appropriately. In addition, delay of awards and notifications will similarly not afford Kentucky colleges sufficient time to decide on the particular appropriate financial aid package for those students enrolling in the fall semester of 1995. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on February 15, 1995.

BRERETON C. JONES, Governor
MARY JO YOUNG, Chairman

HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 5:140E. KTG award determination procedure.

RELATES TO: KRS 164.744(2) to 164.753(4), 164.780, 164.785
STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)
EFFECTIVE: March 23, 1995
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers the Kentucky tuition grant program to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation sets forth the award determination procedures for the Kentucky tuition grant program. This amendment is necessary to increase the KTG award amount [~~delete a section regarding the minimum KHEAA grant award that appears to be inconsistent with the minimum CAP grant award~~].

Section 1. Definitions. For purposes of this administrative regulation, the terms listed below shall have the following meanings: "Pell grant" means an award under the Pell Grant Program operated by the Secretary under the provisions of Title IV Part A, subpart 1 of the federal act.

Section 2. Kentucky Tuition Grant (KTG) Program Awards. Whether or not the applicant is eligible for a CAP grant award, the application shall be reviewed for determination of eligibility for a KTG.

Section 3. KTG Need. For each KTG eligible applicant, the KTG need shall be computed according to the following formula: KTG need equals total cost of education minus the sum of:
(1) Expected Pell Grant;
(2) Expected family contribution; and
(3) CAP grant.

Section 4. KTG Award. (1) If an applicant does not qualify for a CAP grant and the KTG need is an amount equal to or greater than $200, the KTG shall be the lesser of the KTG need or the maximum grant authorized by KRS 164.785(3), except that KTG awards shall be offered only to the extent funds are available.
(2) If an applicant does not qualify for a CAP grant, and the KTG need is an amount less than $200, no award shall be made.
(3) If an applicant has received a CAP award and KTG need is an amount equal to or greater than fifty (50) dollars, the KTG award shall be the lesser of the KTG need or the maximum grant specified in section 6 of this administrative regulation except that KTG awards shall be offered only to the extent that funds are available.
(4) A KTG shall not exceed $1,500 [~~$1,200~~] for an academic year.

Section 5. A KHEAA grant shall not exceed the cost of tuition and fees charged to the student during the academic year of the award. A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books. A semester award shall not exceed tuition and fee charges for that semester. No KHEAA grant award shall be made for a summer academic term.

Section 6. In no event shall the KHEAA grant award exceed the applicant's total cost of education less expected family contribution and other anticipated student financial assistance. The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the educational institution's determination of financial need for that student. The KHEAA grant program officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

Section 7. If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked. If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant for which the student was ineligible.

Section 8. If the authority receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant and the grant has not yet been disbursed, the reduction shall be made to both the fall and spring disbursements, and the student shall be notified of the reduction. If the grant for the fall academic term has already been disbursed, then the reduction shall be made to the spring disbursement. If both the fall and spring disbursements have been made, the student shall repay the overaward to the authority.

Section 9. Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant. Any student who is awarded a KHEAA grant who fails to provide verification requested by the educational institution shall be deemed ineligible, and the grant shall be revoked.

MARY JO YOUNG, Chairman
APPROVED BY AGENCY: March 17, 1995
FILED WITH LRC: March 23, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: The proposed amendment will increase the maximum award from $1,200 to $1,500 in the Kentucky Tuition Grant (KTG) program, which enables financially-needy students to attend a private college. In the academic year ending June 30, 1994, 13,774 applications were processed, and 6,363 recipients were approved. An increased maximum award size may result in fewer awards to eligible students.

(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:
Neither cost of living nor employment will be affected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:
Cost of doing business will not be affected.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition for the:

1. First year following implementation: There will be no increase or decrease in reporting and paperwork, and there will be no impact upon costs or competition.

2. Second and subsequent years: Same as (2)(c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no significant direct or indirect costs or savings. Kentucky Tuition Grants are made from funds appropriated by the General Assembly. Every dollar appropriated for this program is distributed as a student grant. therefore, increasing the maximum grant award is expected to have an effect on the total number of awards made, but will not effect a cost or savings to the promulgating administrative body.

2. Continuing costs or savings: Same as (3)(a)(1) above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no change in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue is anticipated. See (3)(a)(1).

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds for awards in the Kentucky Tuition Grant Program are appropriated from the state general fund.

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

(a) Geographical area in which administrative regulation will be implemented. No economic impact is anticipated. No public comments were received.

(b) Kentucky. Same as (6)(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. This amendment to the administrative regulation 11 KAR 5:140 would provide for additional level of student financial assistance to bring the Kentucky Tuition Grant Awards in line with increases in tuition rates at eligible colleges in recent years.

(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 the environment or 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: Was tiering applied? No. If no, explain why tiering was not applied. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

STATEMENT OF EMERGENCY
32 KAR 1:150E

KRS 121A.020(7) requires the Registry of Election Finance to promulgate administrative regulations necessary to implement provisions of KRS Chapter 121A. The Public Financing Campaign Act of 1992 established a program of partial public financing for gubernatorial campaigns under which a slate which agrees to accept public funds transfers and abide by specified contribution and expenditure limits may receive matching funds based on qualifying contributions. Minimum and maximum thresholds are established by statute, but the statutes do not clearly specify whether a participating slate may raise more than the maximum threshold qualifying amount. The Registry previously promulgated 32 KAR 1:110E which attempted to specify the total amount of contributions a slate may raise. However, during the review process, questions arose with regard to the specific provisions of that emergency administrative regulation which necessitated substantial changes. Because 32 KAR 1:110E was filed as an emergency administrative regulation which would not be replaced by an ordinary regulation, it could not be amended through the usual process. It is therefore necessary to promulgate a new emergency administrative regulation to replace 32 KAR 1:110E which will be withdrawn prior to filing this regulation with the Administrative Regulations Compiler. This emergency regulation differs from 32 KAR 1:110E in that it requires all contributions in excess of the maximum threshold limit to be returned to contributors instead of providing the campaign with an option to either return the contributions to contributors or deposit them into the Election Campaign Fund. It further provides additional scenarios in which a slate may receive contributions and make expenditures up to $1.8 million in the primary. An ordinary administrative regulation shall be filed with the Regulations Compiler to replace this emergency administrative regulation.

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

KENTUCKY REGISTRY OF ELECTION FINANCE

32 KAR 1:150E. Maximum contributions to be received by gubernatorial slates.

RELATES TO: KRS 121A.030(1), 121A.040(2), 121A.060(2)(c), 121A.080(5)

STATUTORY AUTHORITY: KRS 121A.020(7)

EFFECTIVE: mARCH 22, 1995

NECESSITY AND FUNCTION: The Public Financing Campaign

Act of 1992 established a program of partial public financing for gubernatorial campaigns under which a slate which agrees to accept public funds transfers and abide by specified contribution and expenditure limits may receive matching funds based on qualifying contributions. Minimum and maximum thresholds are established by statute, but the statutes do not clearly specify whether a participating slate may raise more than the maximum threshold qualifying amount. The registry previously promulgated 32 KAR 1:110E which attempted to specify the total amount of contributions a slate may raise. However, during the review process, questions arose with regard to the specific provisions of that emergency administrative regulation which necessitated substantial changes. Because 32 KAR 1:110E was filed as an emergency administrative regulation which would not be replaced by an ordinary regulation, it could not be amended through the usual process. It is therefore necessary to promulgate a new emergency administrative regulation to replace 32 KAR 1:110E which will be withdrawn prior to filing this regulation with the Administrative Regulations Compiler. This emergency regulation differs from 32 KAR 1:110E in that it requires all contributions in excess of the maximum threshold limit to be returned to contributors instead of providing the campaign with an option to either return the contributions to contributors or deposit them into the Election Campaign Fund. It further provides additional scenarios in which a slate may receive contributions and make expenditures up to $1.8 million in the primary.

Section 1. Except as provided in Sections 2 and 3 of this administrative regulation, no qualifying slate of candidates seeking nomination or election to the offices of Governor and Lieutenant Governor shall raise more than the maximum threshold qualifying amount established in KRS 121A.060(2)(c). A qualifying slate which discovers that it has received qualifying contributions in excess of the maximum threshold qualifying amount shall dispose of qualifying contributions received after the maximum threshold qualifying amount is reached by returning the excess contributions to the contributors.

Section 2. If the expenditure limits established in KRS 121A.030(1) are lifted as provided in KRS 121A.030(5)(a) a qualifying slate that has received the maximum threshold qualifying amount in qualifying contributions shall be eligible to receive further matching funds based upon qualifying contributions received subsequent to the time the slate was released from the expenditure limit. A qualifying slate that has not raised the maximum threshold qualifying amount in qualifying contributions at the time the slate is released from the expenditure limit may receive qualifying contributions in excess of the maximum threshold qualifying amount and shall be eligible to receive matching funds for those qualifying contributions.

Section 3. (1) A slate of candidates which has signed a statement of intent to accept public funds transfers and expenditure limits for the primary may receive contributions and make expenditures up to $1.8 million in the primary if the slate:

(a) Is unopposed in the primary;

(b) Is opposed only by a slate of candidates that has rejected public financing and the expenditure limit;

(c) Is opposed only by a slate of candidates that has filed a request for exemption from filing preelection campaign finance reports because the slate will not accept or expend in excess of $3,000 in any one (1) election to further its candidacy;

(d) Is opposed by a slate of candidates that has not received qualifying contributions at least equal to the minimum qualifying threshold amount.

(2) If a slate which has rejected public transfers exceeds the expenditure limit, a slate covered by subsection (1)(b) of this section shall be released from the expenditure limit as provided in KRS 121A.030(1).

(3) If, during the course of the primary, the opposing slates receive contributions at least equal to the minimum qualifying threshold amount, then contributions received by the slate of candidates in excess of the maximum threshold qualifying amount shall be refunded to contributors as provided in Section 1 of this administrative regulation simultaneously with receiving a transfer of public funds.

(4) The excess contributions returned to the contributors pursuant to Section 1 of this administrative regulation shall be considered qualifying contributions and shall not be matched by transfers of public funds. Contributions received for the primary shall not be used for prepayment of expenses related to a run-off primary or the regular election.

JOSEPH TERRY, Chair

APPROVED BY AGENCY: March 17, 1995

FILED WITH LRC: March 22, 1995 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

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

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None. All reporting requirements are governed by statute or other administrative regulations.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing paperwork: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky:

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

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not applied because all slates of candidates for Governor and Lieutenant Governor are subject to the same provisions.

STATEMENT OF EMERGENCY
200 KAR 22:030E

200 KAR 22:030E should be enacted as an emergency administrative regulation to implement the provisions of KRS 18A.430(1) which require that each pilot agency participating in the Pilot Personnel Program shall develop and promulgate by administrative regulation a comprehensive employment manual establishing conditions of employment for employees in the Pilot Personnel Program. This administrative regulation promulgates the comprehensive employment manual of the Department of Vocational Rehabilitation for use in the Pilot Personnel Program as approved by the Personnel Steering Committee. Time is of the essence because under KRS 18A.430(2)(b) pilot programs are of limited duration and will expire no later than July 15, 1998. Moreover, the Personnel Steering Committee is required by KRS 18A.425(2) to submit a comprehensive report to the Governor at least 60 days prior to the 1996 General Assembly. Therefore, this administrative regulation should be approved on an emergency basis so that the Pilot Personnel Program of the Department of Vocational Rehabilitation can be implemented without delay. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
CRIT LUALLEN, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

200 KAR 22:030E. Comprehensive Employment Manual of Department of Vocational Rehabilitation for use in the Pilot Personnel Program.

RELATES TO: KRS 18A.430(1)
STATUTORY AUTHORITY: KRS 18A.430(1)(a), (b), (c)
EFFECTIVE: March 24, 1995

NECESSITY AND FUNCTION: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop a comprehensive employment manual establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. Pursuant to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the administrative regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This administrative regulation establishes the comprehensive employment manual of the Department of Vocational Rehabilitation for use in the Pilot Personnel Program.

Section 1. Comprehensive Employment Manual. The Department of Vocational Rehabilitation has been approved to participate in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450. Therefore, pursuant to KRS 18A.430(1), the conditions of employment for employees in the Department of Vocational Rehabilitation are set out in the "Employee Handbook of the Department of Vocational Rehabilitation for Use in the Pilot Personnel Program."

Section 2. Incorporation by Reference. (1) The "Employee Handbook of the Department of Vocational Rehabilitation for Use in the Pilot Personnel Program" dated March 1, 1995, ("Employee Handbook") is incorporated by reference.

(2) The "Employee Handbook" may be inspected, copied, or obtained at the Workforce Development Cabinet, Department of Vocational Rehabilitation, 9th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, c/o George Parsons, Project Coordinator, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUALLEN, Secretary
APPROVED BY AGENCY: March 14, 1995
FILED WITH LRC: March 24, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt, Executive Assistant

(1) Type and number of entities affected: This regulation will affect all employees in the Department of Vocational Rehabilitation who are participating in the Pilot Personnel Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. Because this is an emergency regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. Because this is an emergency regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(c) Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Pursuant to KRS 18A.430(1)(a), pilot programs are already required to develop comprehensive employment manuals establishing conditions of employment for employees in each organizational unit. This regulation merely promulgates the employment manual of the Department of Vocational Rehabilitation and will result in no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Under KRS 18A.430(1)(c), employment manuals developed by the pilot agencies are required to be promulgated as administrative regulations by the Secretary of the Finance and Administration Cabinet. Once the employment manuals are promulgated, the only cost to the Finance and Administration Cabinet or the pilot agencies will be for maintaining a file of the manuals.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Under KRS 18A.430(1)(c), employment manuals developed by the pilot agencies are required to be promulgated as administrative regulations by the Secretary of the Finance and Administration Cabinet. Once the employment manuals are promulgated, the only cost to the Finance and Administration Cabinet or the pilot agencies will be for maintaining a file of the manuals.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Finance and Administration Cabinet and the pilot agencies will be required to absorb the costs of maintaining a file of employment manuals.

(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: Because this is an emergency regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(b) Kentucky: Because this is an emergency regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Secretary, there are no statutes, rules, administrative regulations or government policies which are in conflict, overlap, or duplicate the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used). Tiering was not applied. This is a procedural regulation which applies to all agencies equally.

STATEMENT OF EMERGENCY
301 KAR 6:001E

The transfer of the Division of Water Patrol from the Department of Natural Resources to the Department of Fish and Wildlife Resources necessitates the repromulgation of existing administrative regulations governing boat registration, boating safety equipment, safe boating operations and waters of the Commonwealth zoned with special requirements for safety reasons. It is necessary to promulgate these as emergency administrative regulations to avoid any lapse in regulatory coverage. Such a lapse could leave the Division of Water Patrol without the authority to require specific equipment or operating procedures, which could endanger life and property on the state's waterways. This emergency administrative regulation will be replaced with an ordinary administrative regulation.

BRERETON C. JONES, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 6:001E. Definitions for 301 KAR Chapter 6.

RELATES TO: KRS Chapter 235
STATUTORY AUTHORITY: KRS 235.320
EFFECTIVE: March 16, 1995
NECESSITY AND FUNCTION: To define the terms used in 301 KAR Chapter 6. The definitions in this administrative regulation were found throughout 402 KAR 4:010 through 4:190. The transfer of the Division of Water Patrol to the Department of Fish and Wildlife Resources necessitates that existing administrative regulations be repealed by the Department of Natural Resources and repromulgated by the Department of Fish and Wildlife Resources. Changes in format and wording were made to reflect the current requirements of KRS Chapter 13A.

Section 1. Definitions. (1) "Adequate ventilation" means ventilation which met Boating Industry Association and U.S. Coast Guard requirements at the time the vessel was manufactured.

(2) "Airborne device" means a kite, parachute or similar device which holds a person aloft when towed behind a moving vessel.

(3) "Class A" means vessels less than sixteen (16) feet in length.

(4) "Class 1" means vessels sixteen (16) feet or over and less than twenty-six (26) feet in length.

(5) "Class 2" means vessels twenty-six (26) feet or over and less than forty (40) feet in length.

(6) "Class 3" means vessels forty (40) feet or more in length.

(7) "Crossing" means a situation in which a vessel approaches another from an angle of 112.5 degrees or less from either side of the bow.

(8) "Documented by the federal government" means a vessel which has been registered with, and issued official registration documents by, the United States Coast Guard.

(9) "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

(10) "International diving flag" means a red flag with a white stripe running diagonally from an upper corner to the opposite lower corner.

(11) "Length" means the longest dimension of a boat measured along the centerline from the bow to the stern, but not including outboard motors, swim platforms, or similar attachments.

(12) "Overtaking" means a situation in which a faster vessel approaches a slower vessel from an angle of more than 112.5 degrees from either side of the bow of the slower vessel.

(13) "Passing" means a situation in which vessels approach and pass each other from head on or nearly so.

(14) "Type I" means a personal flotation device.

(a) Designed to turn an unconscious person in the water from a face-downward position to a vertical or slightly backward position; and

(b) Having more than twenty (20) pounds of buoyancy.

(15) "Type II" means a personal flotation device.

(a) Designed to turn an unconscious person in the water from a face-downward position to a vertical or slightly backward position; and

(b) Having at least fifteen and one-half (15.5) pounds of buoyancy.

(16) "Type III" means a personal flotation device.

(a) Designed to keep a conscious person in a vertical or slightly backward position; and

(b) Having at least fifteen and one-half (15.5) pounds of buoyancy.

(17) "Type IV" means a personal flotation device.

(a) Designed to be thrown to a person in the water and not worn; and

(b) Having at least sixteen and one-half (16.5) pounds of buoyancy.

(18) "Water skis" means rigid or inflatable skis, kneeboards, tubes

or similar devices upon or in which a person is towed behind a moving vessel.

(19) "Water skiing" means:

(a) The act of riding in or upon water skis; or

(b) Barefoot skiing.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: March 3, 1995
FILED WITH LRC: March 16, 1995 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Don Smith

(1) Type and number of entities affected: There are 144,700 registered motorboats in the Commonwealth of Kentucky. Their operators are affected by the provisions of this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This repromulgation of existing administrative regulations will not affect cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This repromulgation of existing administrative regulations will not affect 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: Existing requirements are unchanged by the repromulgation of this administrative regulation.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings will be incurred.

2. Continuing costs or savings: No additional costs or savings will be incurred.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements are stipulated by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not change state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Boating registration fees.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(b) Kentucky: No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative to repromulgating boating regulations. Failure to repromulgate administrative regulations dealing with boating safety could endanger life, safety and property on the Commonwealth's waterways.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(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 requirements for safety equipment or safe operating procedures, boating accidents could increase, endangering public health and safety on Kentucky's waterways.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was applied to the extent that operators of different sizes or types of boats are required to have different safety equipment aboard. Otherwise, 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.

STATEMENT OF EMERGENCY
301 KAR 6:010E

The transfer of the Division of Water Patrol from the Department of Natural Resources to the Department of Fish and Wildlife Resources necessitates the repromulgation of existing administrative regulations governing boat registration, boating safety equipment, safe boating operations and waters of the Commonwealth zoned with special requirements for safety reasons. It is necessary to promulgate these as emergency administrative regulations to avoid any lapse in regulatory coverage. Such a lapse could leave the Division of Water Patrol without the authority to require specific equipment or operating procedures, which could endanger life and property on the state's waterways. This emergency administrative regulation will be replaced with an ordinary administrative regulation.

BRERETON C. JONES, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 6:010E. Vessel numbering and registration.

RELATES TO: KRS 235.040, 235.050, 235.100, 235.110, 235.120, 235.140, 235.150, 235.210
STATUTORY AUTHORITY: KRS 235.280, 235.320
EFFECTIVE: March 16, 1995
NECESSITY AND FUNCTION: To prescribe a uniform numbering system, the uniform placement of numbers and validation decals on vessels, and procedures to be followed by agencies exempt from registration. This administrative regulation contains the substance of 402 KAR 4:020, 4:030, and 4:035. The transfer of the Division of Water Patrol to the Department of Fish and Wildlife Resources necessitates that existing administrative regulations be repealed by the Department of Natural Resources and repromulgated by the Department of Fish and Wildlife Resources. Changes in format and wording were made to reflect the current requirements of KRS Chapter 13A.

Section 1. Vessel Numbering. (1) Except as provided in subsection (2) of this section, the identification numbers assigned to Kentucky registered motorboats shall consist of three (3) letter and

number groupings as follows:

(a) The first grouping shall consist of the letters "KY."

(b) The second grouping shall consist of not more than four (4) Arabic numbers.

(c) The third grouping shall consist of not more than two (2) letters.

(d) The letters "I," "O" and "Q" shall not be used.

(2) Boats having valid federal documentation papers shall not be assigned or required to display a Kentucky identification number.

(3) Motorboats not documented by the federal government and owned exclusively by agencies of a state government shall display registration numbers as prescribed by KRS 235.110.

(a) State government agencies shall apply to the Department of Transportation for registration numbers.

(b) Display of validation decals or subsequent renewal of certification shall not be required.

(c) If an agency transfers ownership of a motorboat to another agency of state government, the agency receiving the motorboat shall apply to the Department of Transportation for a new certificate number.

(d) If an agency transfers ownership of a motorboat to other than an agency of state government:

1. The agency shall surrender the registration number; and

2. The current owner shall apply for a registration number pursuant to KRS 235.50.

Section 2. Validation Decals. (1) Persons shall not operate motorboats without a current-year validation sticker attached to the vessel within six (6) inches aft of and in line with the registration number on both sides of the bow.

(2) Expired validation stickers shall be removed.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: March 3, 1995
FILED WITH LRC: March 16, 1995 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Don Smith

(1) Type and number of entities affected: There are 144,700 registered motorboats in the Commonwealth of Kentucky. Their operators are affected by the provisions of this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This repromulgation of existing administrative regulations will not affect cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This repromulgation of existing administrative regulations will not affect 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: Existing requirements are unchanged by the repromulgation of this administrative regulation.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings will be incurred.

2. Continuing costs or savings: No additional costs or savings will be incurred.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements are stipulated by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not change state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Boating registration fees.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(b) Kentucky: No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative to repromulgating boating regulations. Failure to repromulgate administrative regulations dealing with boating safety could endanger life, safety and property on the Commonwealth's waterways.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(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 requirements for safety equipment or safe operating procedures, boating accidents could increase, endangering public health and safety on Kentucky's waterways.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was applied to the extent that operators of different sizes or types of boats are required to have different safety equipment aboard. Otherwise, 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.

STATEMENT OF EMERGENCY
301 KAR 6:020E

The transfer of the Division of Water Patrol from the Department of Natural Resources to the Department of Fish and Wildlife Resources necessitates the repromulgation of existing administrative regulations governing boat registration, boating safety equipment, safe boating operations and waters of the Commonwealth zoned with special requirements for safety reasons. It is necessary to promulgate these as emergency administrative regulations to avoid any lapse in regulatory coverage. Such a lapse could leave the Division of Water Patrol without the authority to require specific equipment or operating procedures, which could endanger life and property on the state's waterways. This emergency administrative regulation will be replaced with an ordinary administrative regulation.

BRERETON C. JONES, Governor

C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 6:020E. Boating safety equipment.

RELATES TO: KRS 235.200, 235.205, 235.280
STATUTORY AUTHORITY: KRS 235. 200, 235.280, 235.320
EFFECTIVE: March 16, 1995
NECESSITY AND FUNCTION: To prescribe the minimum boating equipment necessary to help prevent accident, injury or deaths on Kentucky waterways. This administrative regulation contains the substance of 402 KAR 4:050, 4:060, 4:070, 4:080, 4:090, 4:100 and 4:120. The administrative transfer of the Division of Water Patrol necessitates that existing administrative regulations be repealed by the Department of Natural Resources and repromulgated by the Department of Fish and Wildlife Resources. Changes in format and wording were made to reflect the current requirements of KRS Chapter 13A.

Section 1. Engine Safety Equipment Requirements. (1) Except as provided in subsection (2) of this section, persons shall not operate vessels with enclosed engines without effective U.S. Coast Guard-approved flame arresters on carburetors.

(2) Persons may operate the following without flame arresters:

(a) Outboard engines; or

(b) Vessels with engines completely open by design and not originally equipped with Underwriters Laboratory or U.S. Coast Guard-approved flame arresters.

(3) Persons shall not operate vessels without adequate ventilation of bilges, engine compartments, fuel compartments or other enclosures.

(4) Persons shall not operate vessels originally equipped with a carburetor drip pan without the drip pan in place and maintained in a functioning condition.

(5) Persons shall not operate vessels whose bilges are not maintained free from oil or grease.

Section 2. Lighting Equipment. (1) Between actual sunset and sunrise:

(a) Operators of Class A or Class 1 motorboats shall display:

1. A white light near the stern of the vessel visible in a 360 degree arc.

2. A combined red and green light near the bow of the vessel which is:

a. Lower than the white light; and

b. As stipulated in subsection (2) of this section.

(b) Operators of Class 2 or Class 3 motorboats shall display:

1. A white light mounted near the bow of the vessel, which is visible from dead ahead to 112.5 degrees on either side of the vehicle.

2. A white light mounted near the stern of the vessel which is:

a. Higher than the forward white light; and

b. Visible in a 360 degree arc.

3. Separate red and green lights as stipulated in subsection (2) of this section.

(c) Operators of Class I or larger vessels propelled by sail alone shall display:

1. Red and green lights as stipulated in subsection (2) of this section; and

2. A white stern light which shows in an arc of 135 degrees behind the vessel.

(d) Operators of manually-powered vessels or sailboats less than twenty-two feet, nine inches (22'9") shall:

1. Carry aboard and have immediately available for use a white light of sufficient intensity to illuminate the vessel and its occupants; and

2. Display the white light in time to prevent a collision from an approaching vessel.

(e) Persons operating or responsible for vessels anchored or adrift in a normal navigation channel or passageway shall display a white light visible in a 360 degree arc.

(2) Combination or separate red and green lights shall:

(a) Have an arc of visibility extending from dead ahead to 112.5 degrees on either side of the vessel;

(b) Show the red light on the port side, and the green light on the starboard side, of the vessel; and

(c) Be visible at a distance of at least one (1) mile on a dark night with clear atmosphere.

(3) White lights required by this section shall be visible at a distance of at least two (2) miles on a dark night with clear atmosphere.

(4) On vessels under way between sunset to sunrise, operators shall not display other lights which could be mistaken for the lights specified in this section.

Section 3. Signaling Devices. (1) Operators of Class I or larger vessels shall have on board a hand-, mouth- or power-operated signaling device:

(a) Capable of producing a blast of two (2) seconds duration; and

(b) Audible for:

1. One-half (1/2) mile for Class 1 vessels.

2. One (1) mile for Class 2 vessels.

3. One and one-half (1-1/2) miles for Class 3 vessels.

(2) Nothing in this administrative regulation shall exempt a vessel from additional sound devices required by the U.S. Coast Guard or other governmental agencies.

Section 4. Personal Flotation Devices. (1) Operators of Classes 1, 2, and 3 recreational vessels shall have on board a minimum of:

(a) One (1) Type I, Type II or Type III personal flotation device for each person on board the vessel; and

(b) One (1) Type IV personal flotation device.

(2) Operators of Class A recreational vessels, canoes and kayaks shall have on board a minimum of one (1) Type I, Type II, Type III or Type IV personal flotation device for each person on board the vessel.

(3) Personal flotation devices shall be:

(a) Approved by the U.S. Coast Guard; and

(b) In good and serviceable condition.

(4) Type I, II, or III personal flotation devices shall be of appropriate size for the wearer and readily accessible.

(5) Type IV personal flotation devices shall be immediately available to the user.

Section 5. Fire Extinguishers. (1) Operators of vessels which contain butane gas, propane gas, kerosene, gasoline or other petroleum-consuming device shall have on board at a minimum:

(a) Class A or Class 1 vessels, one (1) B-1 fire extinguisher.

(b) Class 2 vessels:

1. With fixed systems, one (1) B-1 fire extinguisher.

2. Without fixed systems, two (2) B-1 fire extinguishers.

(c) Class 3 vessels:

1. With fixed systems:

a. Two (2) B-1 fire extinguishers; or

b. One (1) B-2 fire extinguisher.

2. Without fixed systems:

a. Three (3) B-1 fire extinguishers; or

b. One (1) B-1 and one (1) B-2 fire extinguishers.

(2) Operators shall:

(a) Maintain fire extinguishers in workable condition; and (b) Have them available for immediate and effective use.

Section 6. Except for vessels operated for the purposes of firefighting or rescue by the United States Coast Guard, the Commonwealth of Kentucky, a county, city or other governmental entity, operators shall not display flashing, rotating or oscillating red lights on vessels.

Section 7. Vessels Without Required Safety Equipment. (1) If an official of the department, or any other law enforcement officer, observes a vessel operating without the safety equipment specified in this administrative regulation, he
may direct the operator to take whatever immediate and reasonable steps are necessary to correct the deficiency, including directing the operator to return to a mooring and remaining there until the situation creating the unsafe condition is corrected.

(2) If a vessel is directed to return to a mooring, the officer may affix a notice to the vessel.

(a) Indicating the nature of the unsafe condition; and

(b) Requiring its correction before the vessel is further operated.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: March 3, 1995
FILED WITH LRC: March 16, 1995 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Don Smith

(1) Type and number of entities affected: There are 144,700 registered motorboats in the Commonwealth of Kentucky. Their operators are affected by the provisions of this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This repromulgation of existing administrative regulations will not affect cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This repromulgation of existing administrative regulations will not affect 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: Existing requirements are unchanged by the repromulgation of this administrative regulation.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings will be incurred.

2. Continuing costs or savings: No additional costs or savings will be incurred.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements are stipulated by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not change state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Boating registration fees.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(b) Kentucky: No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative to repromulgating boating regulations. Failure to repromulgate administrative regulations dealing with boating safety could endanger life, safety and property on the Commonwealth's waterways.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(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 requirements for safety equipment or safe operating procedures, boating accidents could increase, endangering public health and safety on Kentucky's waterways.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was applied to the extent that operators of different sizes or types of boats are required to have different safety equipment aboard. Otherwise, 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.

STATEMENT OF EMERGENCY
301 KAR 6:030E

The transfer of the Division of Water Patrol from the Department of Natural Resources to the Department of Fish and Wildlife Resources necessitates the repromulgation of existing administrative regulations governing boat registration, boating safety equipment, safe boating operations and waters of the Commonwealth zoned with special requirements for safety reasons. It is necessary to promulgate these as emergency administrative regulations to avoid any lapse in regulatory coverage. Such a lapse could leave the Division of Water Patrol without the authority to require specific equipment or operating procedures, which could endanger life and property on the state's waterways. This emergency administrative regulation will be replaced with an ordinary administrative regulation.

BRERETON C. JONES, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 6:030E. Waterway safety requirements.

RELATES TO: KRS 235.150, 235.240, 235.250, 235.280, 235.290

STATUTORY AUTHORITY: KRS 235.280, 235.290, 235.320

EFFECTIVE: March 16, 1995

NECESSITY AND FUNCTION: To prohibit unsafe practices which could lead to accidents, injuries or deaths on Kentucky waterways.

This administrative regulation contains the substance of 402 KAR 4:040, 4:110, 4:130, 4:150, 4:160, and 4:170. The administrative transfer of the Division of Water Patrol necessitates that existing administrative regulations be repealed by the Department of Natural Resources and repromulgated by the Department of Fish and Wildlife Resources. Changes in format and wording were made to reflect the current requirements of KRS Chapter 13A.

Section 1. Accident Reporting. (1) The operator shall file a written report with the department when his vessel is involved in an accident resulting in:

(a) The death of a person;

(b) The disappearance of a person from the vessel under circumstances which suggest the possibility of death of injury;

(c) An injury which requires medical treatment or results in a person being incapacitated for twenty-four (24) hours or more; or

(d) The loss of, or damage to, property in an amount of $500 or more.

(2) Operators shall submit written reports of accidents involving death or serious injury within forty-eight (48) hours.

(3) Operators shall submit written reports of accidents not involving death or serious injury within five (5) days.

(4) Accident reports shall contain the following information:

(a) The registration numbers or names of the vessels involved;

(b) The location of the accident;

(c) The weather and water conditions;

(d) The name, address, age and boating experience of the operator of the reporting vessel;

(e) The names of addresses of the operators of other vessels involved;

(f) The names and addresses of persons killed or injured;

(g) The nature and extent of injuries;

(h) A description of the damage to property and an estimated cost of repairs;

(g) A description of the accident, including opinions as to the cause;

(h) The length, means of propulsion, horsepower, fuel and construction of the reporting vessel; and

(i) The names and addresses of known witnesses.

Section 2. Water Skiing and Related Activities. (1) Persons shall not water ski or tow persons water skiing:

(a) Within 100 feet of:

1. A commercial boat dock;

2. A moorage harbor; or

3. A swimming area.

(b) Within 2,000 feet of a dam or lock.

(c) In waters posted or marked as a no skiing or restricted area.

(2) Persons towing water skiers shall have on board:

(a) In addition to the operator, a person twelve (12) years of age or older, who shall serve as an observer; or

(b) A rear-view mirror with a minimum 160-degree field of vision, mounted so that the operator can observe the activities of the person being towed.

(3) Between sunset and sunrise, persons shall not:

(a) Water ski; or

(b) Operate airborne devices.

(4) Persons shall wear a type I, II, or III personal flotation device while water skiing.

(5) Except during performances authorized by the department in conjunction with a race, regatta or similar activity:

(a) There shall be no more than (2) airborne devices in the air at one (1) time in a general area.

(b) Persons shall not operate airborne devices with tow lines exceeding 150 feet.

(c) Persons towing airborne devices shall have on board, in addition to the operator, a person twelve (12) years of age or older, who shall serve as an observer.

Section 3. Operation in Congested Areas or Near Swimmers or Divers. (1) Persons shall not operate vessels above idle speed:

(a) In harbors or congested areas; or

(b) Within 100 feet of commercial docks or a generally recognized moorage areas.

(2) Operators shall not pass moored or anchored vessels in a manner and at a speed which could cause the moored or anchored vessel to swamp or capsize.

(3) Persons shall not operate vessels in designated swimming areas.

(4) Persons shall not operate vessels in a manner which would endanger swimmers or other persons in the water.

(5) Operators of vessels not involved in a diving operation shall remain more than 100 feet from an international diver's flag.

(6) Operators shall not steer vessels in a circular course around swimmers or fishermen.

Section 4. Restrictions on Swimming or Diving. (1) Persons shall not swim at boat launching areas.

(2) Persons diving with SCUBA or other mechanical diving devices shall display an international diver's flag:

(a) At least twelve (12) inches by twelve (12) inches in size; and

(b) With the diagonal stripe at least three (3) inches wide.

(3) Unless they are actually engaged in diving operations, persons shall not display an international diver's flag on a vessel or on the water.

(4) Except in an emergency, divers shall not rise to surface further than fifty (50) feet from an international diver's flag.

(5) Divers or swimmers shall not:

(a) Interfere with fishermen;

(b) Dive or swim in established traffic lanes; or

(c) Obstruct a vessel from proceeding to its destination where no reasonable alternative routes are available.

Section 5. General Boating Safety Requirements. (1) Persons shall not operate a vessel loaded with passengers or cargo beyond its safe carrying capacity, considering weather and existing operating conditions.

(2) When a vessel is operating faster than at idle speed, persons shall not ride:

(a) On an enclosed bow;

(b) Outside the protective railing of a pontoon boat or houseboat;

(c) On a seat which extends six (6) inches above the plane of the gunwales;

(d) On the sides, back, engine cover, seat back; or

(e) In any other obviously dangerous position which could lead to falling overboard.

(3) Except during emergencies, person shall not operate, moor, anchor or use vessels:

(a) Within 500 feet above or below the wicket area of a power dam when one (1) or more wickets are open.

(b) Within 100 feet of a power dam generator water exhaust chute.

(c) Except for purposes that the operators of a dam may prescribe, within the turbine exhaust chute of a dam.

(d) Within a restricted area.

(e) Within a distance from lock gates that creates potentially hazardous situations.

Section 6. Waterway Traffic. (1) The operator of a vessel:

(a) Passing another vessel shall keep to the right;

(b) Overtaking another vessel:

1. May do so on either side; and

2. Shall yield the right-of-way to the vessel being overtaken.

(c) Shall yield the right-of-way to vessels crossing from the right.

(d) Approaching a dock or pier shall yield the right-of-way to vessels departing the dock or pier;

(e) Departing a shoreline shall yield the right-of way to vessels approaching the shoreline;

(f) Shall not change course without first determining that the course change can be made without risk of collision;

(g) Who fails to understand fully the course of an approaching vessel shall immediately slow to idle speed until the other vessel has passed;

(h) With the right-of-way shall maintain course and speed;

(i) Which is required to yield the right-of-way shall, as necessary:

1. Slacken speed;
2. Stop;
3. Reverse; or
4. Alter course.

(h) In a narrow channel shall keep to the right of midchannel.

(2) Operators of motorboats shall yield the right-of-way to vessels being propelled by sail, oars, or other nonmotorized means.

(3) If there is danger of collision, operators of vessels involved shall slow down, stop, alter course or reverse until the danger is averted, regardless of which vessel has the right-of-way.

(4) Operators shall sound intermittent warning signals in fog or similar situations of restricted visibility when their vessels are:

(a) Underway;

(b) Adrift; or

(c) Anchored or moored outside an established anchorage or mooring field.

(5) Operators shall not interfere with or obstruct the takeoff, landing or taxiing of aircraft.

(6) Operators:

(a) Shall maintain complete control of their vessels; and

(b) Shall not exceed a speed which, given the existing conditions, could cause a loss of control or present a hazard to life or safety.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: March 3, 1995
FILED WITH LRC: March 16, 1995 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Don Smith

(1) Type and number of entities affected: There are 144,700 registered motorboats in the Commonwealth of Kentucky. Their operators are affected by the provisions of this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This repromulgation of existing administrative regulations will not affect cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This repromulgation of existing administrative regulations will not affect 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: Existing requirements are unchanged by the repromulgation of this administrative regulation.
2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings will be incurred.
2. Continuing costs or savings: No additional costs or savings will be incurred.
3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements are stipulated by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not change state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Boating registration fees.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(b) Kentucky: No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative to repromulgating boating regulations. Failure to repromulgate administrative regulations dealing with boating safety could endanger life, safety and property on the Commonwealth's waterways.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(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 requirements for safety equipment or safe operating procedures, boating accidents could increase, endangering public health and safety on Kentucky's waterways.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was applied to the extent that operators of different sizes or types of boats are required to have different safety equipment aboard. Otherwise, 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.

STATEMENT OF EMERGENCY
301 KAR 6:040E

The transfer of the Division of Water Patrol from the Department of Natural Resources to the Department of Fish and Wildlife Resources necessitates the repromulgation of existing administrative regulations governing boat registration, boating safety equipment, safe boating operations and waters of the Commonwealth zoned with special requirements for safety reasons. It is necessary to promulgate these as emergency administrative regulations to avoid any lapse in regulatory coverage. Such a lapse could leave the Division of Water Patrol without the authority to require specific equipment or operating procedures, which could endanger life and property on the state's waterways. This emergency administrative regulation will be replaced with an ordinary administrative regulation.

BRERETON C. JONES, Governor
C. THOMAS BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 6:040E. Zoning or marking of waterways.

RELATES TO: KRS Chapter 235, 33 CFR Chapter 1 Subpart 66.10

STATUTORY AUTHORITY: KRS 235.280, 235.320, 33 CFR Chapter 1 Subpart 66.10

EFFECTIVE: March 16, 1995

NECESSITY AND FUNCTION: To make the marking of Kentucky's waterways conform to national standards and to restrict certain boating activities on some bodies of water. This administrative regulation contains the substance of 402 KAR 4:180 and 4:190. The administrative transfer of the Division of Water Patrol necessitates that existing administrative regulations be repealed by the Department of Natural Resources and repromulgated by the Department of Fish and Wildlife Resources. Changes in format and wording were made to reflect the current requirements of KRS Chapter 13A. The only substantive change reflected in this administrative regulation is to establish an idle-speed zone between actual sunset and sunrise in the Ohio River adjacent to downtown Cincinnati, Ohio.

Section 1. Persons shall not zone, or place buoys or signs:

(1) On nonnavigable waters without first obtaining written approval from the department.

(2) On navigable waters without first obtaining written approval from the department with concurrence by:

(a) The United States Coast Guard; and

(b) The United States Army Corps of Engineers.

Section 2. Persons shall not moor a vessel to a buoy or navigational aid not specifically designated as a mooring device.

Section 3. Zoned Waterways. (1) On Herrington Lake, persons shall not:

(a) Ski except along the main lake channel.

(b) Operate motorboats at greater than idle speed in inlets.

(2) Persons shall not ski on the Big Sandy River.

(3) Between the Second Street Bridge and McAlpine Dam on the Ohio River, persons:

(a) Shall not operate recreational vessels except:

1. To lock through McAlpine Dam; or

2. To dock at the Louisville Municipal Wharf.

(b) Shall remain within the confines of the commercial channel.

(4) Persons shall not operate motorboats at faster than at idle speed on the Salt River in Mercer County.

(5) Persons shall not operate motorboats at greater than idle speed from sunset to sunrise between the Brent Spence Bridge and the Daniel Carter Beard Bridge on the Ohio River.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: March 3, 1995
FILED WITH LRC: March 16, 1995 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Don Smith

(1) Type and number of entities affected: There are 144,700 registered motorboats in the Commonwealth of Kentucky. Their operators are affected by the provisions of this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This repromulgation of existing administrative regulations will not affect cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This repromulgation of existing administrative regulations will not affect 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: Existing requirements are unchanged by the repromulgation of this administrative regulation.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings will be incurred.

2. Continuing costs or savings: No additional costs or savings will be incurred.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements are stipulated by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not change state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Boating registration fees.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(b) Kentucky: No anticipated economic impacts should occur due to the repromulgation of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative to repromulgating boating regulations. Failure to repromulgate administrative regulations dealing with boating safety could endanger life, safety and property on the Commonwealth's waterways.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(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 requirements for safety equipment or safe operating procedures, boating accidents could increase, endangering public health and safety on Kentucky's waterways.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was applied to the extent that operators of different sizes or types of boats are required to have different safety equipment aboard. Otherwise, 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.

STATEMENT OF EMERGENCY
416 KAR 1:010E

KRS 146.110 to 146.121 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. The fund provides cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for such purposes as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; and reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program. This administrative regulation is promulgated as an emergency regulation to protect human health and the environment, by establishing the cost-share assistance program as soon as possible. This will allow best management practices to be implemented sooner than that might otherwise be the case, because persons engaged in agricultural and silvicultural production may be receiving cost-share assistance and accompanying technical assistance in implementing best management practices. An ordinary administrative regulation is not sufficient because it will not become effective for several months, thereby depriving persons engaged in agricultural and silvicultural production the opportunity to receive cost-share assistance until that later effective date. This emergency administrative regulation will make cost-share assistance available now. This administrative regulation will be replaced with an ordinary administrative regulation.

BRERETON C. JONES, Governor
THOMAS E. NEAL, Chairman

SOIL AND WATER CONSERVATION COMMISSION

416 KAR 1:010E. Administration of Kentucky soil erosion and water quality cost-share fund.

RELATES TO: KRS 146.080 to 146.121, 224.71-100 to 224.71-140, Chapter 262
STATUTORY AUTHORITY: KRS 146.110 to 146.121
EFFECTIVE: March 24, 1995
NECESSITY AND FUNCTION: KRS 146.110 to 146.121 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. The fund provides cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for such purposes as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; and reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program.

Section 1. Definitions. (1) "Agricultural or silvicultural production" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.

(2) "Agriculture water quality plan" means a document incorporating the conservation plan, compliance plan, or forest stewardship management plan as necessary to prevent groundwater and surface water pollution from an agricultural or silvicultural production.

(3) "Applicant" means a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(4) "Available funds" means moneys budgeted, unobligated and approved by the commission for cost-share assistance.

(5) "Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service and the Soil and Water Conservation Commission. Best management practices shall establish a minimum level of acceptable quality for planning, siting, designing, installing, operating, and maintaining these practices.

(6) " Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.

(7) "Compliance plan" means a conservation plan containing best management practices developed for persons engaged in agricultural production by the United States Department of Agriculture Natural Resources Conservation Service in conjunction with local conservation districts as required for eligibility under the Federal Food Security Act.

(8) "Conservation district" or "district" means a subdivision of state government organized pursuant to KRS Chapter 262 for the specific purpose of assisting persons engaged in agricultural or silvicultural production and land users in solving soil and water resources problems, setting priorities for conservation work to be accomplished, and coordinating the federal, state, and local resources to carry out these programs.

(9) "Conservation plan" means a plan describing best land management practices, including an installation schedule and maintenance program, which when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land in accordance with the Natural Resources Conservation Service Technical Guide or developed by others in accordance with the Natural Resources Conservation Service Technical Guide and in cooperation with a conservation district.

(10) "Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(11) "District supervisor" means a member of the governing board of a conservation district.

(12) "Ecosystem-based assistance process" means a specific application of a planning process that considers the integration of ecological, economic, and social factors to maintain and to enhance the quality of the environment to best meet current and future needs, which may include the following components:

(a) Inclusion of private land and public land within the watershed;

(b) Identification of and suggested solutions for various resource problems within the watershed;

(c) Establishment of opportunities for public participation in plan development and implementation;

(d) Inclusion of mechanisms for developing a comprehensive resource plan for the watershed and for reporting conservation accomplishments within the watershed;

(e) Identification and prioritization of local resource concerns, and inclusion of mechanisms to address these concerns within the watershed; and

(f) Development within current county conservation district

boundaries with coordination of plans across county lines for protection of the watershed.

(13) "Eligible land" means land on which agricultural or silvicultural production is being conducted.

(14) "Eligible person" means a person eligible to apply for cost-share assistance.

(15) "Eligible practices" means those best management practices that have been approved by the commission.

(16) "Forest stewardship management plan" means a plan developed by the Natural Resources and Environmental Protection Cabinet's Division of Forestry or other cooperating entities which establishes practices for a person engaged in an agricultural or silvicultural production to manage forest lands in accordance with sound silvicultural and natural resource principles.

(17) " Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.

(18) "Obligated funds" means moneys from a district's portion of the Kentucky Soil Erosion and Water Quality Cost-share Fund allocated by the commission and committed to an applicant after final approval of the application for cost-share assistance.

(19) "Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.

(20) "Program year" means the period from July 1 to June 30.

(21) "Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.

(22) "Surface water" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger shall not be considered to be surface waters of the Commonwealth.

(23) "Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.

(24) "Watershed" means all the area from which all drainage passes a given point downstream.

Section 2. Eligibility of Persons. (1) Eligible persons. Persons conducting agricultural or silvicultural production are eligible to receive cost-share assistance for best management practices if the following conditions are met:

(a) The person has had prepared a conservation plan, a compliance plan, a forest management or forest stewardship plan, or an agriculture water quality plan; and

(b) The person agrees to perform and to maintain best management practices for the period of time specified by the commission.

(2) Ineligible persons. A person engaged in agricultural or silvicultural production who has failed or refused to comply with agriculture water quality planning requirements and has been deemed a "bad actor" under KRS 224.71-130 shall lose eligibility for further cost-share assistance.

Section 3. Eligible Best Management Practices. (1) Purposes of best management practices. The Kentucky Soil Erosion and Water Quality Cost-share Funds shall be used to provide cost-share assistance for development and implementation of best management practices for the following purposes:

(a) Providing cleaner water through the reduction in sediment loading of Kentucky streams, rivers, and lakes;

(b) Reducing the loss of topsoil vital to sustain production of food and fiber; and

(c) Preventing surface water and groundwater pollution.

(2) Approved best management practices. Complete listings of eligible best management practices are contained in the document entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual", incorporated by reference in Section 13 of this administrative regulation.

(3) A district may request the commission's approval of best management practices not included in the commission's list of approved practices if those best management practices solve a problem unique to the requesting district and conform to one (1) or more of the purposes listed in subsection (1) of this section. A request shall be filed in writing with the commission in time for the commission to review the request and to notify the district of its decision prior to the advertisement of the program for the next program year. Conservation practices may be included in a district's list of eligible practices offered for cost-share assistance only if approved by the commission in accordance with this subsection.

Section 4. Solicitation of Applications. The commission shall establish for each program year a deadline for submittal of applications for cost-share assistance. Each conservation district shall provide an opportunity for persons within the district to submit applications in time for the next program year by advertising the availability of cost-share assistance in appropriate news media, such as local newspapers, local radio stations, and any newsletters published by the district.

Section 5. Contents and Completion of Applications. (1) Contents of application. An applicant shall submit to the conservation district in which the eligible land is located the application incorporated by reference in Section 13 of this administrative regulation in order to apply for cost-share assistance. The applicant shall append to the application:

(a) Any conservation plan, compliance plan, forest stewardship plan, or agriculture water quality plan in effect for the eligible land; and

(b) If known to the applicant or as made in consultation with the appropriate technical agency, the anticipated total cost of the best management practice to be implemented and the percentage, if any, of the cost which the applicant proposes to bear, which percentage shall not be less than minimums established by the commission for the particular best management practice.

(2) Completion of applications. An applicant who does not have a conservation plan, compliance plan, forest stewardship plan, or agriculture water quality plan in effect for the eligible land; or who has not determined the anticipated total cost of the requested best management practice may request technical assistance from the conservation district in developing a best management practices plan and determining costs. When the best management practices plan has been developed and the anticipated total cost determined, the application will be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

Section 6. Review of Applications. Each conservation district shall review and determine the eligibility of all applications which were submitted to the district by the established deadline. The board of supervisors for the district shall vote upon eligibility at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 to 61.850, and record the outcome in the minutes of the board of supervisors for that meeting. A district supervisor who is also an applicant for cost-share assistance shall not vote on eligibility. The district shall forward the applications to the commission within fifteen (15) days after determining eligibility. A district may submit both individual applications for eligible lands within the district and watershed-based applications for eligible lands within the district.

Section 7. Prioritization of Applications. The commission shall

prioritize the applications of persons determined by the conservation districts to be eligible for cost-share assistance and shall make the final award of cost-share assistance.

(1) Classification of priorities. Applications shall be prioritized based on the following criteria:

(a) Applicants conducting agricultural or silvicultural production needing animal waste management systems where animal waste has been identified by the Natural Resources and Environmental Protection Cabinet as a water pollution problem;

(b) Applicants who are members of agricultural districts; and

(c) Applicants who have implemented a conservation plan, a compliance plan, an agriculture water quality plan, or a forest stewardship plan, and are part of a watershed where the ecosystem-based assistance process is ongoing.

(2) Applications within each classification identified in subsection (1) of this section shall be prioritized based on the following criteria:

(a) Presence of water pollution, based on:

1. Notification by a local, state or federal agency that the applicant's agricultural or silvicultural production has caused or contributed to water pollution;

2. Determination of the Natural Resources and Environmental Protection Cabinet that a surface water affected by the applicant's agricultural or silvicultural production is not meeting its designated use;

3. Identification by the Natural Resources and Environmental Protection Cabinet of a water priority protection region encompassing the location of the applicant's agricultural or silvicultural production; and

4. Other documentation of water pollution, such as through a biological assessment; or

5. Potential for development of water pollution from agricultural or silvicultural production in the watershed in which the applicant's agricultural or silvicultural production is being conducted.

(b) Types of water pollutants, based on:

1. Animal waste;

2. Sediment run-off;

3. Nutrient loading; or

4. Pesticide application, storage or disposal.

(c) Proximity of pollutant to groundwater or surface water;

(d) Magnitude of water pollution; and

(e) Location in designated water quality planning area, based on the existence of:

1. An ecosystem-based assistance process;

2. A Federal Clean Water Act Section 319 demonstration area;

3. A wellhead protection area; or

4. An agriculture water priority protection region.

Section 8. Allocation of Cost-share Assistance. (1) The available funds received by the commission for the cost-share program shall be allocated to the conservation districts based on requests from districts approved by the commission prior to each program year. The district shall receive a share of the Kentucky Soil Erosion and Water Quality Cost-share Fund based on the commission's approval of an initial district request based on the objectives identified in Section 8 of this administrative regulation, and in accordance with the prioritization system established in Section 7 of this administrative regulation.

(2) Any funds allocated by the commission to a district for a program year shall revert to the commission if the district has not obligated the funds within one (1) year from allocation. (3) The commission shall retain ten (10) percent of the available funds in a contingency fund to be allocated to assist persons engaged in agricultural or silvicultural productions and implementing the Agriculture Water Quality Program mandated by KRS 224.71.

Section 9. Design of Best Management Practices. Once cost-share assistance has been awarded by the commission, the local district shall designate a technician to develop final design and layout for the approved best management practices.

Section 10. Execution of Performance and Maintenance Agreements. After an application has been awarded cost-share assistance and before the applicant has received payment of the cost-share funds, the applicant and the conservation district shall execute a performance and maintenance agreement.

(1) Requirements of performance and maintenance agreements. The performance and maintenance agreement shall require the applicant to meet the following requirements:

(a) The applicant shall agree to perform those best management practices approved in accordance with this administrative regulation;

(b) The applicant shall agree to maintain approved best management practices for the expected life of each practice agreed upon in the performance and maintenance agreement;

(c) Upon completion of the approved best management practice the applicant shall notify the district that the practice has been installed and shall provide to the district for its inspection all vouchers, bills, and receipts associated with the practice;

(d) The applicant shall agree that at the time of transfer of ownership of land where a best management practice has been applied using cost-share assistance and the expected life assigned the practice has not expired, the applicant shall execute a contract with the transferee requiring continuation of those practices until completed;

(e) The applicant shall agree that if the applicant destroys the best management practice installed or voluntarily relinquishes control or title to the land on which the installed practice has been established and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of its specified lifespan, the applicant shall refund all or part of the cost-share assistance, as determined by the district; and

(f) The applicant shall agree that if the applicant does not maintain the approved best management practices on the schedule provided in the plan the applicant shall forfeit the cost-share assistance, and the commission shall be authorized to recover the funds disbursed.

(2) Effect of performance and maintenance agreement. Requirements for performance and maintenance of best management practices applied using cost-share assistance shall be established in the performance and maintenance agreement and reviewed with the applicant at the time of application submittal and before completion of a certification of practices.

(3) Refund of funds disbursed. The district may require a refund of cost-share assistance when an approved best management practice has not been performed or maintained in compliance with approved design standards and specifications for the practice during its expected life as agreed in the performance and maintenance agreement.

(4) Application for future cost-share assistance. Best management practices that have been successfully completed and which later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, shall not prohibit the applicant from applying for additional cost-share assistance to restore the practices to their original design standards and specifications.

(5) Certification. Upon notification by the applicant that the approved best management practice has been completed and before disbursement of funds from the district, the appropriate technical agency shall certify to the district that the practice has been installed in accordance with the document entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual, incorporated by reference in Section 13 of this administrative regulation.

(6) Limitations on awards. Cost-share assistance awarded to an applicant shall be limited to a maximum of seventy-five (75) percent of the actual cost, not to exceed an amount approved by the commission, for each best management practice, with the assisted applicant providing twenty-five (25) percent of the cost, which may

include in-kind support, with a maximum of $7,500 per year to each applicant for all practices except for the more expensive animal waste storage practices which have a maximum of $20,000 per year for each applicant. Cost-share assistance may be used with federal or local cost-share funds on the same practices as long as the total cost-share payment does not exceed seventy-five (75) percent of the practice cost. Cost-share assistance shall not be awarded to best management practices in progress prior to cost-share approval or previously-installed practices by the applicant.

Section 11. Reporting and Accounting. (1) District reporting and accounting. A district shall conduct the following reporting and accounting procedures:

(a) Maintain a control ledger showing the current request to the commission and cost-share funds obligated for approved applications, based on estimated cost;

(b) Submit a quarterly report to the commission indicating the unobligated balance of allocated and disbursed cost-share funds as shown on each ledger;

(c) Submit an annual progress report to the commission showing accomplishments "to date" for the current program year; and

(d) Assemble case files for each approved application, filed by program year and accessible for public inspection, containing:

1. The approved application for allocated funds;
2. A copy of the estimated cost sheet;
3. Certification of practice completion;
4. Applicant's vouchers, bills or receipts;
5. Final designs for best management practices;
6. The performance and maintenance agreement;
7. Any amendments to the performance and maintenance agreement; and
8. A map locating the practices.

(2) Commission reporting and accounting. The commission shall conduct the following reporting and accounting procedures:

(a) Receive and maintain reports from districts showing the unobligated balance of allocated and disbursed cost-share funds as shown on each ledger; and

(b) Submit consolidated quarterly reports based on the reports from districts on the unobligated balance of the Kentucky Soil Erosion and Water Quality Cost-share Fund.

Section 12. Appeals. (1) Procedure for filing appeal. An applicant aggrieved by a decision of the commission denying an application or limiting the amount of financial assurance may file a written appeal with the commission within thirty (30) days of the decision and shall set forth the basis for the appeal.

(2) Procedure for hearing appeal. The commission shall notify the applicant and the local district that they may appear before the commission and present testimony or written documentation on the issues presented by the appeal. The commission shall have sixty (60) days in which to make a decision and to notify the local district and the applicant.

(3) Review of final decision. The decisions of the commission may be appealed to the Franklin Circuit Court.

Section 13. Incorporation by Reference. The documents entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual", dated March 1, 1995 is hereby incorporated by reference. It is available for public inspection and copying, subject to copyright law, at the office of the Soil and Water Conservation Commission, 691 Teton Trail, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m., Mondays through Fridays, excluding state holidays.

THOMAS E. NEAL, Chairman
KATHRYN M. HARGRAVES, Manager
APPROVED BY AGENCY: March 15, 1995
FILED WITH LRC: March 24, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Steve Coleman

(1) Type and number of entities affected: Persons engaged in agricultural or silvicultural production.

(2) Direct and indirect costs or savings on the affected entities: This cost-share assistance program will provide a savings for recipients of cost-share assistance; there are no costs associated with this program, since the Soil and Water Conservation Commission and the local conservation districts will assist with the preparation of applications for cost-share assistance.

(a) Effect on the 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: Not applicable.

(b)Effect on the 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: Not applicable.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: Not applicable.
2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body: The cost-share assistance program will be administered by the Soil and Water Conservation Commission and the local conservation districts. No new costs on these agencies are anticipated, since they already provide technical support for the best management practices contemplated by the program. (a) Direct and indirect costs or savings: Not applicable.

1. First year: Not applicable.
2. Continuing costs or savings: Not applicable.
3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: The Soil and Water Conservation Commission and the local conservation districts will be handling the applications and accompanying documents, but do not anticipate an additional burden in doing so.

(4) Assessment of anticipated effect on state and local revenues: The cost-share assistance program may benefit state and local revenues by reducing the costs to persons engaged in agricultural and silvicultural production of implementing best management practices.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: HB 452 (1994) authorized the funding of the cost-share assistance program by registration fees received by the Department of Agriculture, Division of Pesticides. The total amount now available for the program is $550,000.

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

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

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were evaluated because there is a specific legislative directive to implement the cost-share assistance program.

(8) Assessment of expected benefits of the administrative regulation: The cost-share assistance program will aid persons engaged in agricultural or silvicultural production in implementing best management practices.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The cost-share assistance program will aid persons engaged in agricultural or silvicultural production in implementing best management

practices. This will improve environmental conditions in the areas of soil conservation and prevention of groundwater pollution.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If cost-share assistance is not made available, persons engaged in agricultural or silvicultural production will be required to pay all the costs of implementing best management practices, and some may undergo financial harm as a result.

(c) If detrimental effect would result, explain detrimental effect: See (b) above.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: Not applicable.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? (Explain why tiering was or was not used) Yes, by identifying eligible persons and prioritizing their applications.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part of division of local government this administrative regulation will affect. The administrative regulation will affect any local government engaged in agricultural or silvicultural production.

3. State the aspect or service of local government to which this administrative regulation relates. See answer 3 above.

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 effecl if specific dollars estimate cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): The administrative regulation will provide the opportunity to receive cost-share assistance.

Expenditures (+/-): There should be no costs associated with applying for cost-share assistance, since the Soil and Water Conservation Commission and local conservation districts will assist with the preparation of applications for cost-share assistance.

Other Explanation:

STATEMENT OF EMERGENCY
735 KAR 1:010E

This emergency administrative regulation establishes the parameters of the Telecommunications Devices for the Deaf (TDD) Distribution Program. In order to implement this program by July 1, 1995, as mandated by KRS 163.525(5), it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

BRERETON JONES, Governor
THERESA KIDWELL, Chair

KENTUCKY COMMISSION ON THE DEAF AND HARD OF HEARING

735 KAR 1:010E. Eligibility requirements, application and certification procedures to receive telecommunications devices for the deaf.

RELATES TO: KRS 12.290, 163.510
STATUTORY AUTHORITY: KRS 163.525(5)
EFFECTIVE: April 4, 1995
NECESSITY AND FUNCTION: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications devices to any deaf, hard of hearing, or speech-impaired persons qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the criteria for awarding assistance and the procedures for application and certification.

Section 1. Definitions. (1) "Telecommunications Device for the Deaf (TDD)" is defined by KRS 163.525(1)(a).

(2) "TDD Distribution Program" is defined by KRS 163.525(1)(b).

(3) "KCDHH" is defined by KRS 163.506 and 163.510.

(4) "Specialized telecommunications equipment (STE)" means equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile), amplified ring signal devices, large visual display TDDs, artificial larynx and electronic speech aids.

(5) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(6) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(7) "Voucher" is a form which authorizes the recipient to purchase specialized telecommunications equipment through the KCDHH TDD Distribution Program.

(8) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology.

(9) "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(10) "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

(11) "Application" means the KCDHH TDD Distribution Program application which is entitled "Application and Certification to Receive Specialized Telecommunications Equipment".

(12) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(13) "Fiscal constraint" means when seventy-five (75) percent of program funds have been disbursed or encumbered.

(14) "Completion date" means the date that all supporting documentation for the application is received by the KCDHH, as determined by the TDD Distribution Program Coordinator.

(15) "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.

(16) "Deaf and hard of hearing" is defined by KRS 163.500.

(17) "Deaf-blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A legal resident of the state of Kentucky;

(b) At least five (5) years of age and if the applicant is between

five (5) and eighteen (18) years of age, parents or guardians shall apply on behalf of applicants and assume full responsibility for the equipment; and

(c) Deaf, hard of hearing or speech impaired such that the applicant cannot use the telephone for communication without adaptive equipment.

(2) Initial and replacement applications shall be:

(a) Made on forms provided by the KCDHH;

(b) Signed and submitted in person or via mail;

(c) Accompanied by documented proof of eligibility as required by the KCDHH.

(3) The KCDHH shall require that applicants provide professional verification of the extent and permanence of their disability. The certification shall be included as part of the application form.

(a) Verification shall be at the applicant's expense.

(b) Certification shall be done by:

1. A licensed physician;

2. An audiologist;

3. A speech-language pathologist; or

4. Public or private agencies working with deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(4) Except for individuals who receive assistance from programs designed to provide telephone services to those who would not normally be able to afford it, applicants shall subscribe to or have currently applied for telephone service, which shall include:

(a) Installation of a telephone line in their home at their own expense; and

(b) Payment of monthly telephone bills.

(5) Eligible applicants shall be awarded program participation on a first-come, first-served basis, in accordance with the completion date, as determined by the dated signature of the TDD distribution coordinator.

(6) KCDHH shall distribute the STE through the voucher system established in 735 KAR 1:020.

(7) One (1) TDD and adaptive equipment shall be distributed to a deaf, hard of hearing or speech-impaired individual for one (1) residential access line only.

Section 3. Application and Certification Procedures for Eligibility. (1)(a) "Application and Certification to Receive Specialized Telecommunications Equipment," (July 1995), is incorporated by reference.

(b) It may be inspected, copied or obtained at the Kentucky Commission on the Deaf and Hard of Hearing, 134 Brighton Park Boulevard, Frankfort, Kentucky, 40601, Monday through Friday 8 a.m. to 4:30 p.m. The KCDHH telephone number is 1-800-372-2907 V/TDD or 502-573-2604 V/TDD; the KCDHH fax number is (502) 573-3594.

(2) As KCDHH recognizes that the demand for the specialized telecommunications equipment may exceed available funds, so the following statement shall be included on all application forms, which the applicant shall be required to sign: "The KCDHH has a limited amount of funds for the program. There is the possibility that recipients may be placed on a waiting list to receive the specialized telecommunications equipment, due to a large number of applications and the exhaustion of these limited funds on an annual basis. The specialized telecommunications equipment shall be distributed on a nondiscriminatory, first-come, first-served basis."

Section 4. Application Process. (1) The KCDHH staff may provide assistance in completing forms when requested by an applicant.

(2) The TDD program coordinator shall review all applications in the order the KCDHH office receives them to determine:

(a) The application is complete;

(b) All required attachments are included; and

(c) All eligibility requirements are met.

(3) An application, whether initial or replacement, found to be complete shall be dated and signed by the TDD distribution coordinator. The completion date shall determine the first-come, first-serve roster.

(4) Applicants shall be notified in writing whether their initial or replacement application, has been accepted or rejected within sixty (60) calendar days of the completion date, unless a letter as described in subsection (5) of this section has been forwarded indicating otherwise.

(5) During the first two (2) years of program implementation when there is an expected flood of applications, applicants shall be advised within sixty (60) days in writing that their applications may take longer than sixty (60) days to process.

(6) At the end of the second year, the application process shall be reevaluated, and, if feasible, a sixty (60) day response time shall be instated.

(7) If the KCDHH finds that an applicant is ineligible to participate in the program, the applicant shall be given written justification for the determination within sixty (60) days unless a letter as specified in subsection (5) of this section is sent. Any applicant who has been denied participation may reapply if, due to a change in conditions, he meets eligibility requirements as delineated in Section 2 of this administrative regulation.

(8) When a party wishes to appeal an agency decision, the KCDHH shall comply with the provisions of KRS Chapter 13B.

Section 5. Initial and replacement applications shall be denied when:

(1) The applicant has already been issued a voucher pursuant to 735 KAR 1:020, Section 3, which is still valid toward the purchase of specialized telecommunications equipment under this program;

(2) The applicant has received STE from the TDD Distribution Program within the preceding four (4) years;

(3) The applicant is an active client of the Department of Vocational Rehabilitation and receives STE as part of an IWRP (individual written rehabilitation plan);

(4) The applicant has negligently or willfully damaged STE previously received from the KCDHH's TDD Distribution Program, or violated other provisions of the administrative regulations governing the TDD Distribution Program;

(5) The applicant fails to provide a police report of a stolen device or refuses to cooperate with the police investigation in the prosecution of the suspect, including the refusal to testify in court when subpoenaed to do so;

(6) The applicant is found negligent in a police report of a stolen device, such as doors to the house or car left unlocked or unattended;

(7) The applicant has lost or sold the STE; or

(8) In the case of replacement equipment after four (4) years have passed, if the original STE is found to be technologically up to date and functional by the KCDHH.

Section 6. Replacement Equipment. (1) A recipient may apply for replacement equipment if:

(a) The specialized telecommunications equipment is damaged through natural disasters, such as lightning, electrical storms, floods or other acts of God;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the TDD Distribution Program and is deemed more appropriate to the recipient's disability than a device previously purchased by the recipient through a voucher issued by the KCDHH; or

(d) It has been four (4) years since the applicant last received specialized telecommunications equipment.

(2) Replacement equipment shall be issued to applicants:

(a) Who can demonstrate eligibility; and

(b) Who comply with the provisions of the administrative regula-

tions governing the TDD Distribution Program: 735 KAR 1:010 and 735 KAR 1:020.

(3) Priority shall be given in the distribution of replacement equipment to first-time recipients during times of fiscal constraint.

(4) If the replacement equipment is requested because the specialized telecommunications equipment is damaged through natural disasters, such as lightning, electrical storms, or floods, then:

(a) The recipient shall first send the damaged equipment to the vendor.

(b) If the vendor certifies to the KCDHH that the equipment provided to the recipient is unrepairable due to natural disaster, a replacement unit shall be issued to the recipient, upon reapplication, subject to:

1. Equipment availability;

2. Compliance with eligibility criteria established in this administrative regulation; and

3. The first-come, first-served provision.

(5) If the recipient obtains certification from a physician, audiologist, or speech-language pathologist stating that the recipient would benefit from another device available through the KCDHH TDD Distribution Program due to a change in disability status or a new device becoming available, then replacement equipment shall be issued to the applicant. As an alternative, public or private agencies working with deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(6) If the replacement equipment is requested due to the STE being stolen, then the recipient shall:

(a) Notify local police; and

(b) Forward a copy of the police report to the KCDHH within five (5) working days of the date the theft was reported; and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

(7) If the replacement equipment is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall then determine whether or not the original STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the replacement application process as delineated in 735 KAR 1:010 and 735 KAR 1:020; or

2. Not determined to be technologically obsolete or nonfunctional then the application for replacement STE shall be denied.

Section 7. Loan Equipment. (1) When recipients' STE is under repair or maintenance, the KCDHH shall provide, at no cost, "loaner" STE upon receiving a completed Loan Agreement Form from the recipient.

(2)(a) "Loan Agreement Form" (July 1995) is herein incorporated by reference.

(b) It may be inspected, copied, or obtained from the KCDHH, 134 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. - 4:30 p.m. The KCDHH phone number is (502) 573-2604 V/TDD or 800-372-2907 V/TDD; the KCDHH fax number is (502) 573-3594.

Section 8. Fraud. If a recipient obtained specialized telecommunications equipment under false premises or through misrepresentation of facts on the KCDHH application, the KCDHH may demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH TDD Distribution Program.

Section 9. Confidentiality. (1) Applications and other client materials submitted to the TDD Distribution Program shall be kept confidential by KCDHH personnel and other persons authorized by the KCDHH to view the materials.

(2) The applicant's eligibility and participation in the program shall also be confidential and shall not be released without the applicant's written consent and authorization.

THERESA KIDWELL, Chair
APPROVED BY AGENCY: March 28, 1995
FILED WITH LRC: April 4, 1995 at 9 a.m.

STATEMENT OF EMERGENCY
735 KAR 1:020E

This emergency administrative regulation establishes the parameters of the Telecommunications Devices for the Deaf (TDD) Distribution Program. In order to implement this program by July 1, 1995, as mandated by KRS 163.525(5), it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

BRERETON JONES, Governor
THERESA KIDWELL, Chair

KENTUCKY COMMISSION ON THE DEAF AND HARD OF HEARING

735 KAR 1:020E. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO: KRS 12.290, 163.510
STATUTORY AUTHORITY: KRS 163.525(5)
EFFECTIVE: April 4, 1995
NECESSITY AND FUNCTION: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications devices to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the processing system for vendors, security, and the maintenance and repair of the STE.

Section 1. Definitions. (1) "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).

(2) "TDD Distribution Program" is defined by KRS 163.525(1)(b).

(3) "KCDHH" is defined by KRS 163.506 and 163.510.

(4) "Specialized telecommunications equipment (STE)" means equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile), amplified ring signal devices, large visual display TDDs, artificial larynx and electronic speech aids.

(5) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(6) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(7) "Voucher" is a form which authorizes the recipient to purchase specialized telecommunications equipment through the KCDHH TDD Distribution Program.

(8) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology.

(9) "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(10) "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

(11) "Application" means the KCDHH TDD Distribution Program application which is entitled "Application and Certification to Receive Specialized Telecommunications Equipment".

(12) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(13) "Fiscal constraint" means when seventy-five (75) percent of program funds have been disbursed or encumbered.

(14) "Completion date" means the date that all supporting documentation for the application is received by the KCDHH, as determined by the TDD Distribution Program Coordinator.

(15) "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.

(16) "Deaf and hard of hearing" is defined by KRS 163.500.

(17) "Deaf-blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.

Section 2. Processing System Including Vendor Participation. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with the provisions of the Model Procurement Code (KRS Chapter 45A) and shall be applied uniformly to applicants and vendors.

(3) The KCDHH TDD Distribution Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Voucher System. (1) The KCDHH shall issue vouchers to recipients who shall be responsible for using the voucher to purchase the STE directly from the vendor.

(2)(a) The voucher (July 1995) is herein incorporated by reference.

(b) It may be inspected, copied, and obtained at the Kentucky Commission on the Deaf and Hard of Hearing, 134 Brighton Park Boulevard, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. - 4:30 p.m.

(3) The recipient shall:

(a) Order the specialized telecommunications equipment from a contracted vendor within sixty (60) days of the voucher date of issuance; and

(b) Send a copy of the receipt for the device to the KCDHH when the specialized telecommunications equipment has been received.

(4) The vendor shall be responsible for complying with the terms of the voucher, as established in the contract between the vendor and the KCDHH, and shall send the:

(a) STE directly to the recipients' Kentucky residence; and

(b) KCDHH:

1. An itemized invoice; and

2. A copy of the voucher in order to receive payment for the STE.

(5) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(6) The vendors, in exchange for the vouchers and an itemized invoice, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(7) Ownership rights and responsibilities for the TDD shall belong to the recipient, as evidenced by the recipient's copy of the voucher.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment. However, the recipient shall contact the KCDHH and comply with the repair and maintenance procedures established in Section 5 of this administrative regulation in order to have repairs made to the STE and to receive loaner STE.

(b) Recipients shall assume all responsibilities for:

1. Paying their monthly phone bills;

2. Purchasing or leasing a telephone;

3. Purchasing batteries and paper for the printer; and

4. Paying other general costs and supplies associated with the functions and use of the STE.

(c) Recipients shall be responsible for the loss of STE received or borrowed under the auspices of the KCDHH TDD Distribution Program.

Section 4. Security. (1) Equipment obtained under this program shall not be sold, loaned, or otherwise transferred out of the possession of the originally authorized recipient.

(2) The recipient shall notify the KCDHH within five (5) working days if the equipment is lost, stolen, or damaged. If stolen, the recipient shall:

(a) Notify local police;

(b) Forward a copy of the police report to the KCDHH within five (5) working days of the date the theft was reported; and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

Section 5. Equipment Loan Program/Maintenance and Repair Procedures. (1) The KCDHH shall maintain a stock of at least twenty (20) "loaner" units to be used by recipients when their STE has been sent to the manufacturer for repair or maintenance.

(2) The loan program shall only be available to recipients of the TDD Distribution Program. The loan period shall extend until the recipient's STE is returned in working condition.

(3) To participate in the loan program, the recipient shall:

(a) Sign the "Loan Agreement Form," as incorporated in 735 KAR 1:010;

(b) Submit the Loan Agreement Form and the malfunctioning STE to the KCDHH offices.

(4) The KCDHH shall issue loaner STE to the recipient.

(5) The KCDHH shall assume responsibility for shipping the STE to the contracted repair agent.

(6) When the repaired STE is received by the KCDHH, the KCDHH shall:

(a) Notify the recipient that their STE is repaired; and

(b) Request the return of the loaner STE.

(7) The recipient shall return the loaner STE to the KCDHH, either by insured, certified mail (with return receipt requested) or in person. When the recipient has returned the STE in good working condition, then the KCDHH shall send the repaired STE to the recipient.

(8) If the recipient does not return the loaner equipment then the KCDHH shall retain the original, repaired STE in exchange.

(9) The KCDHH reserves the right to repossess the loan equipment at any time if:

(a) There is a change in the recipient's eligibility status;

(b) Repeated negligent or willful damage is done to the equipment; or

(c) There are other violations of the administrative regulations governing the TDD Distribution Program.

(10) Loaner equipment shall be marked with nonremovable identification by the company supplying the equipment.

(11) In the event equipment is lost or stolen, the recipient shall immediately notify the KCDHH, who shall notify manufacturers, distributors and repairmen of the serial numbers of the missing equipment so that it can be identified and returned to the KCDHH. Any person who attempts to sell or knowingly purchase stolen equipment shall be prosecuted to the full extent of the law.

(12) The recipient shall be responsible for the replacement or repair of the loaner STE should the STE be damaged, lost, or stolen

while in their possession, in accordance with the provisions of 735 KAR 1:010, unless the police report or vendor certifies that the theft or damage was not due to negligence or willful damage done on the part of the recipient.

(13) If the recipient moves:

(a) To a different address within the Commonwealth of Kentucky, the KCDHH shall be notified immediately of the address change; or

(b) Out of state, the equipment shall be returned to KCDHH.

THERESA KIDWELL, Chair
APPROVED BY AGENCY: March 28, 1995
FILED WITH LRC: April 4, 1995 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:585E

This emergency administrative regulation is being promulgated to comply with federal guidelines issued by the Health Care Financing Administration (HCFA). We have been verbally advised by HCFA on two occasions that they will be sending us a notice of noncompliance regarding estate recovery if a program is not implemented by April 1, 1995. This action must be taken on an emergency basis to prevent a loss of federal funds because the state may be sanctioned if found out of compliance with 42 USC 1396p. Without this emergency administrative regulation the department would not have clear state regulatory authority to implement an estate recovery program. 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 1:585E. Estate recovery.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 USC 1396a, b, d, p

EFFECTIVE: March 21, 1995

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 estate recovery.

Section 1. Definitions[~~of Estate~~]. The following definitions shall be applicable: [~~The term~~]

(1) "Annual income" means gross annual income except in self-employment situations. In a self-employment situation, "annual income" means net gross income which is determined by subtracting from gross receipts the cost of producing the goods or services with cost determined using the same allowable deductions as are allowed for Internal Revenue Service tax purposes.

(2) "Estate" means a decedent's estate and shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law.

(3) "Family member" means the spouse or relative within the third degree of consanguinity of an heir of a deceased individual with an estate from which the cabinet may be recovering if the spouse or relative is living in the household of the heir.

(4) "Institutionalized individual" means an individual age fifty-five (55) or older who received nursing facility (NF) services, intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) services, home and community based services (HCBS) or alternative intermediate services for the mentally retarded (AIS/MR) with payment for these services made, wholly or in part, by the Medicaid Program.

(5) "Period of institutionalization" means the period of time an institutionalized or permanently institutionalized individual received Medicaid services.

(6) "Permanently institutionalized individual" means an individual under age fifty-five (55) who received NF or ICF/MR/DD services for two (2) or more years with payment for these services made by the Medicaid Program.

(7) "Sole" means that there are not other assets that produce annual income of more than $25,000 per surviving heir or family member.

Section 2. Recovery [~~General~~]. (1) The Cabinet for Human Resources shall seek [~~adjustment or~~] recovery from the estate of any institutionalized or permanently institutionalized [~~medical assistance properly paid on behalf of an~~] individual [~~under the Medicaid state plan through its Department for Medicaid Services working in cooperation with its Department of Law and in accordance with the requirements shown in 42 USC 1396 p(b)(1)~~].

(2) The amount recovered shall not exceed the amount paid by the Medicaid Program on behalf of the individual for services received during a period of institutionalization.

Section 3. Exemptions and Limitations [~~Hardship Waiver~~]. (1) Recovery shall only be made from the estate of an institutionalized or permanently institutionalized individual, if there is no surviving spouse, or children under age twenty-one (21), or children who are blind or disabled.

(2) The cabinet shall waive the application of the recovery provision if [~~when~~] recovery would work an undue hardship or is not cost effective.

(a) Undue hardship shall exist if the estate subject to recovery is:

1. Valued at $5,000 or less;

2. The sole income-producing asset (for example, family farm or business) of the surviving family members who are heirs to the property and are related to the decedent within the third degree of consanguinity if the asset generates annual income of not more than $50,000 for each surviving heir and $50,000 for each surviving family member of a surviving heir; or

3. Is a homestead of $50,500 or less.

(b) Recovery shall not be pursued when it is not cost effective to recover from the institutionalized or permanently institutionalized individual's estate. In order to be cost effective, the administrative cost of recovering from the estate shall be less than the total value of the estate. It shall not be considered cost effective to recover from an estate if the institutionalized or permanently institutionalized individual has not been a Medicaid recipient within two (2) or more years immediately prior to death.

(c) No recovery shall be made against the first $50,500 of homestead property of any value.

(3) The Department for Medicaid Services shall grant an exemption of the recovery provisions on a case-by-case basis if circumstances exist which shall be directly related to a surviving family member within the third degree of consanguinity for continuing educational needs, health care needs or the needs of a person with a disability. [~~as determined on the basis of criteria established by the Secretary, United States Department of Health and Human Services. Any person dis-satisfied with the determination of the cabinet on the applicability of the waiver may file an appeal pursuant to 904 KAR 2:055. Any review on appeal shall take into consideration the arguments of the appellant and the criteria established by the Secretary for Health and Human Services.~~]

Section 4. [~~Death~~] Notification. (1) Written notice regarding estate recovery shall be provided to institutionalized and permanently institutionalized individuals or an authorized representative acting on their behalf. [~~A provider participating in the Medicaid Program having knowledge of a Medicaid recipient's death shall furnish in writing within ten (10) days to the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, the following data:~~]

[~~(a) Recipient's full name;~~]

[~~(b) Medical Assistance ID number;~~]

[~~(c) Date and place of death;~~]

[~~(d) Homestead address (other than a medical facility address);~~]

[~~(e) Address on medical assistance identification card;~~]

[~~(f) Name and address of responsible party or guardian.~~]

(2) If an institutionalized or permanently institutionalized individual who was receiving NF, ICF/MR/DD, HCBS or AIS/MR services expires, the agency providing the services at the time of death [~~Medicaid recipient expires in a Kentucky licensed health care facility participating in the Medicaid Program, the facility~~] shall be responsible for reporting the death to the County Department for Social Insurance Office within ten (10) days.

(3) Written notice of the proposed recovery shall be served on the executor or legally authorized representative of the decedent institutionalized or permanently institutionalized individual's estate. The executor or legally authorized representative shall be required to notify individuals who are affected by the proposed recovery. If no executor or legally authorized representative exists, notice shall be provided to the family or heirs. The notice shall include the:

(a) Action the cabinet intends to initiate;

(b) Reason for the action;

(c) Procedures for application of exemption criteria;

(d) Procedures for applying for a hardship waiver; and

(e) Amount to be recovered.

Section 5. Estate Recovery Forms Manual. The Estate Recovery Forms Manual dated April 1995, incorporated by reference in this administrative regulation, may be reviewed during regular working hours (8 a.m. to 4:30 p.m., Eastern Standard Time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 6. Implementation Date. The provisions of this administrative regulation as amended shall apply to recovery of all claims paid on behalf of individuals from February 2, 1994.

MASTEN CHILDERS II, Commissioner/Secretary
APPROVED BY AGENCY: March 16, 1995
FILED WITH LRC: March 21, 1995 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II

(1) Type and number of entities affected: Nursing facility (NF) recipients, intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) recipients, home and community based services (HCBS) recipients and alternative intermediate services for the mentally retarded and developmentally disabled (AIS/MR) 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:

1. First year: $500,000 to $1,500,000 (savings).

2. Continuing costs or savings: $500,000 to $1,500,000 (savings).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(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: This administrative regulation is being promulgated to comply with estate recovery guidelines issued in November, 1994 by the Health Care Financing Administration (HCFA). We have been verbally advised by HCFA on two occasions that failure to implement the estate recovery program by April 1, 1995 could result in a finding of noncompliance with federal Medicaid requirements. A finding of noncompliance, if sustained, could result in the withholding of federal financial participation necessary for operation of the Medicaid Program.

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

FEDERAL MANDATE ANALYSIS

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

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

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

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

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

STATEMENT OF EMERGENCY
909 KAR 1:080E

This emergency administrative regulation is necessary to implement the provisions of KRS 304.17A-070 which require the certification of accountable health plans before the Health Purchasing Alliance enters into contracts with these plans for the provision of health care services to Health Purchasing Alliance members. KRS 304.17A-020(1) requires that the alliance be operational by July 15, 1995. Timely processing of applications from prospective accountable health plans is essential to the implementation of these legislative mandates by the statutory deadline.

BRERETON JONES, Governor
JACK B. HALL, Chairman

KENTUCKY HEALTH POLICY BOARD

909 KAR 1:080E. Accountable health plan certification.

RELATES TO: KRS 304.17A
STATUTORY AUTHORITY: KRS 304.17A-070
EFFECTIVE: April 14, 1995
NECESSITY AND FUNCTION: KRS 304.17A-070 requires the promulgation of administrative regulations relating to the certification of accountable health plans eligible to serve members of the Kentucky Health Purchasing Alliance. This administrative regulation applies to all accountable health plans that seek to offer services to Kentucky Health Purchasing Alliance members.

Section 1. Definitions. (1) "Accountable health plan" or "AHP" means an organization that integrates health care providers and facilities and assumes financial risk, in order to provide health care services to alliance members, and as certified by the alliance pursuant to KRS 304.17A-070 and this administrative regulation.

(2) "Alliance" or "Kentucky Health Purchasing Alliance" means the state agency created by KRS 304.17A-020 as the exclusive entity for the oversight and coordination of health benefit purchasing through accountable health plans certified by the alliance.

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

Section 2. Accountable Health Plan Application Process. (1) An authorized officer of an AHP shall apply for certification by submitting an original application and three (3) copies to the Kentucky Health Purchasing Alliance on the form "Application for Accountable Health Plan Certification" incorporated herein by reference.

(2) The Kentucky Health Purchasing Alliance shall certify accountable health plans in consultation with the board and the Commissioner of Insurance. Applications will be evaluated in order of their receipt. Within thirty (30) days of receiving an application, the Kentucky Health Purchasing Alliance shall provide the applicant with written notice of its findings. That notice shall:

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

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

(3) In evaluating and authorizing accountable health plans, the following criteria shall be considered:

(a) The AHP's conformity with the criteria set forth in Section 2 of this administrative regulation;

(b) The adequacy of the financial and organizational resources of the AHP; and

(c) The ability of the AHP to meet the evaluation requirements described in KRS 304.17A-030.

Section 3. Revocation of Accountable Health Plan Certification. (1) The Kentucky Health Purchasing Alliance may revoke the certification of an accountable health plan at any time if one (1) or more of the following, or similar, conditions exist:

(a) The AHP does not comply with the provisions of this administrative regulation or other applicable provisions of the statute;

(b) A participating insurer or health maintenance organization becomes subject to suspension or revocation of its certificate of authority; or

(c) There has been a misrepresentation of a material fact in the AHP application or any subsequent report required of the AHP.

(2) The Kentucky Health Purchasing Alliance shall provide written notice of an intent to revoke certification to the AHP setting forth the basis of the revocation and granting the AHP fifteen (15) days from the date of the notice to make a written response.

(3) After reviewing the response, the Kentucky Health Purchasing Alliance shall issue an order directing the AHP to remedy specific defects, and may revoke the AHP certification or, at the discretion of the alliance, set a time and place for hearing.

Section 4. Examination of Records. The Kentucky Health Purchasing Alliance or the Kentucky Health Policy Board may make or cause to be made examinations of the books and records of an accountable health plan to ensure compliance with these rules and the representations made by the AHP on its application for certification or recertification.

Section 5. Incorporation by Reference. The application for accountable health plan certification herein incorporated by reference is available for copying at the offices of the Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601 between the hours of 8 a.m. and 4:30 p.m.,Monday through Friday.

JACK B. HALL, Chairman
APPROVED BY AGENCY: April 13, 1995
FILED WITH LRC: April 14, 1995 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack B. Hall

(1) Type and number of entities affected: All health insurance carriers, health maintenance organizations, and provider-sponsored health care delivery systems throughout 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 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 comments have been received from the public indicating that the cost of doing business will be affected by this administrative 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 accountable health plan certification during the first year following implementation will be limited to those required by KRS 304.17A.

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 administrative 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 administrative regulation requires entities desiring to provide health services to Kentucky Health Purchasing Alliance members to demonstrate compliance with the statutory requirements set forth in KRS 304.17A, and will therefore result in additional written work requirements by the Kentucky Health Purchasing Alliance in the processing and evaluation of these applications.

(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; 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) 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 304.17A-070 requires the Kentucky Health Policy Board to establish administrative regulations for accountable health plan certification and sets forth the requirements for these administrative 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: One of the goals of the Kentucky Health Reform Act is to improve the health status of all Kentuckians. This certification process is intended to assure that those health care entities providing services to public sector employees and other alliance members meet specified standards of quality and access that have been determined by the General Assembly to further the goal of improved health status.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Because certification is a mandatory precondition to the provision of services to members of the Kentucky Health Purchasing Alliance, failure to implement this administrative regulation would nullify the ability of the alliance to contract for services.

(c) If detrimental effect would result, explain detrimental effect: See above.

(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: N/A

(11) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all entities statewide.

ADMINISTRATIVE REGULATION AS AMENDED BY REVIEWING SUBCOMMITTEE AND PROMULGATING AGENCY

Compiler's Note: The following administrative regulations were amended by the promulgating agency and the Administrative Regulations Review Subcommittee on April 3, 1995, unless otherwise noted.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended)

201 KAR 30:040. Standards of practice administrative regulation.

RELATES TO: KRS 324A.035, 324A.050(10)
STATUTORY AUTHORITY: KRS 324A.035
NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to insure that appraisers follow standards, and to protect the public. The function of this administrative regulation is to establish the standards of professional practice.

Section 1. A licensed nonfederal real property appraiser shall be exempted from the provisions of KRS 324A.050(10), requiring compliance with the "Standards of Professional Appraisal Practice."

Section 2. A certified general real property appraiser, a certified residential real property appraiser, a licensed real property appraiser, and a trainee real property appraiser shall comply with the "Uniform Standards of Professional Appraisal Practice."

Section 3. An appraisal report that is made with regard to a federally related transaction shall be in writing.

Section 4. If an applicant, certificant, or licensee fails to comply with the reporting or documentation requirements established in administrative regulations promulgated by the board, his certificate or license shall be denied or suspended by the board. 201 KAR 30:070, Section 10, provides for the administrative process dealing with denial and suspension by the board.

Section 5. (1) "Uniform Standards of Professional Appraisal Practice (1995 edition) [~~(January, 1993)~~]," Appraisal Standards Board of the Appraisal Foundation, is incorporated by reference, as the standards of professional appraisal practice established by the board pursuant to KRS 324A.035.

(2) It may be inspected at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) It may be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, telephone: (202) 347-7722.

JED DETERS, Chairman
APPROVED BY AGENCY: December 29, 1994
FILED WITH LRC: February 10, 1995 at 4 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Department of Agriculture
(As Amended)

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

RELATES TO: KRS Chapter 257
STATUTORY AUTHORITY: KRS 257.030
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 **the** [~~said~~] penalties set forth in KRS 257.990.

ED LOGSDON, Chairman
APPROVED BY AGENCY: December 15, 1994
FILED WITH LRC: February 15, 1995 at 8 a.m.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Division of Weights and Measures
(As Amended)

302 KAR 79:010. Testing and inspection program.

RELATES TO: KRS Chapter 363
STATUTORY AUTHORITY: KRS 363.900 to 363.908, 16 CFR 306.12, 40 CFR 80.27
NECESSITY AND FUNCTION: This administrative regulation is necessary to establish procedures to implement and administer an inspection and testing program for the quality of motor fuels to ensure compliance with KRS 363.902.

Section 1. Definitions. (1) "Gasoline-oxygenate blend" - a fuel consisting primarily of gasoline along with a substantial amount of one (1) or more oxygenates.

(2) "Octane rating" - the rating of the antiknock characteristic of a grade or type of gasoline as determined by dividing by two (2) the sum of the research octane number plus the motor octane number.

(3) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

Section 2. Administration. The Division of Weights and Measures in the Kentucky Department of Agriculture shall administer the program of Motor Fuels Inspection and Testing, KRS 363.900-908.

Section 3. [~~2.~~] Standard Specifications. (1) Gasoline offered for sale at a retail facility shall conform to ASTM D-4814, with the

following exceptions:

(a) Distillation range (ASTM D-86) of gasoline containing up to ten (10) percent ethanol shall be the same as specified for gasoline except the minimum temperature at fifty (50) percent evaporated shall be 150 degrees Fahrenheit (sixty-six (66) degrees Celsius). For gasoline containing up to ten (10) percent ethanol, the vapor pressure limit for each class shall be increased by one (1) pound per square inch and the ASTM V/L (vapor to liquid ratio) specification is waived.

(b) For the periods from May 1 through September 15, the concentration of ethanol must be at least nine (9) percent and no more than ten (10) percent by volume of the gasoline to qualify for the **increased vapor pressure allowance** [~~waiver~~].

(2) The test methods used to determine the standards shall conform to ASTM D-4814.

(3) Samples obtained for testing shall be obtained in a manner consistent with ASTM D-4814.

(4) Gasoline shall not be offered for retail sale under the name "premium" gasoline unless the antiknock octane index is greater than or equal to ninety-one (91).

Section 4. [~~3.~~] General Considerations. (1) Gasoline, diesel fuel, and gasoline oxygenate blends sold in Kentucky shall state on either the bill of lading or invoice the following:

(a) The name of the person transferring the motor fuel.

(b) The name of the person to whom the motor fuel is being transferred.

(c) The date of the transfer.

(d) The octane rating, if the motor fuel is gasoline or a gasoline oxygenate blend.

(e) A declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.

(2) Each retail facility selling motor fuel shall retain the bills of lading or [~~and~~] invoices at the location to which the motor fuel is transferred [~~shipped~~] for a period of not less than thirty (30) [~~ninety (90)~~] days. In the case of a person selling motor fuels at more than one (1) location, the bills of lading or invoices may be retained at a central location, provided bills of lading or invoices are made available to the inspector upon request.

(3) Retail dispensing devices.

(a) All retail dispensing devices shall post the octane rating of all gasoline sold to consumers. At least one (1) label on each face of the dispenser shall identify the octane rating. If two (2) or more gasolines with different octane ratings are sold from a single dispenser, separate labels for each shall be placed on the face of the dispenser.

(b) The label, or labels, shall be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price.

(c) The label showing the minimum octane rating shall meet the same specifications as required under 16 CFR part 306.12.

Section 5. [~~4.~~] Diesel Fuel. (1) Diesel fuel offered for sale at a retail facility for use as a motor fuel shall conform to ASTM D-975.

(2) Each retail dispenser dispensing diesel fuel to be used as a motor fuel shall be labeled with a name or grade containing the word "diesel". Such name shall be placed conspicuously on the dispenser so as to be in full view of consumers.

Section 6. [~~5.~~] Product Storage Identification. The fill connection for any petroleum product storage tank or vessel at the retail level shall be permanently, plainly, and visibly marked in accordance with the American Petroleum Institute color codes as specified and published in the API Recommended Practice 1637.

~~[Section 6. Condemned Product. (1) Any person who removes product from storage because of condemnation shall provide documentation to the department outlining the final disposition process taken within ten (10) days.~~

~~(2) If the condemned product is upgraded to meet standards specified by law, the retail facility shall certify that the fuel meets all standards required. The Department of Agriculture may require that additional samples be obtained by the department for tests to certify the fuel.~~]

Section 7. Inspection of Premises. (1) The department shall have access during normal business hours to all distributor and retailer records relating to the distribution or sale of motor fuel.

(2) The department shall have access to all motor fuel for the purpose of examination, inspection, taking of samples and investigation of a retailer or distributor. If access is denied by the owner or person representing a retailer or distributor, the department may obtain a search warrant or an injunction from a court of competent [~~the appropriate~~] jurisdiction.

(3) Samples of not more than one (1) gallon per grade per inspection may be collected from any distributor or retail outlet without cost to the state. The department shall present proper identification to the employee in charge prior to obtaining samples.

(4) The department may issue a stop-sale order for any motor fuel found not to be in compliance with any provision of this Act. The retailer shall be notified immediately of the stop-sale order. The order shall be in writing and contain an explanation for its failure to meet specifications. A stop-sale order shall be rescinded by the division [~~director~~] upon resolution of the violation. The stop-sale shall apply only to the location where sample analysis indicates specification violation.

Section 8. Violation Process. (1) When the division determines a violation of KRS 363.900-908 has occurred, it shall immediately notify the offending party in writing, with a notice of violation, furnishing a brief description for the specific violation alleged.

(2) An order for payment of a civil penalty, and directing any other actions necessary and appropriate to protect the public, such as a stop-sale order, may be included with the notice.

(3) Any product where a stop-sale is issued shall be removed from sale to the public until the product is brought into compliance with KRS 363.900-908.

(4) A certification that the product meets the requirements of KRS 363.900-908 shall be furnished to the division before sale may continue. Additional samples of the product in question may be required.

(5) Within ten (10) days of receipt of notice of violation, the retail facility shall provide detailed documentation to the division describing the process to bring the product into compliance with KRS 363.900-908 or of its final disposition.

(6) In issuing any order under KRS 363.900-908 the division may consider the degree and extent of harm caused by the violation, the cost of rectifying the noncompliance, the amount of financial benefit derived from the violation, whether the violation was committed willfully, and the compliance record of the violator and shall use as guidance the "Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995" when determining the civil penalty.

(7) For a first violation, the civil penalty shall not exceed $1,000 nor be less than twenty-five (25) dollars. For a second or subsequent violations, the civil penalty shall not exceed $5,000 nor less than fifty (50) dollars.

(8) Any civil penalty shall be due within thirty (30) days of receipt of the notice of violation unless a hearing is requested in accordance with subsection (10) of this section.

(9) Failure to pay a fine within thirty (30) days after receipt of the violation may result in a stop-sale order issued by the division.

(10) Upon the receipt of a notice of violation an aggrieved party may, within thirty (30) days, request in writing to the division, a hearing to contest the validity of the division's findings and order. The hearing shall be conducted in accordance with KRS Chapter 13B, the

State Uniform Administrative Hearings Act. The decision of the hearing officer shall be the final order.

(11) Appeals may be taken from all final orders within thirty (30) days to Franklin Circuit Court.

[~~Section 8. Administrative Penalties. (1) When a violation is found of this chapter, the department, Division of Weights and Measures, shall issue a notice of violation.~~

~~(2) The department may enter an order imposing one (1) or more of the following penalties against any person who violates any of the provisions of this chapter or impedes, obstructs, or hinders the department in the performance of its duty in connection with the provisions of this chapter:~~

~~(a) Issuance of a warning letter.~~

~~(b) Imposition of an administrative fine of not more than $1,000 per violation for a first time offender. For a second time or repeat offender, the administrative fine shall not exceed $5,000 per violation occurrence. When imposing any fine under this section, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefitted from by noncompliance, whether the violation was committed willfully, and the compliance record of the violator.~~

~~(3) The fine shall be due within thirty (30) days receipt of the violation unless an appeal is requested in accordance with subsection (4) of this section. Failure to pay a fine within thirty (30) days after receipt of the violation may result in a stop sale order issued by the department, Division of Weights and Measures.~~

~~(4) Any person receiving a notice of violation from the department may request an administrative hearing within thirty (30) days receipt of the violation. The hearings will be conducted in accordance with the state uniform procedures of administrative hearings as set forth in KRS Chapter 13B.~~

~~(5) Any fine collected by the department shall be paid into an interest bearing account established in the State Treasury.~~

~~(6) Any administrative fine collected shall be in lieu of any civil penalties sought pursuant to KRS Chapter 363.~~]

Section 9. Incorporation By Reference. (1) The following documents are incorporated by reference:

(a) ASTM D-4814, Standard Specifications for Automotive Spark Ignition Engine Fuel, January 1993 edition;

(b) ASTM D 975-93, Standard Specification for Diesel Fuel Oils, December 1993 edition;

(c) American Petroleum Institute color codes as specified and published in API Recommended Practice 1637, July 1994 edition;

(d) 16 CFR 306.12 (as amended by 58 Federal Register 41375, August 3, 1993);

(e) Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995.

(2) The documents referred to in subsection (1) of this section may be inspected, copied or obtained at the office of the Department of Agriculture, Commissioner's Office, Capital Plaza Tower, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.

[~~Section 10. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.~~]

ED LOGSDON, Commissioner
APPROVED BY AGENCY: February 15, 1995
FILED WITH LRC: February 15, 1995 at 10 a.m.

JUSTICE CABINET
Kentucky Parole Board
(As Amended)

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 439.340
STATUTORY AUTHORITY: KRS 439.340(3)
NECESSITY AND FUNCTION: KRS 439.340 requires the Kentucky Parole Board to adopt administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. As used in these administrative regulations, unless the content otherwise requires:

(1) "Board" **means** [~~is~~] the Kentucky Parole Board or a quorum thereof.

(2) "Quorum" **means** [~~is~~] the number of members of any body who must necessarily be present in order for the body to transact business.

(3) "Panel" **means** [~~is~~] anything less than a quorum.

(4) "Chair" means the Chairman of the Kentucky Parole Board. [~~Chairman" is the chief administrative officer of the board as described in KRS 439.320(2), appointed by the Governor to direct the operations of the board and to fulfill the functions established by law for such position.~~]

(5) "Detainer" **means** [~~is~~] a document issued or made by a legal authority, authorizing the keeper of a prison/jail to keep in his custody the person named in the document.

(6) "Serve-out" **means** [~~is~~] a decision of the board that an inmate **shall** [~~must~~] serve until the completion of his sentence (SOT - serve-out time).

(7) "Deferment" **means** [~~is~~] a decision of the board that an inmate **shall** [~~must~~] serve a specific number of months before further parole consideration.

(8) "Reconsideration" **means** [~~is~~] a decision to review a previous board action.

(9) "Parole recommendation" **means** [~~is~~] a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan and if the inmate has signed his parole certificate.

(10) "Parole" **means** [~~is~~] the release of an inmate with a signed parole certificate to the community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision. Where a court or other authority has issued a detainer against the inmate, the board, in its discretion, may release him to answer the detainer of such court or authority.

(11) "Parole rescission" **means** [~~is~~] a decision of the board to terminate or rescind an inmate's parole recommendation, before such inmate **means** [~~is~~] actually released on parole.

(12) "Parole revocation" **means** [~~is~~] the formal procedure by which the board may terminate or revoke a parolee's release on parole.

(13) "Preliminary hearing" **means** [~~is~~] the initial hearing conducted by an administrative law judge to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

(14) "Youthful offender" **means** [~~is~~] a juvenile declared as such as described in KRS 640.010.

Section 2. Statement of Content. (1) It is the intent of the Kentucky General Assembly in creating the Kentucky Parole Board that it be autonomous and in all respects functionally and administratively separate from any other state agency, except as provided in KRS 439.320(1). Consequently, the board **shall** [~~will~~] protect such necessary freedom from real or apparent political control, manipulation, or undue or improper influence by any person, group, or other entity of any kind.

(2) All decisions of the board regarding policy, procedures and its actions in parole matters shall be determined by simple majority vote of the members of the board, except as provided in KRS 439.320(2). Panels of the board may make recommendations to the full board where authorized.

Section 3. Administration. (1) Board structure. The composition of the board shall be as provided by law. The appointment of members of the board, the selection of its chair[~~man~~], and the quorum requirements shall be those as specified by law.

(2) Information concerning the board.

(a) The board shall provide and disseminate written information concerning the functions of the Kentucky Parole Board.

(b) The board shall maintain close communication and cooperation with the Justice Cabinet and the Department of Corrections [~~Cabinet~~], the Governor and his staff, members and committees of the General Assembly, and other public officials, including judges, state attorney general, Commonwealth Attorney, law enforcement officials and public defenders. The board **shall** [~~will~~] communicate and cooperate with all public and private service agencies, including, but not limited to, agencies dealing with mental health, vocational rehabilitation, legal aid, [~~and~~] human services and victims of crime.

(c) Since the board has the authority to grant parole, it welcomes the opinion of the sentencing judge, prosecuting attorney, other public officials, and private citizens, including victims of crime, concerning parole consideration.

Section 4. Parole Eligibility. (1) Initial parole review date.

(a) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed after the effective date of this administrative regulation shall have their cases reviewed by the board (unless otherwise prohibited by statute) in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to & including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

For the crimes, committed on or after July 15, 1986, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping (where there is serious physical injury or death), arson I (where there is serious physical injury or death), criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or Class A felonies which involve serious physical injury or death of the victim:

Sentences of a number of years	As prescribed by statute
Sentences of life	As prescribed by statute

(b) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed on or after December 3, 1980 but prior to the effective date of this administrative regulation shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years

(c) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed prior to December 3, 1980 shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to & including 9 years	1 year
More than 9 years, up to & including 15 years	2 years
More than 15 years, up to & including 21 years	4 years
More than 21 years, up to & including life	6 years

Parole eligibility on those individuals serving multiple sentences, one (1) or more of the crimes which resulted in the convictions committed under Section 4(b) or (c) of this administrative regulation and one (1) or more committed under Section 4(a) of this administrative regulation, **shall** [~~will~~] be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, subsequent review, so long as confinement continues, shall be at the discretion of the board; except maximum deferment given at any one time shall not exceed the minimum parole eligibility for a life sentence as established by statute. The board reserves the right to order a serve-out on any sentence.

(e) A sentence on conviction of a felony imposed upon a confined prisoner for a crime committed prior to the date of his instant commitment, if designated to be served consecutively, shall be added to the sentence being served to determine eligibility for parole consideration if the inmate has not been discharged from the institution since his original admission on that institutional number. If the confined prisoner is a returned parole violator with an additional consecutive sentence then parole eligibility **shall** [~~will~~] be determined on the length of the new sentence only, calculated from the date of final sentencing. If the confined prisoner has been recommended for parole or given a serve-out or deferment and receives an additional sentence, running either concurrently or consecutively, parole eligibility on the new sentence **shall** [~~will~~] be calculated from the date of original admission on the aggregate sentences (total time to serve) and allowing jail credit on all sentences, as if he had never been seen by the board. If the additional sentence is designated to be served concurrently, he shall be considered as having started to accrue parole eligibility on the day he was committed on the first sentence.

(f) A person receiving a concurrent or consecutive sentence for crime committed while confined in the institution or while on escape from the institution shall not begin accruing eligibility time towards parole consideration on the latter sentence until he has become eligible for parole on the sentence, including a life sentence, for which he was originally confined.

(g) In determining parole eligibility for an inmate who has received a sentence for an escape, the board **shall** [~~will~~] require, in addition to the amount of time to be served for parole eligibility on the original

sentence, and the time required to be served for any crime committed while in the institution or while on escape, the service of additional time equal to the time to be served for any additional sentence received for such escape.

(h) If a confined prisoner receives a deferment, escapes before he meets the board next time, returns to the institution from escape but does not have a new sentence for escape, the time out on escape **shall** [~~will~~] be added to the deferred date to arrive at his new adjusted deferment date. However, if he later receives an escape sentence for that escape, his time **shall** [~~will~~] be calculated on the new sentence from the date of sentencing. A new escape sentence **shall** [~~will~~] void [~~wipe out~~] the deferment.

(i) Even though an inmate has received a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence or sentences for crimes committed while on escape or while confined in the institution, he **shall** [~~will~~] automatically be brought before the board again when, and not until, he becomes eligible for parole consideration on the additional sentence(s) and the parole eligibility **shall** [~~will~~] be calculated from the date of sentencing on the new sentence or sentences.

(j) If an inmate has received a parole recommendation but escapes prior to being released on parole, the parole recommendation **shall** [~~will~~] be rescinded by the board upon receipt of an affidavit signed and submitted by the institutional parole officer of the institution from where the inmate escaped attesting to the fact that the escape has occurred. Upon return to a state institution, the inmate **shall** [~~will~~] be placed back before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) A person who is shock probated and later returned as a shock probation violator shall be considered for parole after he has served the required time on the sentence calculated by adding on the period of time the inmate was out of the institution to his original parole eligibility date.

(l) Persons returned to the institution as a shock probation violator with a new concurrent sentence shall have separate dates of parole eligibility on each sentence computed and the inmate **shall** [~~will~~] be heard separately on each eligibility date. The adjusted parole eligibility date on the sentence on which he was shock probated shall be determined by adding the period of time he was out of the institution to his original parole eligibility date calculated prior to being shock probated.

(m) A person who is shock probated and later returned to the institution with a new sentence acquired while on shock probation and ordered to be served consecutively shall be eligible for a parole hearing when he has served the amount of time required to be eligible for a parole hearing required on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences.

[~~(n) Persons who are defined to be "eligible sexual offenders" as set forth in KRS 197.400 to 197.440 shall not be eligible for an initial parole hearing until the board is notified by the Corrections Cabinet that the inmate has successfully completed the sex offender program. This notification must be made in writing to the board by the director of the sex offender program. Once the board is so notified the inmate will be scheduled for his initial parole hearing on the next available board at the institution where he is housed, unless the inmate successfully completes the sex offender program prior to the regular parole eligibility date.~~]

(2) In keeping with the intent of the Act, the Parole Board may with the consent of the majority of the board review the case of any inmate for parole consideration prior to his eligibility date. [~~if he qualifies for the intensive supervision program under the criteria established in conjunction with the Corrections Cabinet, or medical problems exist, as documented by the Corrections Cabinet medical doctors, or upon written request of the sentencing judge or prosecuting attorney of record.~~] This **shall** [~~will~~] not be done until the reason for such action is submitted to all members in writing, along with all supporting documents, and all members **shall** [~~will~~] note in writing as to their desire to grant a hearing. This **shall** [~~will~~] then be filed in the record of the inmate in question and made a permanent part of his file in the central office of the Department of Corrections [~~Cabinet~~].

(3) The parole hearing **shall** [~~will~~] consist of an interview with the inmate by the board, or a panel. In instances when the inmate is too ill to appear before the board, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. In this instance, as in all cases, a majority vote by a quorum is required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement **shall** [~~must~~] be presented to this effect. A person refusing to meet the board may petition the board for reconsideration [~~if he changes his mind~~].

(5) Inmates who are psychologically unstable may be deferred in absentia until they are able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows (unless otherwise prescribed by statute):

(a) For those institutions that have hearings scheduled once per month, the inmates **shall** [~~will~~] be seen during the month they are eligible for parole consideration, if administratively possible.

(b) For those institutions that have hearings scheduled bimonthly, the inmates **shall** [~~will~~] be seen during the month eligible or one (1) month prior to the month they are eligible for parole consideration, if administratively possible.

(c) In those instances where it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible for a parole hearing, the inmate **shall** [~~will~~] be seen at the next available board hearing conducted at the institution where the inmate is housed.

[~~(7) In all cases where parole is recommended, it is conditional upon continued good institutional conduct through the actual release date. If an inmate with a parole recommendation receives an institutional write up or good time loss, the board is to be notified in writing of the institutional infraction so that the board may take further action as needed.~~]

Section 5. Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any or all of the following factors to each inmate:

(a) Current offense - seriousness, violence involved, firearm used;

(b) Prior record;

(c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;

(d) Attitude toward authority - before incarceration, during incarceration;

(e) History of alcohol or drug involvement;

(f) History of prior probation, shock probation or parole violations;

(g) Education and job skills;

(h) Employment history;

(i) Emotional stability;

(j) Mental capacities;

(k) Terminal illness;

(l) History of deviant behavior;

(m) Official and community attitudes toward accepting inmate back in the county of conviction;

(n) Victim impact statements and victim impact hearings;

(o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;

(p) Any other factors involved that would relate to the inmate's needs and the safety of the public.

(2) The board may rescind a parole recommendation anytime prior to the release of an inmate on parole.

(3) The board may reconsider a decision to deny parole if the

chairman requests the full board to reconsider a decision and the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole has been revoked, rescinded or denied by deferment or serve out may request an appellate review by the board. Requests for an appellate review **shall** [~~must~~] be received by the board within twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not received within twenty-one (21) days, it **shall** [~~will~~] be denied. The request **shall** [~~will~~] be screened by a board member or designee to decide if a review **shall** [~~will~~] be conducted. Reviews **shall** [~~will~~] be conducted for the following reasons:

(a) If there is significant new evidence that was not available at the time of the hearing.

(b) If there are allegations of misconduct by a board member that are substantiated by the record.

(c) If there were significant procedural errors by a board member.

All requests which will receive further consideration **shall** [~~must~~] be based on one (1) or more of the above reasons. Requests based on the availability of new evidence or information **shall** [~~must~~] be accompanied by adequate documentation. Requests based on allegations of misconduct or significant procedural errors **shall** [~~must~~] clearly indicate the specific misconduct or procedural errors(s).

If the case is set for review, it **shall** [~~will~~] be conducted from the record of the first hearing and the appearance of the inmate **shall** [~~will~~] not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board **shall** [~~will~~] vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal **shall** [~~will~~] require the concurrence of four (4) board members. The decision rendered after an appellate review is final. [~~or someone on the inmate's behalf may request the board to reconsider a decision to deny parole only after thirty (30) months have passed since the board's most recent action on the inmate.~~]

Section 6. Youthful Offender. (1) Youthful offenders are subject to the jurisdiction of the Kentucky Parole Board as described in KRS 640.080.

(2) The Cabinet for Human Resources and the Department of Corrections [~~Cabinet~~] shall provide the Parole Board with all necessary records to conduct a hearing as described in KRS 640.100.

(3) Youthful offenders shall be subject to all sections of the Kentucky Parole Board administrative regulations as applicable.

(4) Youthful offenders housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the Parole Board.

(5) All youthful offenders housed by the Corrections Cabinet shall have a hearing at a site determined by the Parole Board.

(6) Administrative law judges shall hold preliminary revocation hearings at facilities out of sight and sound of adult inmates.

(7) Final revocation hearings for youthful offenders shall be held at a site agreed upon by the Cabinet for Human Resources and the Kentucky Parole Board or the Central Office of the Parole Board.

(8) Special hearings for youthful offenders **shall** [~~will~~] be held in central office.

Section 7. Conditions of Parole. (1) The general conditions are as follows:

(a) The parolee shall report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more often if directed by the officer, a report on forms prescribed by the Division of Probation and Parole.

(b) The parolee shall permit his parole officer to visit his home and place of employment at any time.

(c) The parolee shall not indulge in the use of nonprescribed controlled substances.

(d) The parolee shall work regularly and support his legal dependents. When unemployed, he shall report this fact to his officer and make every attempt to obtain other employment.

(e) The parolee shall not associate with a convicted felon except for legitimate purposes, including but not limited to family, residential, occupational or treatment purposes.

(f) The parolee shall not visit with inmates of penal institutions without permission of his parole officer.

(g) The parolee shall not leave the state, district, residence or place of employment without written permission of his parole officer.

(h) The parolee shall not be permitted to purchase, own or have in his possession a firearm or other weapon. [~~Purchase of a firearm by a person who has been convicted of a felony is a violation of federal law.~~]

(i) The parolee shall not violate any law or city ordinance of this state or any other state or of the United States.

(j) The parolee shall not falsify any report to his parole officer including his monthly report.

(k) The parolee does not have the right to register for voting purposes and cannot hold office; should he register or reregister prior to restoration of civil rights, he **shall** [~~will~~] be in violation of the law which carries a maximum penalty of five (5) years in prison.

(l) The parolee shall comply with all rules and administrative regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer.

(m) The parolee shall pay a supervision fee unless expressly waived by the Parole Board.

(2) Special conditions of parole may be added in individual cases at the discretion of the Parole Board.

HELEN HOWARD-HUGHES, Chairperson
APPROVED BY AGENCY: February 10, 1995
FILED WITH LRC: February 14, 1995 at 3 p.m.

JUSTICE CABINET
Kentucky Parole Board
(As Amended)

501 KAR 1:040. Conducting parole revocation hearings.

RELATES TO: KRS 439.315, 439.330(1)(e), 439.341, 439.390, 439.430, 439.440
STATUTORY AUTHORITY: KRS 439.340(3)
NECESSITY AND FUNCTION: KRS 439.340(3) requires the Parole Board to establish administrative regulations concerning parole revocation hearings. This administrative regulation contains the procedures for the revocation of parole and the issuance of warrants.

Section 1. Preliminary Revocation Hearings. Preliminary revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at such hearings. The hearings shall be conducted in accordance with applicable state and federal law and in accordance with these administrative regulations.

(1) Charges of parole violation shall be initiated by a parole officer of the Department of Corrections by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, provided a finding is made that the substantial rights of the parolee **shall** [~~will~~] not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of such amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of such objection.

(2) Pursuant to SCR 3.700 Sub. rule 3, in the absence of an attorney to represent the Department of Corrections, Division of

Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Department of Corrections in matters relating to the revocation of probation or parole.

(3) No hearing shall be conducted within five (5) days of the service of the notice of preliminary hearing. The parolee may however, waive this waiting period. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including but not limited to electronically, mechanically or stenographically. However, the record of the proceedings need not be transcribed, unless so requested by the Parole Board.

(5) The administrative law judges may take judicial notice of acts of the Parole Board, including, but not limited to the conditions of parole, and all other matter which may be judicially noticed in the courts of this Commonwealth. Witnesses appearing at the preliminary hearing to give testimony shall do so under oath, administered by the administrative law judge, and **shall** ~~[will]~~ be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. The parole officer shall bear the burden of proof in establishing the elements of the violation, except for those elements which are in the nature of affirmative defenses. The parole officer shall present evidence first and the parolee shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings **shall** ~~[will]~~ be conducted at the discretion of the administrative law judge. The parolee may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition, however, such evidence **shall** ~~[will]~~ be subject to rebuttal by the parole officer.

(6) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing. If probable cause is found to exist, the case shall then be referred to the Chair~~[man]~~ of the Parole Board who shall then issue a parole violation warrant which **shall** ~~[will]~~ cause the parolee to be brought before the Parole Board for a final parole revocation hearing. Notwithstanding a finding of probable cause, upon agreement by all parties, leniency may be granted in any form deemed appropriate by the administrative law judge and upon agreement by the parolee to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.

(7) In cases where the administrative law judge finds probable cause to believe that a violation of parole has been committed and the case is referred to the Chair~~[man]~~ of the Parole Board for the issuance of a parole violation warrant, the administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the parolee's parole, including recommendations concerning the terms and conditions of any future parole. This recommendation shall be advisory only and shall not be binding on the board. In the event that the administrative law judge recommends that a parolee not be returned as a parole violator, the case shall be referred to the Parole Board for their vote on the issuance of the parole violation warrant. This referral may be made at the discretion of the administrative law judge and shall be made only when the administrative law judge finds that there exists substantial mitigating factors or there exists a viable alternative to reincarceration.

(8) In preliminary revocation hearings conducted on probation cases or on cases in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration, or leniency may be considered on the same basis as a case in which the Kentucky Parole Board is the releasing authority.

(9) In those cases in which the alleged violation of parole, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, no cases **shall** ~~[will]~~ be referred to the board for parole revocation consideration unless it is shown that the parolee has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this section shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

(10) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires, and may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel. Except however, chronic appearance for hearing without counsel by a parolee who is capable of retaining counsel, may be deemed an implicit waiver of counsel.

(11) The administrative law judges, in the absence of any specific statutory authorization, are prohibited from considering matters of bail or any other form of release from custody for those persons accused of parole or probation violations.

Section 2. Good Cause Hearings. KRS 439.315 requires the imposition of a supervision fee on all parolees and the establishment of a good cause hearing in the event the supervision fee is not paid. This section describes the good cause hearing.

(1) Upon nonpayment of any installment of the monthly supervision fee, the parole officer shall serve a notice of preliminary hearing on the parolee and also shall serve the supplemental notice of good cause hearing on the parolee.

(2) The good cause hearing shall be scheduled as any other preliminary revocation hearing.

(3) If the parolee makes the required supervision fee payment prior to the scheduled good cause hearing, the hearing shall be cancelled.

(4) The parolee shall be permitted legal representation at the good cause hearing.

(5) The burden of proof to show good cause for nonpayment of the supervision fee shall be placed upon the parolee.

(6) The administrative law judge of the Kentucky Parole Board shall determine whether good cause exists for the nonpayment of the supervision fee.

(7) If the administrative law judge finds that good cause exists for the nonpayment of the supervision fee, the charges shall be dismissed and the parolee shall be returned to parole supervision with the previously imposed supervision fee.

(8) If the administrative law judge finds that good cause does not exist, the parole officer may request that the hearing be continued sine die with the condition that the parolee pay the arrears and agrees to pay the supervision fee on a monthly basis.

(9) If the administrative law judge finds that good cause does not exist for nonpayment of the supervision fee, absent any motion from the parole officer, the hearing shall immediately continue and become a preliminary parole revocation hearing, and shall be conducted as described in Section 1 of this administrative regulation.

Section 3. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:

(1) Upon referral of a case to the Chairman of the Parole Board by the administrative law judge under the provisions of Section 1(6) of this administrative regulation, the chairman shall issue the parole violation warrant. No vote of the board is necessary. In the absence or disability of the chairman the warrant may be issued by any board member who has been designated, in writing, by the chairman to act in his behalf in such matters, or issued with the signature of four (4) board members.

(2) Upon referral of a case to the full Parole Board by the administrative law judge with a recommendation that the parolee not be returned to the institution as a parole violator, such referral being made pursuant to Section 1(7) of this administrative regulation, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. Upon the vote of the board to issue the warrant, the warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signature of four (4) board members shall be sufficient to issue such warrant.

(3) In cases where it appears that a parolee has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Chairman of the Parole Board may, upon sworn affidavit of the supervising parole officer, swearing that some violation has occurred, issue a parole violation warrant. No vote of the board is necessary. In the absence or disability of the chairman such warrants may be issued by majority vote of the board and the signature of four (4) board members shall be sufficient to issue such warrant. If no quorum of the board is present, a board member who has been designated, in writing, by the chairman to act in his behalf in such matters may issue such warrant.

(4) In cases where the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued upon a vote of the Parole Board based upon an unsworn written report from the supervising state setting forth facts sufficient to conclude that there is reasonable grounds to believe that a violation of parole has occurred. Upon the vote of the board to issue the warrant, the warrant shall be issued by the chair[~~man~~], except that in the absence or disability of the chair[~~man~~], the signature of four (4) board members shall be sufficient to issue a warrant.

(5) In all other cases parole violation warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. Upon the vote of the board to issue any such warrant, the warrant shall be issued by the chair[~~man~~], except that in the absence or disability of the chair[~~man~~], the signature of four (4) board members shall be sufficient to issue a warrant.

(6) The board may, in its discretion, decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (3) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.

(7) In any case where a vote of the board is required to issue a parole violation warrant, in the event there is no quorum of the board present to concur that probable cause exists and the warrant should be issued, the chair[~~man~~], or a board member designated by the chair[~~man~~], in writing, to act in his behalf in such matters, is authorized to issue a parole violation warrant if he, upon review concurs that probable cause exists to issue said warrant. If the chair[~~man~~], or his designee, issues a parole violation warrant under such circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the chair[~~man~~] or his designee.

Section 4. Absconding. Except in those cases where a preliminary parole revocation hearing is held by the supervising state in the case of a parolee being supervised in another state, upon apprehension or return to the state of Kentucky of a parolee for whom a parole violation warrant has been issued without a preliminary revocation hearing, such hearing shall then be conducted as set forth elsewhere in Section 1 of this administrative regulation, except that if the administrative law judge finds that there is probable cause to believe that any violations set forth in the warrant have been committed by the parolee and that the warrant, as to any or all charges contained within it, was validly issued, the parolee **shall** [~~must~~] be ordered returned to the appropriate institution of the Kentucky Department of Corrections for further consideration by the Parole Board except as set forth elsewhere within this section. In the event no probable cause is shown, the case **shall** [~~must~~] be referred to the Chair[~~man~~] of the Parole Board who **shall** [~~must~~] then withdraw the warrant, returning the parolee to supervision. Notwithstanding a finding of probable cause, the administrative law judge may, upon motion of the parole officer, or upon finding there are overwhelming mitigation factors present, not known to the board at the time the warrant was issued, refer the case back to the Parole Board for a decision as to whether the warrant should be exercised or withdrawn. This referral back to the board may include a recommendation from the administrative law judge that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the board. If the warrant is withdrawn the parolee shall be returned to normal parole supervision, subject to any additional conditions the Parole Board may impose. If the warrant is ordered exercised, the parolee shall be ordered returned to the appropriate institution.

Section 5. Waiver of Preliminary Parole Revocation Hearings. Any parolee charged with a violation of his parole may waive appearance before an administrative law judge of the Parole Board and by so doing waive his preliminary parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed forms which shall be submitted to the board or its administrative law judge for approval. Such waivers may be accepted within the discretion of the board or its administrative law judges. No wavier **shall** [~~will~~] be accepted unless it is found that the waiver was entered into by the parolee knowingly, and voluntarily and that the parolee is, and clearly understands that he is admitting guilt as to the violations charged. Notwithstanding the submission and acceptance of a waiver of the preliminary parole revocation hearing, the parolee may still submit evidence in mitigation of his conduct. After approval of the waiver, the matter **shall** [~~will~~] proceed in the same manner as after a hearing before an administrative law judge.

Section 6. Final Parole Revocation Hearings. Final parole revocation hearings **shall** [~~will~~] be held within thirty (30) days after the return of the parolee to a state institution. At this hearing, the parolee **shall** [~~will~~] have the charges, specified in the warrant, explained to him and he **shall** [~~will~~] be given the opportunity to admit or deny them. If the inmate admits to the charges, then the board shall receive proof in mitigation of the charges. If the parolee wishes to be represented by legal counsel and wishes to present witnesses on his behalf, he shall request a special hearing. If granted by the board, a short deferment shall be given so the special hearing can be scheduled in central office and the parolee can secure legal counsel. The request for a special hearing by a parolee shall occur at the beginning of the final parole revocation hearing, before he admits or denies guilt. The parolee shall be notified of his right to request a special hearing at his preliminary parole revocation hearing. It is the responsibility of the parolee, and his alone, to request a special hearing if he so desires one.

Section 7. Special Hearings. (1) Special hearings **shall** [~~will~~] be conducted in the central office of the Parole Board, unless the Parole Board changes the site for security or other factors it deems pertinent. In cases so heard, where either the parole officer or the parolee requests the issuance of subpoenas to compel the appearance of a

witness or production of documents, the board **shall** [~~will~~] issue them pursuant to KRS 439.390, providing no claims for expenses incurred by these witnesses **shall** [~~will~~] be submitted to the board, as it has no authorization to pay such expenses.

(2) At the special hearing, the following order of proceedings shall be followed:

(a) The parolee, parole officer and all witnesses shall be sworn in by the Parole Board.

(b) The board **shall** [~~will~~] present a short statement of the charges against the parolee.

(c) The parole officer **shall** [~~will~~] present proof to substantiate the charges, subject to cross-examination by the parolee.

(d) The parolee **shall** [~~will~~] present proof to rebut the parole officer's charges, subject to cross-examination by the parole officer.

(e) The parole officer may put on any rebuttal proof subject to cross-examination.

(f) The board may question both the parolee and the parole officer as well as any witnesses.

(g) The board **shall** [~~will~~] then make a determination as to whether the parolee has violated his parole.

(h) If the parolee is found in violation or if he admits the violation and has proof in mitigation, the board **shall** [~~will~~] receive proof from the parolee in mitigation of the violation subject to cross-examination.

(i) The board **shall** [~~will~~] then make a determination as to the disposition of the case and the parolee is either notified in person immediately or in writing as soon as practical.

Section 8. Waiver of Final Parole Revocation Hearing. A parolee being held pursuant to a parole violation warrant may, subsequent to his preliminary parole revocation hearing, or acceptance of a waiver thereof, request that he be allowed to waive his final parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed form and submit it to the board. Acceptance of such waiver **shall** [~~will~~] be totally within the discretion of the board and only upon a finding that the waiver is entered into knowingly and voluntarily and that the parolee is admitting guilt as to the violations charged. Waiver of the right to the final hearing shall also be considered as waiver of any rights to a special hearing as provided for elsewhere in this administrative regulation. In the event that waiver of the final hearing is accepted, the final decision on the revocation of the parolee's parole **shall** [~~will~~] be made by the majority vote of the board without any further proceedings.

HELEN HOWARD-HUGHES, Chairperson
APPROVED BY AGENCY: February 10, 1995
FILED WITH LRC: February 14, 1995 at 3 p.m.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities
(As Amended)

501 KAR 12:010. Definitions.

RELATES TO: KRS 610.267
STATUTORY AUTHORITY: KRS 610.267
NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth definitions.

Section 1. Definitions. (1) [~~"Youth alternative center" means a nonsecure facility under the jurisdiction of the county jailer or an administrator located in a county which operates a secure detention facility. The center shall be used only for the detention of juveniles and shall not be a part of a county jail or other facility which houses adult offenders.~~

~~(2) "Jailer" means the duly elected or appointed official charged with the overall responsibility of administering the center.~~

~~(3)~~] "Staff" means deputy jailers and other personnel involved in the supervision, custody, care, or treatment of residents in the center.

(2) [~~(4)~~] "Resident" means any juvenile who has been approved for placement by order of a court.

(3) [~~(5)~~] "Medical authority" means the person or persons licensed and certified to provide medical care to residents in the center.

(4) [~~(6)~~] "Resident sleeping area" means a room or group of rooms which provide sleeping space for the resident population.

(5) [~~(7)~~] "Resident living area" means all areas other than sleeping areas which provide space for activities.

JACK LEWIS, Commissioner
APPROVED BY AGENCY: February 14, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities
(As Amended)

501 KAR 12:020. Administration; management.

RELATES TO: KRS 610.267
STATUTORY AUTHORITY: KRS 610.267
NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth procedures to be followed for the administration and management of youth alternative centers.

Section 1. Policy and Procedures - Organization. (1) The jailer or administrator shall develop and maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the Department of Corrections.

(2) The written policy and procedures manual shall be made available to employees.

(3) The operations manual shall include the following aspects of the center's operation:

(a) Administration;
(b) Fiscal management;
(c) Personnel;
(d) Security and control;
(e) Sanitation and management;
(f) Medical services;
(g) Food services;
(h) Emergency and safety procedures;
(i) Classification;
(j) Resident programs;
(k) Resident services; and
(l) Admission and release.

(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Department of Corrections.

Section 2. Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the center to the public, to government agencies, and to the media. The public and residents shall have access to the procedure.

(2) Representatives of the media shall have access to the facility, consistent with the preservation of the juvenile's privacy and the maintenance of order and security in the facility.

(3) All official statements to the news media, relating to center administration policy, shall be made by the jailer only or his designee.

[~~(a) Governmental agencies shall be provided with information~~

~~pertinent only to their specific function and with the consent of the resident; and~~

~~(4) No information shall be released that is detrimental to another resident.~~]

Section 3. Information Systems. The jailer shall establish and maintain an information system which shall comply with the requirements of this section.

(1) Center information and resident records shall be retained in written form or within computer records.

(2) Center information and resident records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time a resident record shall be maintained after a resident's release from custody and the conditions under which archives are maintained.

(3) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the resident or center record. Extraordinary or unusual occurrences shall include:

(a) Death of a resident;
(b) Attempted suicide or suicide;
(c) Serious injury, whether accidental or self-inflicted;
(d) Attempted escape or escape from center;
(e) Fire;
(f) Riot;
(g) Battery, whether by a staff member or resident;
(h) Sexual assaults; and
(i) Occurrence of contagious or infectious disease which poses a serious medical threat to the center.

(4) The center shall keep a log of daily activity.

(5) Each center shall maintain records on the types and hours of training completed by each employee. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

Section 4. Resident Records. (1) The information required by **501 KAR 12:120** [~~Title 501 of the Kentucky Administrative Regulations~~] for admission and release shall be retained for each resident. Other information retained in each resident's center record shall include:

(a) Court orders;
(b) Personal property receipts;
(c) Infraction reports;
(d) Reports of disciplinary actions;
(e) Program involvement; and
(f) Caseworker assigned, if known;
(g) Unusual occurrences and in the case of death of a resident, disposition of the resident's property and remains.

(2) Medical records shall be maintained as required by **501 KAR 12:090** [~~Title 501 of the Kentucky Administrative Regulations~~].

(3) The jailer shall ensure that resident records are safeguarded in accordance with relevant federal and state laws and regulations.

(4) The jailer shall require that residents sign a "Release of Information Consent Form" prior to the release of information to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the resident's record. This form shall include:

(a) Name of person, agency or organization requesting information;
(b) Name of facility releasing information;
(c) Specific information to be disclosed;
(d) Purpose of the information;
(e) Date consent form is signed;
(f) Signature of resident; and/or legal guardian as required by law;
(g) Signature of employee witnessing the resident's signature.

JACK LEWIS, Commissioner
APPROVED BY AGENCY: February 14, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities
(As Amended)

501 KAR 12:030. Fiscal management.

RELATES TO: KRS 610.267
STATUTORY AUTHORITY: KRS 610.267
NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth fiscal management procedures to be followed in youth alternative centers.

Section 1. Budgeting and Accounting. The center's budget and fiscal records shall be kept in accordance with the general records of the center.

Section 2. Canteen. [~~As provided in KRS 441.135,~~] **The** [~~each~~] jailer or administrator may establish a canteen to provide residents with items approved by the jailer which are not supplied by the center.

JACK LEWIS, Commissioner
APPROVED BY AGENCY: February 14, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities
(As Amended)

501 KAR 12:070. Safety; emergency procedures.

RELATES TO: KRS 610.267
STATUTORY AUTHORITY: KRS 610.267
NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth safety and emergency procedures to be followed in youth alternative centers.

Section 1. Policy and Procedure. (1) Each center shall have a written policy and procedure which specify fire prevention regulations and practices to ensure the safety of residents, visitors, and staff. These shall include:

(a) Provision of fire emergency planning sessions for staff and residents at least quarterly;
(b) Written documentation of fire planning sessions;
(c) A fire safety inspection by the Department of Corrections at least once a year;
(d) Inspection and testing of fire protection equipment by qualified persons at least annually with documented visual inspections by staff monthly;
(e) Smoking restrictions and administrative regulations **for staff and residents**; and
(f) Written evacuation plan coordinated with local fire officials and reviewed annually.

(2) Each center shall have written policy and procedures for emergency situations including:

(a) Escapes;
(b) Taking of hostages;
(c) Riots;
(d) Food poisoning;
(e) Civil disturbances in the community;

(f) Natural disasters;
(g) Suicides; and
(h) Other deaths and disorder.

Section 2. Physical Plant. (1) The center shall comply with the NFPA Life Safety Code (1981 Edition) which is hereby incorporated by reference.

(2) Each center shall have exits which are distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each center shall have equipment necessary to maintain essential lights.

(4) Each center shall have an approved fire alarm and smoke detection system.

(5) Each center may be required to install an approved sprinkler system and a smoke evacuation system.

JACK LEWIS, Commissioner
APPROVED BY AGENCY: February 14, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities
(As Amended)

501 KAR 12:080. Sanitation; hygiene.

RELATES TO: KRS 610.267
STATUTORY AUTHORITY: KRS 610.267
NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth procedures to provide proper sanitation and hygiene in youth alternative centers.

Section 1. Procedures. (1) The jailer or administrator shall provide for the control of vermin and pests.

(2) The jailer or administrator shall provide for both solid and liquid waste disposal.

(3) The jailer or administrator shall have a written preventative maintenance plan which includes:

(a) A cleaning schedule for various locations and items in the center;

(b) A schedule for inspections by the jailer or administrator;

(c) A schedule for trash and garbage removal; and

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(4) The center shall have fresh and purified air circulating within resident living and activity areas.

(5) The center shall furnish clean sanitized bedding to each resident, including:

(a) One (1) penal mattress;
(b) One (1) blanket, when conditions require;
(c) Two (2) sheets;
(d) One (1) penal pillow; and
(e) One (1) pillowcase.

(6) Resident bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week;

(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner;

(c) Mattresses and pillows shall be cleaned quarterly.

(7) Each resident shall be issued a clean towel. Towels shall be laundered every fourth day.

(8) Provisions shall be made for laundering resident clothing at least every fourth day.

(9) All floors, toilets, sinks, and showers in the center shall be maintained in a clean condition.

(10) All residents shall be issued or permitted to obtain the following hygienic items**. Indigent residents shall be furnished these items by the center.** [:]

(a) Soap;
(b) Toothbrush;
(c) Toothpaste;
(d) Toilet paper; and
(e) Female sanitary supplies (where applicable). [~~Indigent residents shall be furnished these items by the center.~~]

(11) Hair cutting services or sanitized hair cutting equipment shall be available to all residents.

(12) Shaving equipment shall be available to all residents.

JACK LEWIS, Commissioner
APPROVED BY AGENCY: February 14, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities
(As Amended)

501 KAR 12:120. Admission; release.

RELATES TO: KRS 610.267
STATUTORY AUTHORITY: KRS 610.267
NECESSITY AND FUNCTION: KRS 610.267 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for youth alternative centers. This administrative regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each center shall develop written admission, orientation, and release procedures to be included in the center's policy and procedure manual.

Section 2. Admission. (1) The center staff shall ensure that each resident is admitted under proper written legal authority.

(2) The admitting officer shall make certain that all required forms are complete and that information is current.

(3) The center staff shall conduct a search of residents and their possessions upon admission.

(a) Each resident shall be searched for contraband in such a manner as responsible staff reasonably determine is necessary to protect the safety of fellow residents, staff and institutional security. Such search shall be conducted in a private area and in a manner which protects the resident's dignity to such extent as possible in that particular center.

(b) When a strip search is conducted, it shall be done only on reasonable suspicion that is based upon the existence of objective information that could predict the likelihood of the presence of a weapon, drugs, or other items of contraband concealed on a particular resident. The criteria used to determine reasonable suspicion shall include but not be limited to the following:

1. A current offense involving felony violence, drug charges, or fugitive status.

2. A criminal history of offenses involving the use of a weapon or the possession of contraband.

3. Institutional behavior or history that indicates possession or manufacturing of contraband, the refusal to submit to a clothed pat-down search, or a clothed pat-down search reveals the possession of contraband.

4. A person in custody has contact with the public by a contact visit, court appearance, or after transported from an area of public exposure.

5. The court has ordered commitment to custody after arraignment, conviction, or sentencing.

(c) When a strip search of a resident is conducted it shall be performed by a staff person of the same sex as the resident.

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the resident is carrying contraband there and such search shall only be conducted by a physician or registered nurse in a private location and under sanitary conditions.

(4) Each center shall develop written policies and procedures, specifying the personal property that residents may retain in their possession.

(a) Any cash or personal property which is taken from the resident upon admission shall be listed by complete description on a receipt form, and securely stored pending the resident's release. The receipt shall be signed by the receiving staff person and the resident.

(b) Personal property released to a third party must have the resident's signature of approval or court order, and the signature receipt of the third party.

Section 3. Orientation. (1) As soon after assignment as possible an oral or written orientation shall be made available to each resident. Special assistance shall be given to illiterate and non-English speaking residents.

(2) The orientation shall provide the resident with information regarding his confinement including, the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the resident's confinement;

(b) Rules of resident conduct;

(c) Disciplinary procedures;

(d) Information regarding programs (work, educational and vocational training, counseling, and other social services);

(e) Procedures for making requests or registering complaints with the center's staff, judiciary, and Department of Corrections personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any resident from confinement.

(2) When a resident is released or removed for any legal purposes to the custody of another, the identity or receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the resident is released or removed.

(4) Prior to the release or removal of a resident, the receiving authority shall sign an authorized release form.

(5) Before the jailer or administrator releases a resident to an out-of-state jurisdiction, he shall consult with the appropriate prosecuting office in the county **in which the jail is located**.

(6) Any property, not legally confiscated or retained, receipted from the resident upon admission shall be returned to the resident at the time of release.

(7) Each resident shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned **shall** **[~~must~~]** be submitted in writing with specific details within twenty-four (24) hours.

JACK LEWIS, Commissioner

APPROVED BY AGENCY: February 14, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

DEPARTMENT OF CORRECTIONS
Division of Local Facilities
(As Amended)

501 KAR 12:150. Hearings, procedures, disposition.

RELATES TO: KRS 610.267

STATUTORY AUTHORITY: KRS 441.075, 441.095

NECESSITY AND FUNCTION: The Commissioner of the Department of Corrections is authorized by KRS 610.267 to hear matters covered by the order of the department requesting youth alternative centers to comply with the minimum standards pursuant to KRS 441.075, 441.095 and to issue, modify or repeal the order at the conclusion of the hearing.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Corrections.

(2) "Department" means the Department of Corrections.

(3) "Standards" means the minimum standards for youth alternative centers.

(4) "Hearing officer" means a hearing officer appointed by the commissioner.

(5) "Proceeding" means any proceeding before the commissioner or before a hearing officer.

(6) "Day" means a calendar day.

(7) "Order" means the order of the commissioner requiring the petitioner(s) to comply with the minimum standards for youth alternative centers as specified.

(8) "Petitioner" means the jailer, administrator or county judge/executive who requests a hearing for review of the commissioner's order.

[~~(9) "Youth alternative center" means a nonsecure facility under the jurisdiction of the county jailer or a correctional services division which is used only for the detention of juveniles.~~**]**

Section 2. Assignment of Hearing; Filings. (1) Cases coming before the commissioner may be assigned to a hearing officer within the discretion of the commissioner for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgement of the commissioner.

(2) A recommended order or adjudication by the hearing officer or the initial order of the commissioner, if dismissed or disposed of as provided in subsection (1) of this section, or any modification of repeal of the initial order, shall become the final order of the commissioner under the provisions of KRS 441.085-095, appealable to the Franklin Circuit Court, thirty (30) days from the date of issue.

(3) Prior to the assignment of a case to a hearing officer, the jailer, administrator, or county judge/executive shall, within seventy-two (72) hours of receipt of notification of order, request in writing a public hearing before the commissioner or his designee on the matters covered by said order to the Commissioner of the Department of Corrections, State Office Building, Fifth Floor, Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer and prior to the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice of hearing.

(4) All evidence and witnesses of both parties and intervenors and all proof shall be presented at the time of hearing. No additional evidence shall be permitted thereafter except in unusual circumstances and within the discretion of the commissioner or the hearing officer.

(5) All hearings shall be held in Frankfort, Kentucky unless otherwise ordered by the commissioner.

(6) Unless otherwise ordered, all filing may be accomplished by first class mail.

(7) Filing is deemed effective at the time of mailing.

Section 3. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) These rules shall govern all proceedings before the department and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

Section 4. Computation of Time. Where service of a pleading or documents is by mail pursuant to Section 2 of this administrative regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

Section 5. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties and intervenors within forty-five (45) days from the receipt of the request for hearing unless otherwise ordered by the commissioner or his designee. No hearing shall be held later than ninety (90) days from the date of request.

(2) The notice of hearing shall include:

(a) Statement of the time and place of the hearing.

(b) The name and address of the assigned hearing officer.

(c) Statement of the legal authority and jurisdiction under which the hearing is held.

Section 6. Continuance of Hearing. (1) Continuance of a hearing ordinarily shall not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, no such request shall be considered unless received in writing at least three (3) days in advance of the time set for the hearing. The request for continuance shall include the reasons therefor.

(3) Continuance of hearing not in excess of fifteen (15) days may be granted in the discretion of the hearing officer. One (1) additional continuance not in excess of fifteen (15) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. No additional continuance may be granted without approval of the commissioner.

Section 7. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing shall be made in the absence of extraordinary circumstances within five (5) days after the scheduled hearing date.

(3) The commissioner or the hearing officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing shall be rescheduled.

Section 8. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the commissioner's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the act require.

Section 9. Severance. Upon its own motion, or upon motion of any party or intervenor, the commissioner or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 10. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner shall assist in the determination of the issues in question and that the intervention shall not unnecessarily delay the proceeding.

(3) The commissioner or the hearing officer may grant a petition for intervention to such an extent and upon such terms as the commissioner or the hearing officer shall determine.

(4) The caption of all cases where intervention is allowed shall reflect such intervention by adding to the caption after the name of the respondent the name of the intervenor, followed by the designation "intervenor."

Section 11. Service. (1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(4) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

Section 12. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 13. Response to Motions. Any party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 14. Failure to File. Failure to file any pleading pursuant to these rules when due, may, in the discretion of the commissioner or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 15. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the commissioner.

Section 16. Prehearing Conference. (1) At any time before a hearing, the commissioner or the hearing officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which shall tend to simplify the issues or expedite the proceedings.

(2) The commissioner or the hearing officer may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

Section 17. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the commissioner or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with the provisions of these rules and filed with the commissioner within the time allotted and shall be a part of the record.

Section 18. Discovery Depositions and Interrogatories. (1) Except

by special order of the commissioner or the hearing officer, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(2) In the event the commissioner or the hearing officer grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

Section 19. Failure to Comply with Orders for Discovery. If any party or intervenor fails to comply with an order of the commissioner or the hearing officer to permit discovery in accordance with the provisions of these rules, the commissioner or the hearing officer may issue appropriate orders.

Section 20. Reporter's Fees. Reporter's fees shall be equally shared by all parties. This shall include the reporter's per diem costs and the cost of the original transcript. All other copies shall be paid by the requesting party.

Section 21. Transcript of Testimony. Hearings shall be **recorded unless transcription is requested by the hearing officer** [~~transcribed verbatim~~]. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and intervenors of such filing. Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of fees fixed therefor.

Section 22. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and administrative regulations of the department; to:

(1) Administer oaths and affirmations;

(2) Rule upon offers of proof and receive relevant evidence;

(3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(4) Hold conferences for the settlement or simplification of the issues;

(5) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commissioner and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of this decision;

(6) Examine witnesses and to introduce into the record documentary or other evidence;

(7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(8) Adjourn the hearing as the needs of justice and good administration require; and

(9) Take any other action necessary under the foregoing and authorized by the published rules and administrative regulations of the department.

Section 23. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to Section 27 of this administrative regulation.

(3) Unless the hearing officer finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

(4) All exhibits offered, but denied admission into evidence, shall be identified as in subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.

Section 24. Rules of Evidence. Hearings before the department and its hearing officers insofar as practicable shall be governed by the Kentucky Rules of Evidence.

Section 25. Burden of Proof. In all proceedings commenced by the filing of a notice of hearing, the burden of proof shall rest with the department.

Section 26. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 27. Recommendations of Hearing Officer; Exceptions; Final Order. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order to the commissioner disposing of all issues before him.

(2) Any party may file exceptions to the hearing officer's findings of fact, conclusions of law, and recommended order within ten (10) days of the date of said findings of fact, conclusions of law, and recommended order.

(3) The commissioner shall, within forty-five (45) days of the date of the hearing officer's findings of fact, conclusions of law, and recommended order, issue a final order modifying, repealing, or adopting the findings of fact, conclusions of law and recommended order of the hearing officer.

JACK LEWIS, Commissioner
APPROVED BY AGENCY: February 14, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.

TRANSPORTATION CABINET
Department of Highways
Division of Right-of-way and Utilities
(As Amended)

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

RELATES TO: KRS 56.610 to 56.760, 49 CFR Part 24
STATUTORY AUTHORITY: KRS 56.690, 174.080, 183.024, 49 CFR Part 24
NECESSITY AND FUNCTION: The Transportation Cabinet is required to adopt administrative regulations and procedures to implement the provisions of KRS 56.610 to 56.760 with regard to providing for uniform relocation assistance services and compensation to persons displaced by the land acquisition programs of the Transportation Cabinet.

Section 1. Definitions. (1) "Advertising sign" means a billboard.

(2) "Average annual net earnings" means one-half (1/2) of the net earnings of the business or farm operation before federal, state, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced. If the business or farm operation was not in operation for the full two (2) taxable years prior

to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when it is determined by the Transportation Cabinet to be more equitable.

(3) [~~(2)~~] "Business" means any lawful activity, except a farm operation, conducted:

(a) Primarily for the purchase, sale, lease, or rental of personal or real property, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; or

(b) Primarily for the sale of services to the public; or

(c) Primarily for outdoor advertising display purposes, when the display is required to be moved as a result of the project; or

(d) By a nonprofit organization.

(4) [~~(3)~~] "Comparable replacement dwelling" means a dwelling which is:

(a) Decent, safe and sanitary;

(b) Functionally equivalent to the displacement dwelling;

(c) Adequate in size to accommodate the occupants;

(d) In an area not subject to unreasonable adverse environmental conditions, and is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities and reasonably accessible to the person's place of employment;

(e) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

(f) Currently available to the displaced person on the private market; and

(g) Within the financial means of the displaced person.

(5) [~~(4)~~] "Contributes materially" means that during the two (2) taxable years prior to the taxable year in which displacement occurs the business or farm operation:

(a) Had average annual gross receipts of not less than $5,000; or

(b) Had average annual net earnings of not less than $1,000; or

(c) Contributed at least one-third (1/3) of the owner's or operator's average annual gross income from all sources.

(6) [~~(5)~~] "Control of the property" means that the Transportation Cabinet has paid the owner for the property to be acquired or if acquisition is by condemnation, the Transportation Cabinet has posted the purchase price of the property with the circuit court.

(7) [~~(6)~~] "Decent, safe and sanitary dwelling" means a dwelling which meets local housing and occupancy codes, but at a minimum shall:

(a) Be structurally sound, weathertight and in good repair;

(b) Contain a safe, electrical wiring system adequate for lights and other electrical devices;

(c) Contain a heating system capable of sustaining a healthful temperature of approximately seventy (70) degrees for a displaced person;

(d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink and a toilet, all in good working order and properly connected to a source of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator;

(e) Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor shall have at least two (2) means of egress; and

(f) If the displaced person is an individual with a disability be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by the displaced person.

(8) [~~(7)~~] "Displaced person" means a person who moves from the real property or moves his personal property from the real property, including a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements:

(a) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the initiation of negotiations for, or the acquisition of, the real property in whole or in part; or

(b) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the acquisition of, in whole or in part, other real property on which the person conducts a business or farm operation. However, eligibility under this subsection applies only for the purpose of obtaining relocation assistance advisory services and moving expenses.

(9) [~~(8)~~] "Dwelling" means the place of permanent or customary and usual residence of a person including a single-family house; a single-family unit in a two (2) family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

(10) [~~(9)~~] "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

(11) [~~(10)~~] "Family" means two (2) or more individuals living together in a single-family dwelling unit who:

(a) Are related by blood, adoption, marriage, or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or

(b) Are not related by blood or legal ties but live together by mutual consent.

(12) [~~(11)~~] "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(13) [~~(12)~~] "Furnished dwelling unit" means a unit in which the furnishings are owned by someone other than the displaced person.

(14) [~~(13)~~] "An individual with a disability" means a person who has a physical or mental impairment that substantially limits one (1) or more major life activities, has a record of an impairment or is regarded as having an impairment.

(15) [~~(14)~~] "Initiation of negotiations" means the delivery of the initial written offer of compensation to purchase the real property by the Transportation Cabinet to the owner or the owner's representative. If the Transportation Cabinet issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the date of "initiation of negotiations" is the date of the actual move of the person from the property.

(16) [~~(15)~~] "Mortgage" means the classes of liens that are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the Commonwealth of Kentucky together with the credit instrument, if applicable.

(17) [~~(16)~~] "Net earnings" means any compensation obtained from the business or farm operation by its owner or the owner's spouse the owner's dependents.

(18) [~~(17)~~] "No duplication of payment" means that **the person shall not** [~~no person shall~~] receive any payment under this administrative regulation if that person receives a payment under federal, state or local law which is determined to have the same purpose and effect as the payment under this administrative regulation.

(19) [~~(18)~~] "Nonprofit organization" means an organization incorporated in the Commonwealth of Kentucky as a nonprofit organization under the provisions of KRS Chapter 273 and which is exempt from paying federal income taxes under the Internal Revenue

Code (26 USC 501).

(20) [~~(19)~~] "Notice of intent to acquire" or "notice of eligibility for relocation assistance" means written notice furnished to a person who is to be displaced, which establishes eligibility for relocation benefits prior to initiation of negotiations.

(21) [~~(20)~~] "Owner of a dwelling" means a person who has purchased or holds any of the following interest in the real property:

(a) Fee title, a life estate, a ninety-nine (99) year lease, or a lease including any options, for extension with at least fifty (50) years to run from the date of acquisition; or

(b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(c) A contract to purchase any of the interests or estates described in paragraph (a) or (b) of this subsection; or

(d) Any other interest, including a partial interest, which warrants consideration as ownership.

(22) [~~(21)~~] "Person" means any individual, family, partnership, corporation, or association.

(23) [~~(22)~~] "Persons not displaced" means but is not limited to the following:

(a) One who moves before the initiation of negotiations, unless the Transportation Cabinet determines that the person was displaced as a direct result of the project; or

(b) One who initially occupies the property after the date of its acquisition by the Transportation Cabinet; or

(c) One who occupies the property for the purpose of obtaining assistance under this administrative regulation; or

(d) One who the Transportation Cabinet determines is not displaced as a direct result of partial acquisition of the property; or

(e) An owner-occupant who voluntarily conveys his property, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Transportation Cabinet does not intend to acquire the property. In these cases, however, any resulting displacement of a tenant is subject to the provisions of this administrative regulation; or

(f) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause, under applicable law; or

(g) A person determined by the Transportation Cabinet to not be displaced because of another special condition.

(24) [~~(23)~~] "Purchases a dwelling" means, in addition to actually buying a dwelling, the following:

(a) Purchases and rehabilitates a substandard dwelling; or

(b) Relocates a dwelling which he owns or purchases; or

(c) Constructs a dwelling on a site he owns or purchases; or

(d) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(e) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(25) [~~(24)~~] "Real property" means land, and generally whatever is erected or growing upon or affixed to land.

(26) [~~(25)~~] "Salvage value" means the probable sale price of an item if offered for sale on the condition that it is to be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which the item is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(27) [~~(26)~~] "Small business" means a business having not more than 500 employees working at the site being acquired or displaced by the project where the site is the location of economic activity.

(28) [~~(27)~~] "Subsequent occupant" means any person who did not occupy the property at the time negotiations began for acquisition of the property and who is in occupancy at the time the property is acquired and who subsequently moves from the real property. Relocation assistance payments made to a subsequent occupant shall be through the provisions of Last Resort Housing in Section 30 [~~29~~] of this administrative regulation.

(29) [~~(28)~~] "Tenant" means a person who has the temporary use and occupancy of real property owned by another.

(30) [~~(29)~~] "Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Transportation Cabinet has determined has little or no value or utility to the owner.

(31) [~~(30)~~] "Unlawful occupancy" means that a person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Transportation Cabinet to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property. The Transportation Cabinet may, at its discretion, consider a squatter to be in lawful occupancy.

(32) [~~(31)~~] "Utility costs" means expenses for heat, light, water, and sewer.

Section 2. Applicability. (1) The payments and services set forth in this administrative regulation which involve a Transportation Cabinet project in which a person, business, farm operation, or nonprofit organization is required to relocate or discontinue operation shall be made regardless of whether federal funds are used or not used in the project.

(2) If the Transportation Cabinet acquires real property on behalf of another agency that agency may authorize the cabinet to follow the provisions of this administrative regulation.

Section 3. Relocation Notices - General. (1) Each relocation notice provided by the Transportation Cabinet shall be personally delivered or sent by certified or registered mail, return receipt requested.

(2) As soon as feasible, a person scheduled to be displaced shall be notified of the possibility of his displacement. He shall also be furnished with a general written description of the relocation program which gives at least the following information:

(a) Informs the person that he may be displaced because of the project and generally describes any relocation payment for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment;

(b) Indicates that any person displaced shall be given reasonable relocation advisory services to help the person relocate successfully including housing referrals, help in filing payment claims and other necessary assistance;

(c) Informs any displaced person lawfully occupying the property that he shall not be required to move without at least ninety (90) days advance notice except under the most unusual of circumstances;

(d) Describes the person's right to appeal the determination of eligibility for, or the amount of, any relocation payment for which the person may be eligible;

(e) Informs the person that in order to be eligible for benefits he is required to occupy the property at the time of initiation of negotiations and includes a definition of initiation of negotiations; and

(f) Informs the displaced person that he cannot be required to move permanently unless at least one (1) comparable replacement dwelling has been made available.

(3) Eligibility for relocation assistance shall begin on the date of initiation of negotiations for acquisition of the occupied property. At this time the Transportation Cabinet shall notify each occupant or family to be displaced in writing of his eligibility for relocation assistance.

(4) **A** **[~~No~~]** lawful occupant shall **not** be required to move unless he has received at least ninety (90) days advance written notice of the earliest date by which he may be required to move. Only in unusual circumstances, such as a substantial danger to the person's health or safety, shall an occupant be required to vacate the property on less than ninety (90) days advance written notice.

(5)(a) At the initiation of negotiations the Transportation Cabinet shall give the displaced person a ninety (90) day notice.

(b) The notice shall be either:

1. A specific date which is the earliest date by which he shall be required to move; or

2. A statement that before the displaced person is required to move from the property, he shall be given a thirty (30) day written notice specifying the date by which the property shall be vacated.

(6)(a) The Transportation Cabinet may issue a notice to a displaced person specifying the date by which he is required to vacate the acquired property, if:

1. The Transportation Cabinet has gained control of the property to be acquired;

2. Sixty (60) or more days have passed since the issuance of a ninety (90) day notice; and

3. Comparable replacement housing has been made available to the displaced person.

(b) The required vacation date shall be at least thirty (30) days after the notice is issued.

Section 4. Notice at Initiation of Negotiations. (1) The Transportation Cabinet shall furnish an owner-occupant of 180 days or more no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of replacement housing computation and eligibility requirements to receive the payment;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The possibility of his eligibility to receive an increased interest payment, or payment of incidental expenses incurred in the purchase of replacement housing;

(d) His option to rent rather than purchase replacement housing;

(e) The availability of relocation assistance advisory services and how they may be obtained;

(f) A ninety (90) day notice; and

(g) His right to appeal.

(2) The Transportation Cabinet shall furnish an owner-occupant of less than 180 days no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of a rental replacement housing payment and the maximum amount of a down payment for the purchase of replacement housing, as well as the requirements to receive these payments;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice; and

(f) His right to appeal.

(3) The Transportation Cabinet shall furnish a tenant-occupant of ninety (90) days or more, no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The amount of rental and purchase replacement housing payments and the eligibility requirements to receive these payments;

(b) The address of the comparable housing used to compute the rental and replacement housing payments;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice;

(f) His right to appeal; and

(g) The date of the initiation of negotiations for the property.

(4) The Transportation Cabinet shall furnish in writing to a subsequent tenant-occupant within seven (7) working days from the date the cabinet acquires the property the following information:

(a) His eligibility to receive moving expense payments;

(b) The availability of relocation advisory services and how they may be obtained;

(c) Assurance that comparable replacement housing is available within his financial means; and

(d) The ninety (90) day notice to vacate. This notice shall specify the date by which the property shall be vacated, and shall not be issued until comparable housing is available.

Section 5. Alternate Notices. (1) The Transportation Cabinet may specify an alternative notification procedure to those established in Sections 3 and 4 of this administrative regulation if there are insufficient rental units available for the tenant-occupants of the acquired property.

(2) If the Transportation Cabinet determines that an alternative notification procedures will be used, it shall not be required to make the replacement housing payment offer to the displaced tenants within the seven (7) working days specified in Section 4(3) of this administrative regulation.

(3) The alternate notification procedure used by the Transportation Cabinet shall be as follows:

(a) Contact the owner and make the fair market value offer for the property;

(b) Within seven (7) working days, contact the tenants and give each a written statement which shall include:

1. The date of initiation of negotiations for the parcel; and

2. An explanation of the eligibility requirements to receive a rental replacement housing payment, or a down payment.

(c) At the time the replacement housing payment is computed and the written statement required in paragraph (b) of this subsection is given the tenant, the ninety (90) day notice shall be included. The cabinet shall use the procedure in issuing the thirty (30) day vacation written notice as specified in Section 4 of this administrative regulation.

(d) The thirty (30) day notice to vacate shall not be required if an occupant moves of his own volition prior to the date the Transportation Cabinet would have issued the notice.

(4) A notice of intent to acquire the property shall be furnished to an owner or tenant only if it becomes necessary to establish eligibility requirements prior to negotiations on the parcel. This notice shall not be issued until acquisition has been authorized for the project. The notice of intent to acquire the property shall contain the following:

(a) Statement of eligibility and any restrictions on eligibility;

(b) The anticipated date of the initiation of negotiations for acquisition of the property; and

(c) How additional information regarding relocation payments and services can be obtained.

(5) If a notice of intent to acquire the property is given to an owner, the tenant shall be issued the notice within fifteen (15) days. The owner shall be given a copy of the notice issued to the tenant.

(6)(a) When the Transportation Cabinet acquiring property results in a property being landlocked, the occupant of the landlocked property shall be considered displaced. The displaced occupant shall:

1. Be eligible for relocation assistance; and

2. Have one (1) year to obtain an occupied decent, safe and sanitary replacement housing.

(b) The vacation date shall begin to run from either the date the Transportation Cabinet:

1. Makes a payment for damages to the nonresident owner of the property; or

2. Posts payment for damages in court.

Section 6. Availability of Comparable Replacement Dwelling Prior to Displacement. (1) **A** **[~~No~~]** person to be displaced shall **not** be

required to move from his dwelling unless at least one (1) comparable replacement dwelling has been made available to the person. When possible, three (3) or more comparable replacement dwellings shall be made available. A comparable replacement dwelling shall be considered to have been made available to a person if:

(a) The person is informed of its location;

(b) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(c) The person is assured of receiving the relocation assistance and acquisition compensation, subject to reasonable safeguards, to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(2) The requirements of subsection (1) of this section may be waived if the displaced person is required to move in case of an emergency situation which shall include:

(a) A major disaster as described in Section 102(c) of the National Disaster Relief Act of 1974;

(b) A presidentially declared national emergency;

(c) Highway slides or floods; or

(d) When continued occupancy would constitute a substantial danger to the health or safety or the occupants or the public.

(3) If a person is required by the Transportation Cabinet to relocate for a temporary period due to an emergency, the Transportation Cabinet shall do the following:

(a) Take the necessary steps to assure the person is temporarily relocated to decent, safe and sanitary housing;

(b) Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in rent and utility costs incurred in connection with the temporary relocation; and

(c) Make available to the displaced person as soon as feasible at least one (1) comparable replacement dwelling.

(d) In the case of an emergency relocation, the date of displacement shall be the date the person moves from the temporarily-occupied dwelling. This date shall be used in:

1. Filing a claim for relocation assistance; and

2. Determining eligibility requirements for a relocation payment.

Section 7. Relocation Advisory Services. (1) The Transportation Cabinet Advisory Services Program shall include the measures, facilities, and services that may be necessary or appropriate in order to:

(a) Personally interview each family or person to be displaced to:

1. Determine the person's relocation needs and preferences;

2. Explain the relocation payments; and

3. Explain other assistance for which the person may be eligible, including requirements for obtaining the assistance;

(b) Provide current and continuing information on the availability, price and rental cost of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one (1) comparable replacement dwelling is made available;

(c) In order that the displaced person is made aware of the amount of the replacement housing payment to which he may be entitled, inform the displaced person, in writing, of:

1. The specific comparable replacement dwelling;

2. The price and rent used as a basis for establishing the upper limit of the replacement housing payment; and

3. The basis for the determination;

(d) If feasible, inspect the comparable housing prior to its being made available to assure that it is decent, safe and sanitary;

(e) It shall be the policy of the Transportation Cabinet to provide a minority displaced person an opportunity to elect relocation to a replacement dwelling which is located outside an area of minority concentration if:

1. It would not require the Transportation Cabinet to pay a larger relocation payment than is required by this administrative regulation; and

2. It is within the financial means of the minority displaced person;

(f) Offer the displaced person transportation to inspect housing to which he is referred;

(g) Provide current and continuing information on the availability, location purchase price, and rental cost of comparable and suitable commercial and farm properties. Assist any person displaced from a business, farm operation, or nonprofit organization to obtain and become established in a suitable replacement location;

(h) Minimize hardships to persons in adjusting to relocation by providing counseling, advice about other sources of assistance that may be available, and other help that may be appropriate;

(i) Supply persons to be displaced with information concerning federal and state housing programs, disaster loans and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to persons to be displaced;

(j) Advise a displaced person that no payments received under the relocation assistance program shall be considered as income for the purposes of:

1. The federal Internal Revenue Code; or

2. Determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal or state law; and

(k) Maintain contact with other governmental agencies to determine the extent of other programs which might affect the Transportation Cabinet relocation program and the availability of housing resources.

(2) The amount and extent of the relocation advisory services rendered shall be determined by the needs of the displaced person.

(3) The Transportation Cabinet may offer relocation advisory services to a person occupying property adjacent to the real property acquired if that person is caused substantial economic injury because of the cabinet's acquisition of the real property.

(4) The Transportation Cabinet shall coordinate relocation activities with project work and other displacement-causing activities to ensure that persons displaced receive consistent treatment and duplication of functions is minimized.

Section 8. Claims for Relocation Assistance Payments. (1)(a) Any claim for relocation assistance payment shall be accompanied by documentation to support expenses incurred.

(b) A displaced person shall be provided reasonable assistance in completing and filing a claim for payment.

(c) The Transportation Cabinet shall review claims in an expeditious manner and promptly notify the claimant if additional documentation is required.

(d) Payment for a relocation assistance claim shall ordinarily be made only after:

1. The displaced person has moved or after closing; and

2. As soon as feasible following receipt of sufficient documentation to support the claim.

(e) The payment for a claim may be processed in advance of a move or closing but shall not be made until it can be reasonably expected that the objective of the payment has been or is to be accomplished.

(2) All claims for a relocation payment shall be filed based on the following unless the time limits have been waived for good cause by the Transportation Cabinet:

(a) For tenants, within eighteen (18) months after the date of displacement; or

(b) For owners, within eighteen (18) months of the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(3) If two (2) or more occupants of one (1) household of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a prorated share of all relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling. However, if it is determined that

two (2) or more occupants maintained separate households within the same dwelling, the occupants shall have separate entitlements to relocation payments.

(4) If a person to be displaced owes rent to the Transportation Cabinet, the amount owed may be deducted from his relocation assistance payment unless the deduction would prevent the displaced person from obtaining comparable replacement housing. The Transportation Cabinet shall not withhold any part of a relocation assistance payment to a displaced person to satisfy an obligation to any other creditor.

(5) By written agreement between the displaced person, the mover and the Transportation Cabinet, the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover. The displaced person shall initially make this request on forms prescribed and furnished by the Transportation Cabinet.

(6) If the Transportation Cabinet denies a claim of eligibility for or the amount of a payment, the claimant shall be promptly notified in writing of the reason for denying the claim and of his right to appeal.

Section 9. Moving and Related Expense Payments-General. Moving and related expense payments are types of relocation assistance payments. Any eligible individual, family, business, farm operation, or nonprofit organization displaced by a Transportation Cabinet project and who qualifies as a displaced person is entitled to payment of his actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary.

(1) To be eligible for moving and related expense payments the displaced person shall:

(a) Be in legal occupancy at the initiation of negotiations for the real property or at the time the property is acquired, in whole or in part by the Transportation Cabinet or at the time he is given a written notice by the Transportation Cabinet of intent to acquire the real property; and

(b) Move from the real property, or move his personal property from the real property subsequent to the dates established in paragraph (a) of this subsection.

(2) If the acquisition of real property used for a business, farm operation, or nonprofit organization causes a person to vacate a dwelling or other real property not acquired by the Transportation Cabinet, the additional moving cost shall be eligible for reimbursement. Also, if it is necessary to move personal property that is legally located within the acquired property, the cost shall be eligible for reimbursement.

(3) A second move for a displaced person shall not be automatically authorized, nor generally eligible for payment. However, under exceptional circumstances, a second moving payment may be made. Prior to authorizing a second move, the Transportation Cabinet shall consider all special circumstances.

(4) The displaced person shall be informed in writing as soon as possible after the initiation of negotiations of the following requirements:

(a) The displaced person shall provide the Transportation Cabinet reasonable advance notice of the approximate date of the start of the move or disposition of his personal property and a list of the items to be moved; and

(b) The displaced person shall allow the Transportation Cabinet to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and allow the cabinet to monitor the move.

Section 10. Moving and Related Expense Payments for Residential Moves. (1) A displaced person, owner-occupant or tenant of a dwelling who qualifies as a displaced person:

(a) Is entitled to receive payment for the actual, reasonable and necessary moving expenses of his personal property, himself, and his family.

(b) Has the option to receive reimbursement on the basis of actual, reasonable expenses, or from the fixed-rate schedule listed in subsection (7) [~~(5)~~] of this section which is based on the number of rooms of personal property.

(2) An owner-occupant of a multiple-family dwelling may be entitled to a moving payment for a residential move for himself and moving payments for his personal property located in other units.

(3) In order to determine that more than one (1) household exists in a single dwelling unit, each family unit shall have separate baths, kitchen areas and bedrooms.

(a) Two (2) or more families occupying the same dwelling unit, who are required to relocate into separate dwelling units because a single comparable dwelling unit is not available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule.

(b) Two (2) or more families occupying the same dwelling unit, who relocate into separate dwelling units on a voluntary basis when a single comparable dwelling unit is available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule. A fixed-rate schedule move payment shall be based on the number of rooms actually occupied by each family, plus community rooms utilized by each family.

(c) Two (2) or more individuals who occupy the same dwelling unit are considered to be a single family and payments shall be made accordingly.

(4) When an owner retains his dwelling, the cost of moving it onto a different site is not eligible for reimbursement as a part of the cost of moving personal property. However, if he chooses to use his dwelling as a means of moving personal property, the cost of moving the personal property may be considered eligible for reimbursement. Payments in these cases shall be from the fixed-rate schedule.

(5) If the displaced person elects to move on an actual cost basis, the following expenses are eligible for payment:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond fifty (50) miles are not eligible, unless it is determined by the Transportation Cabinet that relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking, and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;

(d) Storage of the personal property for a period not to exceed twelve (12) months, unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the property in connection with the move and necessary storage;

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available; and

(g) Other moving related expenses not listed as ineligible in Section 14 [~~13~~] of this administrative regulation but which are determined by the Transportation Cabinet to be reasonable and necessary.

(6)(a) The displaced person may elect to move by the use of a licensed commercial mover and receive reimbursement for the actual, reasonable expenses. These expenses shall be supported by receipted bills.

(b) The Transportation Cabinet may furnish the displaced person a list of licensed movers in the area.

(c) The displaced person shall select one (1) mover and the Transportation Cabinet shall select one (1) mover.

(d) The Transportation Cabinet shall:

1. Obtain from both of the selected movers an estimate of the moving costs including any necessary utility service connections.

2. Base payment on the lower estimate.

(e) The displaced person may hire either company.

(7) [~~(6)~~] The displaced person, including a person displaced from a seasonal residence, may elect to move his personal property according to the fixed-rate schedule. The separate items authorized under commercial and self moves have been included in establishing the fixed-rate schedule and no additional moving payments shall be authorized. The room count of furniture shall be based on the actual number of furnished rooms, plus basements, attics, garages and out buildings if such spaces contain sufficient personality as to constitute a room. Payment shall be based on the following schedule:

1 Room = $250	5 Rooms = $ 750
2 Rooms = $400	6 Rooms = $ 850
3 Rooms = $550	7 Rooms = $ 950
4 Rooms = $650	8 Rooms = $1050
	Each Additional Room = $100

(8) [~~(6)~~] If the displaced person lives in a furnished dwelling unit, he shall be paid moving costs for moving his personal property according to the following schedule:

First room = $225

Each additional room = $35

(9) [~~(7)~~] The moving expenses of a person with minimal personal possessions who occupies a dormitory style room shared by two (2) or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to fifty (50) dollars.

Section 11. Moving and Related Expense Payments, Including Reestablishment Expenses, for Business, Farm Operations, or Nonprofit Organizations. The owner of a displaced business, farm operation, or nonprofit organization is entitled to receive a payment for moving and related expenses, including reestablishment expenses.

(1) Any business, farm operation, or nonprofit organization which qualifies as a displaced person is entitled to payment for the actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary, including expenses for the following:

(a) Transportation of personal property. Transportation costs for a distance beyond fifty (50) miles are ineligible, unless it is determined by the Transportation Cabinet that [~~the~~] relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property including substitute personal property and including connection to utilities available nearby. Also, included are modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded);

(d) Storage of the personal property for a period not to exceed twelve (12) months unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the personal property in connection with the move and necessary storage;

(f) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be prorated, based on the remaining useful life of the existing license, permit or certification;

(g) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee), where insurance covering the loss, theft, or damage is not reasonably available; and

(h) Professional services necessary for planning the move of the personal property; moving the personal property; and installing the relocated personal property at the replacement location.

(2) The owner of a business, farm operation, or nonprofit organization, may be paid the actual reasonable cost of moving his personal property as determined to be reasonable and necessary by using a qualified commercial mover. These expenses shall be supported by receipted bills. Prior to authorizing the move, the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items are to actually be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation, or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers when a replacement property has been found. The payment of moving expenses shall be authorized only on the basis of the lower of the bids.

(3) The owner of the business, farm operation, or nonprofit organization, may elect to move himself. Under this circumstance the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items actually are to be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation, or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers after a replacement property has been found. The move may be authorized only on the basis of the lower of the bids. The Transportation Cabinet shall pay to the displaced person the amount of the lower bid once it is determined that all property was moved to the new location.

(4) If the cost of the move is not likely to exceed $5,000, a single estimate may be prepared by a qualified staff employee of the Transportation Cabinet other than the person preparing the claim.

(5) When the Transportation Cabinet obtains bids for a business, farm operation, or nonprofit organization move, the bidder shall be instructed in writing that the amount of his bid shall be the property of the Transportation Cabinet and shall be considered confidential information. The bidder shall state in his letter transmitting his bid to the cabinet that he shall not divulge the amount of his bid to any other person, including the displaced person. Any bidder who does not adhere to these requirements shall not be permitted to submit future bids.

(6) If it is necessary to reprint available stationery because the business, farm operation, or nonprofit organization, has been relocated, the Transportation Cabinet shall pay the actual cost for reprinting the number and type of item to be replaced. Payment shall be made for only the number of each item approved in advance of the reprinting by the Transportation Cabinet. The claim for payment shall be documented by receipted bills from the provider.

(7) If it is necessary to reletter a sign that has been made obsolete as a result of the move, if possible, only that portion of the sign which changes shall be eligible to be relettered. However, if necessary, the cost of relettering the complete sign shall be an eligible expense. The payment request shall be documented by receipted bills from the provider. Approval of the relettering shall be obtained from the Transportation Cabinet in advance of work being performed.

(8)(a) The Transportation Cabinet shall reimburse the displaced business, farm operation, or nonprofit organization actual and reasonable expenses in searching for a new location.

(b) Payment shall be limited to $1,000.

(c) The items for which an invoice may be submitted include:

1. Transportation;

2. Lodging and meals away from home;

3. Time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and

4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(d) The claim for payment shall be documented by receipted bills for meals and lodging when away from home and an affidavit shall be required for mileage and time. The affidavit shall show:

1. Persons contacted;

2. Places visited;

3. Activity involved; and

4. Basis for the hourly rate charged for time.

(9)(a) Payment of actual direct losses of tangible personal property may be made when the business, farm operation, or nonprofit organization owner moves or discontinues his operation. Payment for actual direct losses of tangible personal property may be made only after a bona fide effort has been made by the owner to sell the items involved. The payment shall consist of the lesser of:

1. The fair market value of the item for continued use at the displacement site less the proceeds from its sale.

a. The claimant shall make a good faith effort to sell the personal property, unless the Transportation Cabinet determines that the effort is not necessary.

b. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price; or

2. The estimated cost of moving the item, with no allowance for storage. If the business, farm operation, or nonprofit organization is discontinued, the estimate shall be based on a move of fifty (50) miles;

(b) The prompt purchase of substitute personal property to replace an item not to be moved in a business, farm operation, or nonprofit organization move, yet which performs a comparable function at the replacement site. Payment shall be the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale or trade-in of the replaced item; or

2. The estimated cost of moving and reinstalling the replaced item, with no allowance for storage. If the estimated cost for the move is $5,000 or less, the estimated cost may be based on a single estimate prepared by a qualified Transportation Cabinet employee.

(c) If no offers are received for the property at the sale and the property is abandoned, payment for the actual direct loss of that item shall not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item fifty (50) miles, whichever is less, plus the reasonable costs of the attempted sale, irrespective of the cost to the Transportation Cabinet of removing the item.

(d) If personal property is abandoned with no effort made by the owner to dispose of the property by sale, the owner shall not be entitled to moving expenses, or losses, for the item involved.

(e) The cost of removal by the Transportation Cabinet of personal property shall not be considered as an offsetting charge against other payments to the displaced person.

(f) The sale price, if any, and the actual reasonable costs of advertising and conducting the sale shall be supported by a copy of the bill of sale or similar documents, and by copies of any advertisements, offers to sell, auction records, and other data which support the sale.

(10) A small business, farm operation, or nonprofit organization is entitled to receive a payment not to exceed $10,000 for expenses actually incurred in relocating and reestablishing the small business, farm operation, or nonprofit organization at the replacement site. Eligibility for this payment shall be contingent upon the following:

(a) Eligible expenses shall be reasonable and necessary as determined by the Transportation Cabinet and may include:

1. Repairs or improvements to the replacement real property as required by federal, state, or local law, code, regulation or ordinance.

2. Modification to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

3. Construction and installation costs for exterior signing to advertise the business.

4. Provision of utilities from the right-of-way to improvements on the replacement site.

5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

6. Licenses, fees and permits when not paid as a part of moving expenses.

7. Feasibility surveys, soil testing and marketing studies.

8. Advertisement of the replacement location.

9. Professional services in connection with the purchase or lease of a replacement site.

10. Increased cost of operation during the first two (2) years at the replacement site for items such as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees.

11. Impact fees or one (1) time assessments for anticipated heavy utility usage.

12. Other items determined by the Transportation Cabinet to be essential to reestablishment of the business.

(b) A representative of the Transportation Cabinet and the displaced person shall meet at the replacement site prior to any work being done to determine what repairs or changes are necessary. After the move has been completed, the displaced person shall submit to the Transportation Cabinet itemized paid receipts for reestablishment expenses he has incurred.

(c) The following is a nonexclusive list of reestablishment expenses not considered to be reasonable, necessary, or eligible:

1. Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures;

2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operations;

3. Interest on money borrowed to make the move or purchase the replacement property;

4. Payment to a part-time business in the home which does not contribute materially to the household income.

(d) Sites occupied solely by outdoor advertising signs, devices or displays do not qualify as a business for reestablishment expenses under the provisions of this section.

~~[(g) The direct loss payment for an advertising sign which is personal property shall be the lesser of the depreciated reproduction cost of the sign less the proceeds from its sale; or the estimated cost of moving the sign as determined by the Transportation Cabinet but with no allowance for storage.~~

~~(10) An owner of a discontinued or relocated business otherwise eligible for payment of moving expenses may choose to receive a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.~~

~~(a) The amount of the fixed payment shall equal the average annual net earnings for the business but not less than $1,000 and not more than $20,000.~~

~~(b) For an owner of a business to be entitled to this payment, it shall be determined that:~~

~~1. The business owns or rents personal property which has to be moved in connection with the displacement and for which an expense~~

~~would be incurred in the move and the business vacates or relocates from the displacement site;~~

~~2. The business cannot be relocated without a substantial loss of patronage (clientele or net earnings). A business is assumed to meet this test unless it is determined by the Transportation Cabinet that it will not suffer a substantial loss of its existing patronage;~~

~~3. The business is not part of a commercial enterprise having more than three (3) other entities which are not being acquired, and which are under the same ownership and engaged in the same or similar business activities;~~

~~4. The business is not operated at a displacement dwelling solely for the purpose of renting the dwelling to others; and~~

~~5. The business contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement. The displaced person shall furnish the Transportation Cabinet copies of his income tax returns and other proof of net earnings.~~

~~(c) In determining whether two (2) or more displaced legal entities constitute a single business which is entitled to only one (1) fixed payment, all pertinent factors shall be considered, including the extent to which:~~

~~1. The same premises and equipment are shared;~~

~~2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;~~

~~3. The entities are held out to the public, to those customarily dealing with them, as one (1) business; and~~

~~4. The same person or closely related persons own, control, or manage the affairs of the entities.~~

~~(11) An owner of a displaced farm operation may choose to apply for a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.~~

~~(a) The amount of the fixed payment shall equal the average annual net earnings for the farm operation but not less than $1,000 and not more than $20,000.~~

~~(b) In the case of partial acquisition of land which was a farm operation before the acquisition, a fixed payment may be made only if the Transportation Cabinet determines that:~~

~~1. The farm operation contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement;~~

~~2. Acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or~~

~~3. The partial acquisition caused a substantial change in the nature of the farm operation.~~

~~(12)(a) A displaced nonprofit organization may choose to apply for a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.~~

~~(b) The payment shall not be less than $1,000 nor more than $20,000.~~

~~(c) Any request for payment in excess of $1,000 shall be supported with financial statements for the two (2) twelve (12) month periods prior to the acquisition.~~

~~(d) The amount to be used in determining the payment is the average of two (2) years annual gross revenues less administrative expenses.~~

~~(e) Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other fund raising activities.~~

~~(f) Administrative expenses include rent, utilities, salaries, advertising and fund raising expenses. Operating expenses for carrying out the purpose of the nonprofit organization are not included in administrative expenses.~~

~~(g) Monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.~~]

Section 12. Moving and Related Expense Payments for Advertising Signs. (1) The owner of an eligible displaced advertising sign which is not included in the appraisal of the real property is entitled to receive a payment for moving and related expenses as determined by the Transportation Cabinet to be reasonable and necessary, including:

(a) Transportation of the advertising sign. Transportation costs for a distance beyond fifty (50) miles shall be ineligible unless it is determined by the Transportation Cabinet that relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking, or uncrating of the advertising sign;

(c) Disconnecting, dismantling, removing, reassembling, or reinstalling relocated machinery, equipment, or other personal property related to the advertising sign and substitute personal property, including connection to utilities available nearby;

(d) Modifications to the advertising sign necessary to adapt it to the replacement structure, the replacement site, or utilities at the replacement site;

(e) Modifications necessary to adapt utilities at the replacement site to the advertising sign, excluding expenses for providing utilities from the right-of-way to the sign;

(f) Storage of the advertising sign for a period not to exceed twelve (12) months unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For storage costs to be eligible the Transportation Cabinet shall determine that:

1. Storage is reasonable and necessary; and

2. The advertising sign is not stored on property being acquired or property owned or leased by the displaced person;

(g) Insurance for the replacement value of the advertising sign in connection with the move and necessary storage;

(h) Any license, permit, or certification required of the displaced person at the replacement location. Payment may be prorated based on the remaining useful life of any existing license, permit or certification;

(i) The replacement value of the advertising sign or property related to it which is lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee), where insurance covering the loss, theft, or damage is not reasonably available; and

(j) Professional services necessary for:

1. Planning the move of the advertising sign;

2. Moving the advertising sign; or

3. Installing the relocated advertising sign at the replacement location.

(2) The owner of an advertising sign which is not included in the appraisal of the real property may be paid the actual cost of moving the sign as determined to be reasonable and necessary by using a qualified commercial mover. These expenses shall be supported by receipted bills. Prior to authorizing the move, the Transportation Cabinet shall:

(a) Obtain photographs of the advertising sign to be moved. The displaced person shall certify that the sign will actually be moved to the replacement site. If there is a significant change in the sign relocation, the amount to be paid shall be revised accordingly.

(b) Obtain two (2) bids from qualified movers once a replacement site has been found. Payment of moving expenses shall be authorized only on the basis of the lower of two (2) acceptable bids.

(3) The owner of an advertising sign which is not included in the appraisal of the real property, may elect a self-move based on the lower of two (2) bids from qualified movers. Under this circumstance the Transportation Cabinet shall:

(a) Obtain photographs of the advertising sign to be moved. The displaced person shall certify that the sign will actually be moved to the replacement site. If there is a significant change in the sign relocation, the amount to be paid shall be revised accordingly;

(b) Obtain two (2) bids from qualified movers once a replacement site has been found. The move may be authorized only on the basis of the lower of the bids. The Transportation Cabinet shall pay to the

displaced person the amount of the lower bid once it is determined that the sign was moved to the new location.

(4) If the cost of the move is not likely to exceed $5,000, a single estimate may be prepared by a qualified Transportation Cabinet employee other than the person preparing the claim.

(5) The displaced person shall give the Transportation Cabinet reasonable, advance notice of the approximate date the move will commence.

(6) When the Transportation Cabinet obtains bids for moving a sign, the bidder shall be instructed in writing that the amount of his bid shall be the property of the Transportation Cabinet and shall be considered confidential information. The bidder shall state in his letter transmitting his bid to the cabinet that he shall not divulge the amount of his bid to any other person, including the displaced person. Any bidder who does not adhere to these requirements shall not be permitted to submit future bids.

(7) The Transportation Cabinet shall reimburse the owner of a displaced advertising sign actual and reasonable expenses in searching for a new location.

(a) Payment shall be limited to $1,000.

(b) The items for which an invoice may be submitted include:

1. Transportation;

2. Lodging and meals away from home;

3. Time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and

4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of the site.

(c) Receipts will be required for meals and lodging when away from home. An affidavit which includes the following items is required to document mileage and time:

1. Persons contacted;

2. Places visited;

3. Activity involved; and

4. Basis for the hourly rate charged for time.

(8) Payment for actual direct losses of tangible personal property may be made when the owner of a displaced advertising sign which is excluded from the appraisal of the real property elects not to relocate the sign. The direct loss payment shall be the lesser of the following:

(a) The depreciated reproduction cost of the sign less the proceeds from its sale; or

(b) The estimated cost of moving the sign as determined by the Transportation Cabinet but with no allowance for storage.

Section 13. [~~12.~~] Miscellaneous Moves. There are entities to be relocated that meet none of the definitions of a business, a farm operation, or a nonprofit organization. The moving expenses in these instances shall usually be paid as a self-move. Examples of moves of this type are:

(1) Partial taking of a farm or residential lot on which only a shed, barn or garage contains personal property;

(2) Acquisition of a tenant-occupied residence if the owner has some personal property in the building; or

(3) Acquisition of a tenant-occupied service station where the owner or distributor has personal property to be moved.

Section 14. [~~13.~~] Ineligible Moving and Related Expenses. A displaced person shall not be entitled to payment for the following:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;

(2) Interest on a loan to cover moving expenses;

(3) Loss of good will;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location (except as provided for under reestablishment expenses);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Transportation Cabinet;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business, farm, or nonprofit organization except as provided for under actual reasonable moving expenses and reestablishment expenses; or

(11) Costs for storage of personal property on real property already owned or leased by the displaced person.

~~[Section 14. Reestablishment Expenses of Businesses, Farm Operations or Nonprofit Organizations. A small business, farm operation or nonprofit organization may be eligible to receive a payment not to exceed $10,000 for expenses actually incurred in relocating and reestablishing the small business, farm operation or nonprofit organization at the replacement site. Eligibility for this payment shall be contingent upon the following:~~

~~(1) Eligible expenses shall be reasonable and necessary as determined by the Transportation Cabinet and may include:~~

~~(a) Repairs or improvements to the replacement real property as required by federal, state, or local law, code, regulation or ordinance;~~

~~(b) Modification to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;~~

~~(c) Construction and installation costs for exterior signing to advertise the business;~~

~~(d) Provision of utilities from the right of way to improvements on the replacement site;~~

~~(e) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;~~

~~(f) Licenses, fees and permits when not paid as a part of moving expenses;~~

~~(g) Feasibility surveys, soil testing and marketing studies;~~

~~(h) Advertisement of the replacement location;~~

~~(i) Professional services in connection with the purchase or lease of a replacement site;~~

~~(j) Increased cost of operation during the first two (2) years at the replacement site for items such as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees;~~

~~(k) Impact fees or one (1) time assessments for anticipated heavy utility usage; and~~

~~(l) Other items determined by the Transportation Cabinet to be essential to the reestablishment of the business.~~

~~(2) Expenses in excess of the maximums set forth in subsection (1)(c), (h) and (j) of this section may be considered eligible if large and legitimate disparities exist between the cost of operation at the displacement site and cost of operation at an otherwise similar replacement site. In these cases, the limitations for reimbursement of the cost may be waived by the Transportation Cabinet, but in no case shall the total costs payable for reestablishment expenses exceed the $10,000 maximum.~~

~~(3) A representative of the Transportation Cabinet and the displaced person shall meet at the replacement site prior to any work being done in order to determine what repair or changes are necessary. After the move has been completed, the displaced person shall submit to the Transportation Cabinet the itemized paid receipts for those reestablishment expenses he has incurred.~~

~~(4) The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:~~

~~(a) Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures;~~

~~(b) Purchase of manufacturing materials, production supplies,~~

~~product inventory or other items used in the normal course of the business operations;~~

~~(c) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in subsection (1)(c) of this section;~~

~~(d) Interest on money borrowed to make the move or purchase the replacement property;~~

~~(e) Payment to a part-time business in the home which does not contribute materially to the household income.~~

~~(5) Sites occupied solely by outdoor advertising signs, devices or displays shall not qualify as a business for reestablishment expenses under the provisions of this section.~~]

Section 15. Fixed Payments In Lieu of Payments for Moving and Related Expenses, Including Reestablishment Expenses, to Businesses, Farms, and Nonprofit Organizations. (1) An eligible owner of a discontinued or relocated business may choose to receive a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, which are set forth in Section 11 of this administrative regulation.

(a) The amount of the fixed payment shall equal the average annual net earnings for the business but not less than $1,000 and not more than $20,000.

(b) For an owner of a business to be entitled to this fixed payment, the Transportation Cabinet shall determine that the business meets all of the following:

1. It owns or rents personal property which has to be moved in connection with the displacement and for which an expense would be incurred in the move;

2. It vacates or relocates from the displacement site;

3. It cannot be relocated without a substantial loss of patronage (clientele or net earnings). A business is assumed to meet this test unless it is determined by the Transportation Cabinet that it will not suffer a substantial loss of its existing patronage;

4. It is not part of a commercial enterprise having more than three (3) other entities which are not being acquired, and which are under the same ownership and engaged in the same or similar business activities;

5. It is not operated at a displacement dwelling solely for the purpose of renting the dwelling to others;

6. It is not operated at the displacement site solely for the purpose of renting the site to others; and

7. It contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement.

(c) The displaced owner of a business shall furnish proof of net earnings through income tax returns.

(d) The payment amount of the fixed payment shall be determined by adding the annual net earnings before federal, state and local income taxes for the two (2) taxable years immediately preceding the taxable year in which the enterprise is relocated (or that two (2) year period deemed more representative by the Transportation Cabinet), and dividing that amount by two (2).

(e) In determining whether two (2) or more displaced legal entities constitute a single business which is entitled to only one (1) fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;

2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

3. The entities are held out to the public, to those customarily dealing with them, as one (1) business; and

4. The same person or closely related persons own, control, or manage the affairs of the entities.

(2) An eligible owner of a displaced farm operation may choose to receive a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, as set forth in Section 11 of this administrative regulation.

(a) The amount of the fixed payment shall equal the average annual net earnings for the farm operation, but not less than $1,000 and not more than $20,000.

(b) In the case of partial acquisition of land which was a farm operation prior to the acquisition, a fixed payment shall be made only if the Transportation Cabinet determines that:

1. The partial acquisition caused the operation to be displaced from the farm operation on the remaining land; or

2. The partial acquisition caused a substantial change in the nature of the farm operation.

(c) For an owner of a farm operation to be entitled to this fixed payment, the farm operation shall have contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement.

(d) The displaced owner of a farm operation shall furnish proof of net earnings through income tax returns.

(e) The amount of the fixed payment shall be determined by adding the annual net earnings before federal, state and local income taxes for the two (2) taxable years immediately preceding the taxable year in which the enterprise is relocated (or that two (2) year period deemed more representative by the Transportation Cabinet), and dividing that amount by two (2).

(3) An eligible displaced nonprofit organization may choose a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, as set forth in Section 11 of this administrative regulation.

(a) The fixed payment shall not be less than $1,000 nor more than $20,000.

(b) Any request for payment in excess of $1,000 shall be supported with financial statements for the two (2) twelve (12) month periods prior to the acquisition.

(c) The amount to be used in determining the fixed payment is the average of two (2) years annual gross revenues less administrative expenses.

(d) Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other fundraising activities.

(e) Administrative expenses include rent, utilities, salaries, advertising and fund raising expenses but shall not include operating expenses for carrying out the purpose of the nonprofit organization.

(f) A displaced nonprofit organization shall furnish proof of monetary receipts and expense amounts through certified financial statements or financial documents required by public agencies.

Section 16. [~~15.~~] Replacement Housing Payments - General. (1) It shall be the policy of the Transportation Cabinet to consistently apply the provisions of this administrative regulation relating to eligibility for replacement housing payments to housing situations not specifically provided for in this administrative regulation. Displaced persons may include individuals or families displaced from condominiums or cooperative apartments.

(2) The displaced individual or family shall not be required to relocate to the same occupancy (owner or tenant) status in order to receive the replacement housing payment, but has other options based on his ownership status and tenure of occupancy.

(3)(a) The Transportation Cabinet shall not participate in more than one (1) replacement housing payment for each dwelling unit, except in the case of multifamily occupancy of a single family dwelling as described in Section 18 [~~17~~] of this administrative regulation.

(b) The claim for payment shall be filed with the cabinet no more than eighteen (18) months after the date of displacement for tenants.

(c) For owners, the claim for payment shall be filed no more than eighteen (18) months after the date of:

1. Displacement; or

2. The final payment for the acquisition of real property, whichever is later.

(d) Before the payment is made to the displaced person, the

Transportation Cabinet shall determine that the replacement dwelling is decent, safe and sanitary.

(4)(a) If a displaced person qualifies for a replacement housing payment, but has not yet purchased or occupied a suitable replacement dwelling, provided he purchases and occupies the inspected dwelling within the one (1) year time limit, the Transportation Cabinet shall provide a written or oral certification that the displaced person is eligible for the payment of a specific amount

(b) The Transportation Cabinet shall release this certification only:

1. Upon the request of the displaced person who is purchasing the dwelling;

2. After inspecting the proposed dwelling; and

3. Upon finding that the dwelling is decent, safe and sanitary.

(c) The certification shall include the address of the property inspected and the amount of money the displaced person is required to spend for the replacement property in order to receive the full amount of his replacement housing payment.

(5)(a) Replacement housing payments may be made directly:

1. To the relocated individual or family; or

2. Upon written instructions from the displaced person:

a. Directly to the lessor for rent; or

b. Directly to the seller for use toward the purchase of a dwelling.

(b) This written instruction from the displaced person shall be submitted with the application for payment.

(c) The Transportation Cabinet shall make the replacement housing payment into an escrow account if:

1. The displaced person has made a specific request in the application; and

2. The applicant otherwise qualifies for a replacement housing payment.

(6)(a) The Transportation Cabinet shall determine the probable selling price of a comparable dwelling by analyzing at least three (3) comparable dwellings representative of the dwelling unit to be acquired which are available on the private market.

(b) Less than three (3) comparable dwellings may only be used for this determination when sufficient comparable dwellings are not available.

(c) Selection of comparable dwellings and computation of payment shall be made by a qualified Transportation Cabinet employee other than the appraiser or review appraiser on the parcel involved.

(d) The selected comparable dwellings shall be the most nearly comparable available and equal to or better than the subject property.

(7)(a) If the lapse of time between obtaining a listing of an available dwelling which is used to compute a replacement housing payment and the offer of the replacement housing payment amount to the displaced person exceeds thirty (30) days, the Transportation Cabinet shall determine that the property is still on the market.

(b) If a check of the market reveals the comparable dwelling relied upon is not available, a new comparable dwelling shall be selected and a new replacement housing payment computed.

(8) An adjustment shall be made to the asking price of the selected comparable dwelling only when the market reflects a difference of more than five (5) percent in the asking price and the sale price of comparable housing in the area. To determine whether an adjustment to the asking price is needed the Transportation Cabinet may contact realtors or use multiple listings books for recent sales.

(9)(a) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (for example, the site is significantly smaller or does not contain a swimming pool), the value of the attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(b) If an uneconomic remnant of land remains after the Transportation Cabinet acquired only a portion of a tract of property and the owner of the remaining property refuses to sell it to the Transportation Cabinet, the fair market value of the uneconomic remnant shall be deducted from the before value of the displacement dwelling for purposes of computing the replacement housing payment.

(10) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(11) A person who occupies a property for less than ninety (90) days before initiation of negotiations or who occupies the property subsequent to the initiation of negotiations but before the property is acquired is entitled to moving expenses and advisory services. Any replacement housing payment if applicable shall be made under the provisions of Section 30 [~~29~~] of this administrative regulation.

(12) A person shall not be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this administrative regulation for a reason beyond his control, such as:

(a) A disaster;

(b) An emergency; or

(c) An imminent threat to the public health or welfare as determined by:

1. The President;

2. The federal agency funding the project; or

3. The Transportation Cabinet; or

(d) A delay in the construction of the replacement dwelling;

(e) Military reserve duty; or

(f) A hospital stay.

(13)(a) A displaced tenant who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a purchase or down payment assistance payment if he meets the eligibility criteria for the payments, including purchase and occupancy within the prescribed one (1) year period.

(b) Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment.

(c) A displaced owner-occupant who originally rents a replacement dwelling and receives a rent supplement payment is eligible to receive a replacement housing payment, if he purchases and occupies a dwelling within the prescribed one (1) year.

(14)(a) A replacement housing payment is personal to the displaced person and upon his death, the undisbursed portion of any payment shall not be paid to the heirs or assigns, except that the amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(b) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy a decent, safe and sanitary replacement dwelling.

(c) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(15) In order to avoid duplicate compensation, the amount of any insurance proceeds received by a displaced person in connection with a loss to the displacement dwelling shall be included in the acquisition cost of the displacement dwelling when the Transportation Cabinet computes the replacement housing payment.

Section 17. [~~16.~~] Replacement Housing Payments - Partial Tract Acquisition. (1)(a) If the acquired dwelling is located on a tract typical in size for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling on a tract typical in size for the area, less the difference in the before and after values of the residential property.

(b) This difference represents the acquisition price and shall include any damages to the portion of the tract not acquired by the Transportation Cabinet.

(2) If the acquired dwelling is located on a tract larger in size than

typical for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the tract which is a typical size for computation of the maximum replacement housing payment. The maximum housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total tract.

(3)(a) If the acquired dwelling is located on a farm and if only a portion of the farm is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the farm which is a typical size tract for a residential property in the area for computation of the maximum replacement housing payment.

(b) The maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total farm.

(4) If an outbuilding is located on the tract to be acquired and if the outbuilding is used for nonresidential purposes such as corncribs or implement storage, its value shall not be included in the computation of the replacement housing payment.

(5) If the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the difference in the before and after value of the typical size homesite using the value indicated by the higher and better use, or if larger than typical, the difference in the value before and after a portion is carved out. This difference shall represent the acquisition price.

Section 18. [~~17.~~] Replacement Housing Payments - Multiple Occupancy of Same Dwelling Unit. (1)(a) If two (2) or more eligible families occupy the same single-family dwelling unit, and a comparable replacement dwelling is available, the occupants are entitled to only one (1) replacement housing or rent supplement payment.

(b) If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each family shall be based on housing which is comparable to the quarters privately occupied by each family plus community rooms which have been shared with other occupants.

(c) For owner-occupants the acquisition price to be used as the basis for replacement housing payment computations is that amount each owner received from the total payment for the property to be acquired.

(2)(a) If two (2) or more eligible individuals occupy the same single-family dwelling unit, they are considered one (1) family for replacement housing payment or rent supplement purposes.

(b) If all individuals do not relocate to decent, safe and sanitary housing, the Transportation Cabinet shall determine and pay those individuals who do relocate into decent, safe and sanitary housing a proportional share of the payment that would have been received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

(3) If a displaced individual or family occupies living quarters on the same premises as a displaced business, farm or nonprofit organization, the individual or family is a separate displaced person for purposes of determining entitlement to relocation payments. The Transportation Cabinet shall compute the replacement housing payment for joint residential and business use properties as follows:

(a) If the owner occupies living quarters in the building the replacement housing payment shall be determined by establishing the difference in the before and after value of the land using the appraised value (if acquiring the entire tract the cabinet shall use the total land value) adding the value of the living quarters portion of the building and then subtracting the total from the most comparable property to the living quarters available for sale on the market.

(b) If a tenant occupies living quarters in the building to be acquired, the replacement housing payment shall be determined by subtracting the base monthly rent of the displaced tenant in the acquired dwelling as determined in Section 24 [~~23~~](2) of this administrative regulation from the amount the displaced person actually pays per month for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities. That amount shall be multiplied by forty-two (42) to establish the replacement housing payment.

(c) A displaced person eligible for a rental replacement housing payment under Section 24 [~~23~~](1) of this administrative regulation may receive a down payment assistance payment not to exceed $5,250. In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(4) The procedure for computing replacement housing payment amounts to an owner of a multifamily dwelling who occupies one (1) unit is as follows:

(a) The comparable dwellings considered in the computation shall be the same as that acquired, that is, if the property is a triplex, then the comparable dwellings shall be triplexes. If comparable dwellings are not available, structures of the next lowest density shall be used. If there are not any available comparable multifamily structures to be found, the comparison of the owner's living unit shall be to a single-family residence. A higher density structure shall never be used as a comparable structure.

(b)1. The value of the owner's unit shall be used as the basis for the replacement housing payment determination, not the entire fair market value of the property being acquired. The replacement housing payment determination is that difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable available property.

2. If the comparable housing is a triplex:

a. The replacement housing payment is based on the value of only one (1) of the three (3) units;

b. A duplex, the payment is based on the value of only one (1) of the two (2) units;

c. A single-family dwelling, the payment is based on the entire value of the dwelling.

3. The other living units of a multifamily dwelling shall not be included in the value of a comparable unit because these are considered as income producing and not part of the owner's personal living area.

Section 19. [~~18.~~] Replacement Housing Payments - Owner-Occupants of 180 Days or More. (1) A displaced owner-occupant may receive replacement housing payments if the displaced person has actually owned and occupied the displacement dwelling for 180 days or more immediately prior to the initiation of negotiations and if he purchases and occupies a decent, safe and sanitary replacement dwelling within a one (1) year period, beginning on the later of the following dates:

(a) The date the person receives final payment from the Transportation Cabinet for the displacement dwelling; or

(b) In the case of condemnation, the date the full amount of the estimate of just compensation is deposited in court; or

(c) The date the person is advised by the Transportation Cabinet of the availability of comparable housing.

(2) The owner-occupant is eligible for a replacement housing payment when:

(a) He is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or part;

(b) He is in occupancy at the time he is given a written notice by

the Transportation Cabinet of intent to acquire the property by a given date;

(c) His occupancy of the property has been for at least 180 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier; and

(d) He purchased and occupied a decent, safe and sanitary dwelling within the time period specified in subsection (1) of this section;

(3) The combined total of the replacement housing payments for an owner-occupant of 180 days shall not exceed $22,500 for the additional costs necessary to purchase replacement housing; for compensation to the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; and to reimburse the owner for expenses incidental to the purchase of replacement housing which are incurred.

(4)(a) The amount of the replacement housing payment for the sole owner of a dwelling is the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling, whichever is less.

(b) When the displaced person obtains his decent, safe and sanitary replacement dwelling (not necessarily comparable to the dwelling from which he was displaced), his replacement housing payment shall be based on the amount spent for the replacement dwelling.

(c) If the replacement dwelling is not decent, safe and sanitary, he may be paid to correct the deficiencies if he maintains documented receipts.

(d) Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for decent, safe and sanitary replacement dwelling.

(5) If a single-family dwelling is owned by several persons, and occupied by only part of the owners, the replacement housing payment shall be the lesser of:

(a) The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or

(b) The difference between the total acquisition cost of the acquired dwelling and the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling.

(6) If the displaced owner-occupant of 180 days or more does not purchase and occupy a decent, safe and sanitary dwelling, he shall be entitled to receive a rent supplement payment if he rents and occupies a decent, safe and sanitary dwelling.

(7) It shall be the Transportation Cabinet's responsibility to make available a comparable replacement dwelling unit and to relocate the displaced person to his original ownership status if this is his desire. If the displaced owner-occupant desires to rent, the Transportation Cabinet shall make a reasonable effort to accomplish the request.

(8)(a) When an owner-occupant of 180 days or more retains and moves his dwelling to another location, the Transportation Cabinet shall determine if he is eligible for a replacement housing payment.

(b) If the dwelling meets the decent, safe and sanitary standards, improvements such as room additions or remodeling shall not be allowed in determining the amount of the replacement housing payment.

(c) If the dwelling retained and moved is not decent, safe and sanitary, the cost to improve it so that it complies with adequate standards shall be allowed if documented receipts are maintained.

(d) Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for a decent, safe and sanitary replacement dwelling.

(9) If an owner-occupant of 180 days or more has received a rental replacement housing payment and subsequently chooses to purchase a replacement dwelling, the amount of the rental replacement housing payment shall be deducted from the amount he would have been entitled to receive if he had purchased a replacement dwelling immediately. The combined payments shall not exceed $22,500.

(10) If the owner is allowed the option of retaining his dwelling, the replacement housing payment shall be computed in accordance with the appropriate paragraph below. The payments computed under paragraphs (a) through (c) of this subsection shall not exceed the amount the displaced person would have received if he had purchased a replacement dwelling.

(a) If the dwelling is decent, safe and sanitary, the payment, if any, shall be the amount by which the cost to relocate the retained dwelling exceeds the acquisition price of the dwelling and homesite. The cost to relocate may include the reasonable costs of acquiring a new site and other expenses incidental to retaining and moving the dwelling, and restoring it to a condition comparable to that before the move. Payment shall not exceed $22,500;

(b) If the owner chooses to move his dwelling to a part of the tract not acquired by the Transportation Cabinet, the current fair market value for purchase of a residential site, not to exceed a typical size homesite, may be included as a cost to relocate the dwelling; or

(c) If the retained dwelling is not decent, safe and sanitary, the payment shall be computed as shown above, except the costs to correct deficiencies shall be included in the costs to relocate.

(11)(a) An owner-occupant of 180 days or more eligible for a purchase replacement housing payment who elects to rent a replacement dwelling is eligible for a rental replacement housing payment which shall not exceed $5,250 unless the conditions of subsection (12) of this section exist.

(b) To compute the eligible payment, from the amount the displaced person actually pays for a rental replacement dwelling, including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the fair market rent including monthly utilities of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(12) The rental payment authorized by subsection (11) of this section may only exceed $5,250 if the payment to purchase for an owner-occupant of 180 days could have been authorized as a last resort housing payment under Section 30 [~~29~~] of this administrative regulation and therefore, could have exceeded $22,500.

Section 20. [~~19.~~] Replacement Housing Payments - Owner-Occupants of Less Than 180 Days. (1)(a) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days and who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed $5,250.

(b) To compute the rental payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the monthly fair market rent of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(2) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days, may elect to receive an amount to enable him to make a down payment on the purchase of a replacement dwelling including the actual expenses incidental to the purchase, not to exceed $5,250, or for additional costs to relocate his retained dwelling in accordance with the following:

(a) The full amount of the payment shall be applied toward the purchase of the replacement dwelling and related incidental expenses and the displaced person shall purchase and occupy the dwelling within the time frame specified in Section 24 [~~23~~](1) of this administrative regulation;

(b) The displaced person may be eligible for the entire $5,250 for a down payment including incidental expenses, when the amount of the rental replacement housing computation is less than $5,250 or is zero, except either payment shall not exceed the amount the displaced person would receive if he were an owner-occupant of 180 days or more.

(3)(a) If an owner-occupant of less than 180 days retains his dwelling, then the replacement housing payment, if any, shall be determined in accordance with the provisions of Section 19 [~~18~~] (10) of this administrative regulation, but the payment shall not exceed $5,250.

(b) If an owner-occupant of less than 180 days has received a rental replacement housing payment, the amount of the rental payment shall be deducted from the amount to which he is entitled.

(c) The combined payments shall not exceed $5,250.

Section 21. [~~20.~~] Revisions to Replacement Housing Payment. (1) If the comparable housing used in the Transportation Cabinet's computation is not available at the time of the relocation offer, a new replacement housing payment shall be computed cased on available housing which is equal to or better than the dwelling acquired and meets the other comparable criteria. However, the new replacement housing payment amount shall not be less than the original computed amount.

(2) When an adjustment is made in the fair market value offer to the owner-occupant because of an administrative settlement, an appeal from the commissioners' award, jury award or similar reason the replacement housing payment shall be recomputed based on the new acquisition price.

Section 22. [~~21.~~] Replacement Housing Payments - Increased Interest Payments. Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling.

(1)(a) The increased interest payment shall be allowed only when the dwelling acquired by the Transportation Cabinet was encumbered by a mortgage which was made in good faith without fraud or deceit and which was a valid lien on the dwelling for not less than 180 days prior to initiation of negotiations for the acquisition of the real property, in whole or in part, or at the time a written notice is given of the Transportation Cabinet's intent to acquire the property and the displaced person obtains a mortgage on his replacement dwelling at a higher interest rate than the mortgage rate on the dwelling acquired by the Transportation Cabinet.

(b) All mortgages on the dwelling acquired by the Transportation Cabinet shall be considered in computing the increased interest cost portion of the replacement housing payment.

(c) In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) In determining the amount of the increased interest payment, the computation shall be based on the monthly payment of the old mortgage, the remaining term of the old mortgage or term of new mortgage, whichever is shorter, and the old and new interest rates. Most increased interest payments shall also be based on the unpaid mortgage balance on the displacement dwelling. However, if the new mortgage amount is less, the payment shall be reduced accordingly.

(3) Documentation of the terms, amount and interest rate for the existing and new mortgages shall be submitted on a form prescribed and furnished by the Transportation Cabinet. This form shall be completed for the existing and new mortgages and signed by a representative of the lending agency. When a loan is included in a land contract, a copy of the contract may be used for documentation.

(4) Payment for purchaser's points, loan origination fees or assumption fees but not seller's points, shall be paid to the extent that:

(a) They are not paid as incidental expenses;

(b) They do not exceed rates normal to real estate transactions in the area; and

(c) They are determined to be necessary; and

(d) The points and fees are based on the unpaid mortgage balance on the displacement dwelling, less the amount of the mortgage payment computed in this section.

(5) To document these charges in subsection (4) of this section, the Transportation Cabinet shall be provided a copy of the lending agency's closing statement.

(6) The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual interest rate but shall not exceed the prevailing fixed interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(7) Increased interest payments normally shall be made directly to the displaced person. However, upon written request from the displaced person the payment may be made directly to the mortgagee of the replacement dwelling or may be paid into escrow prior to the displaced person's moving.

(8)(a) If the dwelling acquired is located on a tract normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the mortgage balance shall be reduced by the percentage ratio the acquisition price bears to the before value of the total tract. The reduction shall not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

(b) If a dwelling is located on a tract larger than normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(9) The interest payment on multiuse properties shall be reduced to the percentage ratio the residential value of the multiuse property bears to the before value.

(10)(a) If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as shown in subsection (8) [~~(7)~~](b) of this section.

(b) If the mortgage interest rate is obviously based on the higher use, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value of the parcel.

Section 23. [~~22.~~] Replacement Housing Payments- Incidental Relocation Expenses. The incidental expenses which may be paid are those necessary and reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling and customarily paid by the buyer.

(1) The type of incidental expenses eligible for payment shall include:

(a) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats and recording fees;

(b) Lender, Federal Housing Administration, or Veteran's Administration application and apprising fees;

(c) Loan origination or assumption fees that do not represent prepaid interest;

(d) Certification of structural soundness and termite inspection when required;

(e) Credit report;

(f) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for preparation of title insurance of a comparable replacement dwelling;

(g) Escrow agent's fee;

(h) State revenue or documentary stamps, sales on transfer taxes (not to exceed the costs for a comparable replacement dwelling); and

(i) Other costs as determined by the Transportation Cabinet to be incidental to the purchase.

(2)(a) An owner-occupant of 180 days or more who has a mortgage on the dwelling acquired and who places a mortgage on his replacement dwelling shall be reimbursed for the necessary and reasonable incidental expenses incurred when obtaining a mortgage on his replacement dwelling.

(b) An owner-occupant of 180 days or more who has no mortgage on the acquired dwelling, but who places a mortgage on his replacement dwelling shall not be reimbursed for the incidental expenses of obtaining his loan.

(c) An owner-occupant of less than 180 days, or a tenant-occupant of more than ninety (90) days who chooses to purchase a replacement dwelling may be reimbursed for eligible incidental expenses if they are included in the down payment. However, the total of the down payment and incidental expenses is limited to a maximum of $5,250.

Section 24. [~~23.~~] Replacement Housing Payments - Rental Payments. (1) A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, if the displaced person:

(a) Actually and lawfully occupied the displacement dwelling for at least ninety (90) days immediately prior to the initiation of negotiations; and

(b) Has rented or purchased and occupied a decent, safe and sanitary replacement dwelling within one (1) year after the date he moves from the displacement dwelling if he is a tenant; or

(c) In the case of an owner-occupant, has rented or purchased and occupied decent, safe and sanitary dwelling within one (1) year of the later of the date he received final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or the date he moved from the displacement dwelling.

(2) The base monthly rental for the displacement dwelling shall be the least of the three (3) computations below:

(a) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement using either actual or fair market rent. For a tenant who paid little or no rent for the displacement dwelling, fair market rent shall be used unless it would result in a hardship due to his personal income or other circumstances; or

(b) Thirty (30) percent of the person's average monthly gross household income. If a person refuses to provide evidence of income or is a dependent, the base monthly rent shall be the average monthly cost for rent or utilities. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

(c) The total of the amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amount for shelter and utilities. The base monthly rental shall include any rent supplement supplied by others unless the supplement is to be discontinued upon vacation of the property.

(3)(a) To compute the rental assistance payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the base monthly rent of the acquired dwelling as determined in subsection (2) of this section.

(b) Then the cabinet shall multiply that amount by forty-two (42) to determine the actual payment.

(c) For owner-occupants the cabinet shall use the actual or fair market rent instead of the base monthly rent when computing the payment amount.

(d) In determining the amount necessary to rent a comparable dwelling the Transportation Cabinet shall examine, if available, three (3) comparable rental properties.

(e) Only when the local housing market does not contain three (3) comparable rental properties may the Transportation Cabinet determine the payment based on less than three (3).

(4) The disbursement of rental replacement housing payments may be in a lump sum payment, or in installments. The full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

Section 25. [~~24.~~] Replacement Housing Payments - Down Payment Assistance. (1) Down payment assistance may be given to a tenant-occupant of ninety (90) days or more who purchases a replacement dwelling.

(2)(a) A displaced person eligible for rental replacement housing payment under Section 24 [~~23~~] of this administrative regulation may receive a down payment assistance payment not to exceed $5,250.

(b) In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(c) If the rental assistance payment computed under Section 24 [~~23~~] of this administrative regulation would be zero dollars, the displaced person is entitled to receive the $5,250 for a down payment.

(3) A displaced person eligible to receive a replacement housing payment as a 180 or more day owner-occupant is not eligible for this payment.

Section 26. [~~25.~~] Replacement Housing Payment - Sleeping Room Tenant. A displaced person who has occupied a sleeping room for ninety (90) days or more and who is eligible to receive a replacement housing payment, may receive an amount not to exceed $5,250 as a rent supplement, or to enable him to make a down payment on a replacement dwelling. The provisions of Sections [~~23 or~~] 24 or 25 of this administrative regulation shall be followed.

Section 27. [~~26.~~] Mobile Homes - General. (1) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall be applicable to owners or tenants of mobile homes.

(2) If it is determined that a sufficient portion of a mobile home park is taken that the remainder is not sufficient to continue the operation, and a mobile home in the remaining part of the park is required to be moved as a result of the project, the owner and any tenant shall each be considered a displaced person. A mobile home may be considered a replacement dwelling provided it is substantially a decent, safe and sanitary dwelling.

(3) The ownership or tenancy of the mobile home (not the land on which it is located) shall determine the occupant's status as an owner or a tenant. The length of ownership and occupancy of the mobile home or the mobile home site shall determine the occupant's status as a 180 day or ninety (90) day owner or tenant. The mobile home shall have been occupied on the same site (or in the same mobile home park) for the requisite 180 days or ninety (90) days to make the occupant eligible for a replacement housing payment or rent supplement.

(4) A nonoccupant-owner of a mobile home is eligible for an actual cost moving expense payment.

(5) If the person is displaced from a mobile home park, a nonreturnable mobile home park entrance fee is reimbursable provided it does not exceed the fee at a comparable park or if the Transportation Cabinet determines that it is necessary to pay the fee to effect relocation.

(6) There is no limit to the distance of the move of the displaced person. However, a relocation assistance moving expense payment shall be computed on a move of a distance of no more than fifty (50)

miles, except when it is determined that the relocation cannot be accomplished within a fifty (50) mile radius. Beyond the fifty (50) mile radius, approval for a distance payment shall be limited to the nearest available mobile home site.

(7)(a) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a comparable conventional dwelling.

(b) If it is determined that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the cost of a comparable replacement dwelling shall be assumed to be:

1. The sum of the value of the mobile home;

2. The cost of any necessary repairs or modifications; and

3. The estimated cost of moving the mobile home to a replacement site.

(c) If a mobile home is not actually acquired, but the occupant is considered displaced under this administrative regulation, the initiation of negotiations shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he is a displaced person for the purpose of these procedures.

(d) If the owner is reimbursed for the cost of moving the mobile home under this administrative regulation, he is not eligible for a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(8) There may be other combinations of ownership of occupancy relating to mobile homes not covered in these procedures. In these cases, the Transportation Cabinet shall make every effort to treat the displaced person in a manner consistent with the other provisions of this section.

Section 28. [~~27.~~] Mobile Home Moving Expense Payments. (1)(a) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall also be applicable to owners and tenants of mobile homes.

(b) Displaced individuals or families occupying a mobile home may receive payment for the actual, reasonable expense of moving their personal property.

(c) If an owner-occupied mobile home is considered personal property, the cost of moving the mobile home is reimbursable.

(d) If the owner chooses to move the mobile home, it shall be moved by a commercial mobile home carrier licensed by the Department of Vehicle Regulation.

(e) The owner may choose the mover, and receive reimbursement for the actual, reasonable expenses. Request for payment of moving expenses shall be supported by receipted bills.

(f) Prior to authorizing a move of a mobile home, the Transportation Cabinet shall determine:

1. The items of personal property to be moved, including the mobile home and any items stored in accessory buildings; and

2. Determine that the mobile home mover is a licensed commercial mobile home carrier and obtain from him an estimate of the moving costs.

a. This estimate shall include any necessary utility service connections.

b. If this estimate is not reasonable, the cabinet may approach another mobile home mover or renegotiate the price.

(2) If the mobile home is not acquired, but the mobile home owner-occupant obtains a replacement housing payment under one (1) of the circumstances described in Section 29 [~~28~~](2)(c) of this administrative regulation, the owner shall not be eligible for payment for moving the mobile home, but may be eligible for payment for moving personal property from the mobile home.

(3) However, the following expenses shall be eligible for an actual cost moving expense payment:

(a) The reasonable cost of disassembling, moving, and reassembling any attached appurtenance, such as a porch, deck, skirting, or awning; anchoring of the unit; and utility hookup charges; and

(b) The reasonable cost of repairs or modifications if a mobile home requires repairs or modifications so that it can be moved or made decent, safe and sanitary, and it is determined that it would be economically feasible to incur the additional expense.

(3) Arrangements may be made between the Transportation Cabinet, the displaced person, and the mover so that the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover.

(4) An application for moving expense payments may be submitted in advance of the move so that payment is made available immediately upon completion of the move. In some unusual circumstances, and with prior approval of the Transportation Cabinet, moving expense payments may be made prior to the actual move.

(5) If a mobile home is considered real property, acquired by the Transportation Cabinet and included in the appraised value of the site, and if the owner repurchases the mobile home from the Transportation Cabinet, the cost of moving the mobile home shall not be eligible for moving expense payments.

(6) If the landowner occupies the mobile home and the mobile home is acquired by the Transportation Cabinet or if a tenant-occupant of a mobile home is displaced, the displaced person shall move his personal property from his mobile home by one (1) of the following methods:

(a) The displaced person may elect to move his personal belongings by the use of a commercial mover as prescribed in Section 10(4) of this administrative regulation.

(b) The displaced person may elect to move his personal property from the mobile home according to the fixed-rate schedule set out in Section 10(5) of this administrative regulation. The room count of furniture shall be based on the actual number of furnished rooms. A small detached shed or building used to store such things as lawn mowers, lawn chairs, hoses, etc., shall be considered as an additional room, if the shed or building contains sufficient personality as to constitute a room.

Section 29. [~~28.~~] Mobile Home Replacement Housing and Rent Supplement Payments. (1) The replacement housing or rent supplement payment for a mobile home shall be computed in two (2) parts:

(a) The replacement housing or rent supplement payment for the mobile home shall be computed in accordance with the procedures set forth in Sections 16 and 19 through 26 [~~15 and 18 through 25~~] of this administrative regulation.

(b) The replacement housing or rent supplement payment for the mobile home site shall be computed based on comparable sites, but the total payment shall be limited to the maximums established in this administrative regulation according to the displaced person's ownership or tenancy of the land.

(c) The sum of these two (2) parts shall not [~~cannot~~] exceed the $5,250 or $22,500 limit set for rent supplement or replacement housing payments. The total of these two (2) parts shall not [~~cannot~~] exceed $22,500.

(2) A mobile home owner-occupant who has owned and occupied the mobile home for 180 days or more shall be eligible for a replacement housing payment not to exceed $22,500 provided:

(a) The displaced person owns the displacement mobile home and occupied it on the displacement site at least 180 days immediately prior to the initiation of negotiations;

(b) The displaced person meets the other basic eligibility requirements in Section 19 [~~18~~] of this administrative regulation; and

(c) The Transportation Cabinet acquired the mobile home as real property, or the mobile home is not acquired by the Transportation Cabinet but the owner is displaced because it is determined that the mobile home:

1. Is not and cannot economically be made decent, safe and sanitary; or

2. Cannot be relocated without substantial damage or unreason-

able cost; or

3. Cannot be moved because there is no available comparable replacement site; or

4. Cannot be relocated because it does not meet mobile home park entrance requirements.

(d) If the mobile home is not actually acquired, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount, shall include the salvage value or trade-in value of the mobile home, whichever is higher.

(3) A displaced owner-occupant of 180 days or more of a mobile home and site who meets the provisions of subsection (2) of this section:

(a) Shall be eligible for replacement housing payments for the following specific items:

1. The additional costs necessary to purchase replacement housing in accordance with Section 19 [~~18~~] of this administrative regulation;

2. The amount necessary to compensate him for the loss of favorable financing on his existing mortgage in the financing of replacement housing under the provisions of Section 22 [~~21~~] of this administrative regulation; and

3. An amount to reimburse the owner for incidental expenses incurred in the purchase of replacement housing in accordance with Section 23 [~~22~~] of this administrative regulation.

(b) Who is eligible for a replacement housing payment and who elects to rent is eligible for a rental replacement housing payment, not to exceed $5,250.

(4) If the Transportation Cabinet acquires both the mobile home and site from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases replacement housing the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home and site equals the lesser of the amount the owner is required to pay for a decent, safe and sanitary replacement mobile home and site, or if a mobile home and site are not available, the cost of a conventional dwelling, and the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home and site or conventional dwelling in accordance with the provisions of Section 19 [~~18~~] of this administrative regulation.

(b) If the owner elects to rent, the Transportation Cabinet shall compute the rental replacement housing payment by subtracting the fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental replacement dwelling, including estimated average monthly utilities, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and mobile home site or conventional dwelling, including the estimated average monthly utilities multiplied by forty-two (42).

(5) If the Transportation Cabinet from the owner-occupant of 180 days or more described in subsection (2) of this section acquires the site, but not the mobile home situated upon the site, and the mobile home is required to be moved, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement site, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home site equals the lesser of the amount the owner is required to pay for a comparable site, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home site;

(b) If the owner elects to rent a replacement site, the rental replacement housing payment shall be computed by subtracting the fair market rent including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To compute the actual payment the cabinet shall multiply that amount by forty-two (42).

(6) If an owner-occupied mobile home situated on a rental site is acquired from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement mobile home, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired the mobile home equals the lesser of the actual amount the owner is required to pay for a replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home, plus a site rental payment computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To determine the actual payment the Transportation Cabinet shall multiply that amount by forty-two (42). The owner of the mobile home may choose to purchase a comparable mobile home site as an alternative to renting a site. If so, to receive the replacement housing payment, the full amount of the payment shall be applied toward the purchase price of the replacement lot and related incidental expenses. Also, the displaced person shall purchase the lot and place his mobile home on the replacement lot. This payment shall be limited to $5,250.

(b) If the owner elects to rent a replacement mobile home, the rent supplement payment shall be computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person pays for a rental mobile home and site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site including the estimated average monthly utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42) to compute the actual payment.

(7) If the Transportation Cabinet acquires the site where the owner-occupant of 180 days of a mobile home described in subsection (2) of this section rents the site but the cabinet does not acquire the mobile home, the replacement housing payment shall be determined as follows:

(a) If the owner of the mobile home elects to purchase a replacement site, the replacement housing payment shall be a down payment assistance payment not to exceed $5,250 if the owner of the mobile home purchases and occupies the replacement site within one (1) year. The full amount of the payment shall be applied to the purchase of a replacement mobile home site and related expenses.

(b) If the owner of the mobile home elects to rent a replacement site, the rental replacement housing payment shall be determined by subtracting the actual or fair market rent including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental mobile home site including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable mobile home site including utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42).

(8)(a) A displaced owner-occupant of a mobile home who has occupied for less than 180 days the mobile home on the site from which he is being displaced, and who is otherwise eligible under the provisions of Section 19 [~~18~~] of this administrative regulation is eligible for a replacement housing payment not to exceed $5,250.

(b) The replacement housing payment may enable him to make a down payment on the purchase of replacement housing in accordance with the provisions of paragraph (a) of this subsection and reimburse him for the actual expenses incidental to the purchase.

(c) If he elects to rent, a rental replacement housing payment shall be determined as provided in paragraph (b) of this subsection. The payment is to be computed and disbursed in accordance with the provisions of Section 24 [23] of this administrative regulation.

(d) When the cabinet is acquiring both the mobile home and site from the owner-occupant, the displaced person eligible for a rental replacement housing payment may receive a down payment assistance payment not to exceed $5,250 only if the full amount of the payment is applied to the purchase price of the replacement dwelling and related incidental expenses. The amount for which he is eligible shall be limited to the amount he would receive if he were an owner-occupant of 180 days or more.

(e) If the Transportation Cabinet acquires the mobile home and site from the less than 180 days owner-occupant, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the mobile home and site including utilities as determined in by the cabinet from the amount the owner actually pays for a rental mobile home and site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site, including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall multiply this amount by forty-two (42).

(9) If the Transportation Cabinet acquires the site but not the mobile home from the owner-occupant described in subsection (2) of this section except that he had occupied the mobile home for less than 180 days, the replacement housing payment shall be determined as follows:

(a) If the owner purchases conventional replacement housing or purchases a site to which the mobile home is moved, the replacement housing payment shall be determined as in subsection 8(a) of this section.

(b) If the owner elects to rent replacement housing, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the acquired site, including utilities as determined by the cabinet from the amount the displaced person actually pays for a rental replacement mobile home site, including the estimated average monthly utilities, or if less, the amount determined by the Transportation Cabinet as necessary to rent comparable mobile home site including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall then multiply this amount by forty-two (42).

(10) A displaced tenant of a mobile home who has occupied for at least ninety (90) days the mobile home on the site from which he has been displaced and who is otherwise eligible under the provisions of Section 24 [23](1) of this administrative regulation, is eligible for a replacement housing payment, not to exceed $5,250. The rental replacement housing payment shall be determined in accordance with the provisions of Section 24 [23] of this administrative regulation. If the displaced person elects to purchase a replacement dwelling, he shall receive a payment in accordance with Section 25 [24] of this administrative regulation.

Section 30. [29.] Last Resort Housing. The last resort housing procedures of this section shall be implemented when it is determined that a Transportation Cabinet project cannot proceed to actual construction because comparable replacement sale or rental housing, within the monetary limits is not available and the housing cannot otherwise be made available. A person cannot be required to move from his dwelling unless at least one (1) comparable replacement dwelling is made available to the person.

(1) If comparable decent, safe and sanitary housing is not available, any decision to provide last resort housing assistance shall be justified either:

(a) On a case-by-case basis, during which consideration has been given to:

1. Availability of comparable housing in the area of the project;

2. Resources available to provide comparable housing; and

3. Individual circumstances of the displaced person; or

(b) It is determined that:

1. There is little, if any, comparable replacement housing available to a displaced person within an entire project area. Therefore, a case-by-case justification for last resort housing assistance is not necessary;

2. A project cannot be advanced to completion in a timely manner without last resort housing assistance; and

3. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project costs.

(2) **A [No]** displaced person shall **not** be deprived of any rights the person may have under KRS 56.610 to 56.760. **A [No]** displaced person shall **not** be required, without the person's written consent, to accept a dwelling provided by the Transportation Cabinet under the procedures described in subsection (3) of this section in lieu of any acquisition payment or any relocation payment for which the person may be eligible;

(3) The methods of providing last resort housing include, but are not limited to:

(a) A replacement housing payment in excess of the limits set forth in Sections 19 and 24 [18 and 23] of this administrative regulation. Rental assistance subsidy in last resort housing may be provided in installments or in a lump sum as determined by the Transportation Cabinet;

(b) Rehabilitation of or addition to an existing replacement dwelling;

(c) Construction of a new replacement dwelling;

(d) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may or may not be secured by the real property. The loan may or may not be interest free;

(e) The relocation and, if necessary, rehabilitation of a dwelling;

(f) The purchase of land or a replacement dwelling by the Transportation Cabinet and subsequent sale or lease to or exchange with a displaced person;

(g) Removal of barriers to the handicapped; and

(h) The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

(4) Under special circumstances, modified methods of providing housing of last resort permit consideration of:

(a) Replacement housing based on space and physical characteristics different from those in the displacement dwelling;

(b) Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate the individuals or families displaced from marginal or substandard housing with probable functional obsolescence; or

(c) For the displaced person who is ineligible for a rent supplement or a replacement housing payment (for example, a tenant of less than ninety (90) days or a person who occupies the property subsequent to the initiation of negotiation) when comparable rental replacement housing is not available at rental rates within the person's financial means. The housing provided shall be comparable housing. To determine if a tenant in this category is entitled to a replacement housing payment, the Transportation Cabinet shall subtract thirty (30) percent of the person's gross monthly household income from the cost of a comparable replacement dwelling and multiply the difference by forty-two (42). There shall **not** be **a [no]** prohibition against making direct payments to a displaced person under last resort housing. Each case shall be reviewed to determine if it is the best interest of the person or family. The payment may be made to a third party or in installments.

Section 31. [30.] Appeals. (1) A person may file a written appeal

and request for hearing with the Transportation Cabinet in any case in which the person believes that the cabinet has failed to properly determine:

(a) His eligibility; or

(b) The amount of the payment required under the provisions of this administrative regulation.

(2) The Transportation Cabinet shall consider a written appeal regardless of form.

(3) The appeal shall be filed within sixty (60) days of the date of his written notice from the Transportation Cabinet of the cabinet's determination on the person's claim.

(4) A person may be represented by legal counsel or other representative in connection with his appeal, but solely at his own expense.

(5)(a) The Secretary of the Transportation Cabinet shall appoint a hearing officer for the purpose of conducting the hearing and making a recommendation to the secretary with reference to the appeal.

(b) Technical rules of evidence shall not apply;

(c) The hearing officer shall be authorized to issue rulings regarding the competency, relevancy and materiality of the evidence to be presented at the hearing;

(d) A record of all evidence introduced at the hearing shall be made by the Transportation Cabinet.

(6)(a) The hearing officer shall make findings of facts, conclusions of law and a recommended decision on the disposition of the appeal.

(b) A copy of this shall be made available to all parties concerned, including the person requesting the hearing and the attorney representing the Transportation Cabinet in this appeal procedure.

(c) They shall have twenty (20) days in which to comment on or object to the hearing officer's recommended decision. These comments or objections shall be presented in writing.

(7) The Transportation Secretary or his representative, who shall not have been directly involved in the action appealed, shall consider:

(a) The hearing officer's recommended decision; and

(b) any written comments received from the involved parties in making his final ruling.

(8) If the full relief requested in the appeal is not granted, the Transportation Cabinet shall advise the person of his right to seek judicial review.

J. M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: January 13, 1995
FILED WITH LRC: February 7, 1995 at 2 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(As Amended)

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, **TC 96-182 effective in July 1994, is incorporated by reference as part of this administrative regulation and** 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 **TC96-182** 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 **TC 96-182** 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 **the** procedures **required for** [~~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. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

Section 10. [~~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

CABINET FOR WORKPLACE DEVELOPMENT
Department of Vocational Rehabilitation
(As Amended)

781 KAR 1:010. Department of Vocational Rehabilitation appeal procedures.

RELATES TO: KRS 151B.190, 34 CFR Part 361, 29 USC 722
STATUTORY AUTHORITY: KRS 151B.185, 151B.195
NECESSITY AND FUNCTION: 29 USC 722(d) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation [~~and independent living~~] services; KRS 151B.200 accepts and agrees to comply with federal vocational rehabilitation Acts; and KRS 151B.195 sets forth rulemaking authority with respect to the state vocational rehabilitation agency. This administrative regulation establishes the necessary appeals procedures.

Section 1. Definitions. (1) [~~"Eligible individual" or "client" means an applicant for vocational rehabilitation services who the department determines is an individual with a disability who requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.~~] [~~individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361, which is adopted without change.~~]
[~~(2)~~] "Applicant" means an individual who submits an application for vocational rehabilitation services [~~has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of~~

~~referral~~].

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

(3) [~~(4)~~] "Commissioner" means the Commissioner of the Department of Vocational Rehabilitation.

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

(5) "Impartial hearing officer" means an individual **who**:

(a) [~~Who~~] Is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education;

(b) [~~Who~~] Is not a member of the Vocational Rehabilitation Advisory Council;

(c) [~~Who~~] Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;

(d) [~~Who~~] Has knowledge of the delivery of vocational rehabilitation services, the federal and state laws and administrative regulations governing the provision of vocational rehabilitation services;

(e) [~~Who~~] Has training with respect to the performance of official duties; and

(f) [~~Who~~] Has no personal or financial interest that would be in conflict with the objectivity of the individual.

Section 2. Right of Appeal and Information. (1) An applicant or eligible individual [~~client~~] who is dissatisfied with any action concerning the furnishing or denial of vocational rehabilitation services shall have the right to appeal that action. All applicants or eligible individuals [~~clients~~] shall be informed of entitlements available under this administrative regulation, including the names and addresses of department [~~such~~] individuals with whom an appeal shall be filed. The request for appeal shall be made in writing**, by telephone or on tape.** [~~or alternative format.~~]

(2) **Pending a final determination of a hearing or other final resolution, the department shall not suspend, reduce, or terminate services provided under the individualized written rehabilitation program unless the:**

(a) Services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the applicant or client; or

(b) Applicant or client, or an authorized representative, requests such action. [~~Unless the applicant or eligible individual, or an authorized representative of the individual, so requests, pending a final determination of a requested hearing or other final resolution, the department shall not institute a suspension, reduction, or termination of services being provided under the individualized written rehabilitation program unless the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the eligible individual or applicant.~~]

Section 3. Client Assistance Program. The department [~~of Vocational Rehabilitation~~] shall advise all applicants and eligible individuals [~~clients~~] of the existence of the Client Assistance Program, the services provided by the program, and how to contact the program representatives.

Section 4. [~~Notification of Appeal Rights Regarding Eligibility. The Department of Vocational Rehabilitation shall provide each applicant or client with written notification of any agency decision concerning eligibility or ineligibility for services pursuant to federal guidelines.~~

~~Section 5. Notification of Appeal Rights Regarding an Individualized Written Rehabilitation Program. Each client with an Individualized Written Rehabilitation Program (IWRP), shall receive notification of the means for appealing any IWRP decisions through an administrative review or impartial hearing.~~

~~Section 6.~~] Choice of Appeal Procedures and Time Frames. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence, of agency action or inaction, an applicant or **eligible individual** [~~client~~] may appeal.

(2) [~~The request for review or hearing shall be made in writing.~~

~~(3)~~] Applicants or eligible individuals [~~clients~~] may choose either [~~initially request~~] an administrative review conducted by an agency staff member not involved in the agency action, or a more formal hearing conducted by [~~before~~] an impartial hearing officer [~~as a means to resolve issues of dissatisfaction~~].

(3) If an administrative review is chosen and the applicant or eligible individual is dissatisfied with the resolution, a hearing may be requested within thirty (30) days after the receipt of the administrative review decision. The hearing shall be held within forty-five (45) days of receipt of the hearing request. Reasonable time extensions may be made for good cause by the commissioner or hearing officer.

[~~(4) The administrative review or expedited administrative review shall not delay an impartial hearing and its time frames, unless both the agency and the applicant or client agree to the delay.~~

~~(5) When both parties have agreed to delay time frames established by federal regulation, the applicant or client, if still dissatisfied, may request an impartial hearing no later than forty-five (45) days after receiving written notice of the administrative review decision or the expedited administrative review decision.~~

~~(6) An applicant or client who is dissatisfied with any determination made by agency staff concerning the furnishing or denial of services may request a review of that determination before an impartial hearing officer by writing the Commissioner, Department of Vocational Rehabilitation.~~]

Section 5. [~~7.~~] Procedures for an Administrative Review. The following procedures shall be followed in an administrative review:

(1) The regional administrator shall designate a branch manager from a district not involved in the action in question to conduct the administrative review. The director of Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) shall designate **a** [~~the~~] review officer who has not been involved in the action or inaction **of the center that is** being appealed for review [~~involving CDPCRC~~].

(2) The administrative review shall be held within fifteen (15) working days of receipt of the request.

(3) When practicable, the review shall be at a time and place convenient to the applicant or eligible individual [~~client~~] requesting the review, and the individual shall be notified in writing as to the time and place of the review and the right to be represented at the review by counsel or a designated advocate.

(4)**(a) A written report of the findings and grounds for the decision shall be sent to the applicant or eligible individual within ten (10) working days of the day on which the review was completed.**

(b) The written report shall state that:

1. The department shall be bound by the decision;

2. If the applicant or eligible individual is dissatisfied with the decision, a formal hearing may be requested within thirty (30) days after the receipt of administrative review decision;

3. The request for a formal hearing shall be made by contacting the Director of Program Services of the department;

4. The name and address of the Director of Program Services;

5. The formal hearing shall be held within forty-five (45) days of receipt of the hearing request;

6. Reasonable time extensions may be made for good cause by the commissioner or hearing officer;

7. Additional evidence, information, and witnesses may be presented by the applicant or eligible individual or, if appropriate, by the parent, guardian, or other representative;

8. The applicant or eligible individual may be represented by counsel or other appropriate advocate;

9. The applicant or client may examine all witnesses and other relevant sources of information and evidence. [~~A report of the findings of the review shall be sent to the applicant or eligible [involved] individual within ten (10) [fifteen (15)] working days from the completion date of the review.~~]

Section 6. Procedures for Impartial Hearings. (1) The hearing officer shall be selected by the **applicant or eligible** individual with a disability from the pool of approved and trained hearing officers maintained by the department.

(2) The department shall send a list of hearing officers to the applicant or eligible individual within five (5) working days from receipt of the hearing request.

(3) The applicant or eligible individual shall notify the department of the selected hearing officer within five (5) working days of receipt of the list.

(4) The notification from the applicant or eligible individual shall include an issue statement for the hearing and shall identify any accommodations required for the hearing (e.g., accessible formats for print materials or a sign language interpreter).

(5) The designated hearing officer may be disqualified by the department representative for a reasonable cause such as, personal knowledge or involvement with the case or the **applicant or eligible** individual or a financial interest which would compromise the objectivity of the decision.

(6) If the commissioner determines that reasonable cause supports disqualification, the **applicant or eligible** individual shall be contacted to select another hearing officer.

(7) **If** [~~At the time~~] the selected hearing officer agrees to conduct the hearing, the hearing officer **shall be** [~~becomes~~] responsible for communication with each party concerning the hearing. **If** [~~At any time~~] the **applicant or eligible** individual obtains legal counsel, communication with counsel **shall constitute** [~~constitutes~~] notice to the individual.

(8)**(a) The hearing officer shall send written notification of the scheduled hearing to the applicant or eligible individual and the department representative.**

(b) The notification shall include:

1. The names, official titles, mailing addresses, and phone numbers of all parties to the hearing, including the department representative and counsel for the applicant or eligible individual, if any;

2. The date, time, and place of the hearing;

3. The issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

4. The applicant's or eligible individual's right to legal counsel;

5. The parties' right to inspect any documentary or tangible evidence to be used at the hearing or any relevant records in the possession of the department; and

6. A statement that if any party fails to attend or participate as required at any stage of the hearing process, a default judgment and recommended order against that party may be entered. [~~The hearing officer shall send written notification of the scheduled hearing to the applicant or eligible individual and the department representative which shall include:~~

~~(a) A statement of the date, time, place of the hearing;~~

~~(b) The names, official titles, mailing addresses, and phone numbers of all parties to the hearing, including the department representative and counsel for the individual, if any;~~

~~(c) A statement of the issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;~~

~~(d) A statement advising the individual of the right to legal counsel;~~

~~(e) A statement of the parties' right to inspect any documentary or tangible evidence to be used at the hearing or any relevant records in the possession of the department; and~~

~~(f) A statement advising that if any party fails to attend or participate as required at any stage of the hearing process, a default judgment and recommended order against that party's interest may be entered.~~]

(9)**(a) With reasonable notice, the hearing officer may conduct a prehearing conference to:**

1. Clarify issues;

2. Explore settlement possibilities; or

3. Rule on pending motions or other matters that will promote the orderly and prompt conduct of the hearing.

(b) Prior to the hearing, the hearing officer shall issue a prehearing order incorporating matters determined at the prehearing conference. [~~The hearing officer may convene and conduct a prehearing conference with reasonable notice. The purpose of the prehearing conference is to clarify the issues for the hearing, explore settlement possibilities, rule on any pending motions, or on other matters that will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order prior to the hearing incorporating all matters determined at the prehearing conference.~~]

(10) At least five (5) calendar days prior to the hearing:

(a) All documents which will be presented as evidence shall be disclosed between the parties; and

(b) A list of witnesses to be called to testify during the hearing shall be submitted to the hearing officer by each party with a copy submitted to the other party.

(11)**(a) A hearing officer may approve a request from either party to take the deposition of an unavailable witness.**

(b) If both parties agree, a hearing officer may approve the introduction of video tape depositions as evidence, in lieu of a witness's appearance at the hearing. [~~Depositions are not routinely available. The hearing officer may approve a request from either party to take the deposition of an unavailable witness. Videotape depositions may be approved by the hearing officer for introduction as evidence in lieu of a witness' appearance during the hearing if both parties agree.~~]

(12) The hearing officer shall not communicate off the record with any party to the hearing or other person who has a direct or indirect interest in the outcome of the hearing concerning any substantive issue while the proceeding is pending. Ex parte communication concerning procedural or scheduling questions may be permissible to expedite the proceeding.

Section 7. Conduct of the Hearing. (1) The hearing officer shall:

(a) Preside over the [~~conduct of the~~] hearing;

(b) [~~and shall~~] Make [~~all~~] decisions and rule on [~~all~~] matters concerning the [~~conduct of the~~] hearing; and

(c) Insure order and decorum at the hearing. [~~shall require an orderly and proper decorum at the hearing.~~]

(2) The applicant or eligible individual shall designate whether the hearing will be open or closed.

(3) The rules of civil procedure do not apply.

(4) The department shall present its case first, examine witnesses and submit documentation subject to cross examination. The applicant or eligible individual shall then present, examine witnesses and submit documentation subject to cross examination.

(5) Each party shall provide three (3) copies of any exhibit to be introduced into evidence.

(6) The hearing officer shall exclude any evidence that has not been disclosed to the opposing party at least five (5) days before the hearing. Parties may agree to enter undisclosed evidence which does not present an unfair surprise. The hearing officer may enter rebuttal

evidence in the record.

(7) Judicial notice shall be taken of governing laws, administrative regulations, and the department's state plan. [~~Policy statements or interpretive memoranda not formally promulgated as administrative regulations shall be produced to the opposing party prior to the hearing if introduced as evidence.~~]

(8) The tape recording of all testimony, motions, and objection in the hearing shall constitute the formal record of the hearing unless extraordinary circumstances justify preparation of a transcript at the request of the hearing officer or the **applicant or eligible** individual or department representative. The preparation of any transcript shall be at department expense.

Section 8. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the commissioner the written recommended order within thirty (30) days from the completion of the hearing unless both parties agree to a reasonable time extension.

(2) The recommended order shall be based exclusively on the evidence on the record, **and contain** [~~making~~] findings of fact and recommendations.

(3) Within twenty (20) days of the mailing of the decision, the commissioner shall notify the applicant or eligible individual of the intent to review the recommended order in whole or in part.

(4) The decision of the commissioner to review any impartial hearing officer's decision shall be based on the following standards:

(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion or otherwise unreasonable.

(b) Whether the hearing officer's decision was supported by facts in the record and applicable federal and state laws and administrative regulations.

(5) If the commissioner elects to review the decision, the applicant or eligible individual shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.

(6) The commissioner's review shall be limited to the findings with which the commissioner took issue and shall be a [~~paper~~] review of the record of evidence, the hearing officer's written recommended order, and any additional relevant written documentation submitted by the applicant or eligible individual.

(7) The commissioner shall not overturn or modify a decision of an impartial hearing officer, or part of a decision, that supports the position of the applicant or eligible individual unless the commissioner concludes, on the basis of clear and convincing evidence, that the decision of the independent hearing officer is clearly erroneous on the basis of being contrary to federal or state law or administrative regulation.

(8) A final decision shall be made in writing by the commissioner within thirty (30) days of the commissioner's decision to review the recommended order of the hearing officer. The commissioner may grant a reasonable time extension in order for the applicant or eligible individual to submit additional evidence relevant to the final decision.

(9) The commissioner's final decision shall state the findings and the grounds for the decision.

(10) The commissioner shall not delegate responsibility to make a final decision to any administrator or employee of the department.

(11) The decision of the commissioner shall be the final state agency action.

(12) The commissioner shall provide a copy of the final decision to both parties.

[~~Section 8. Expedited Administrative Review. When there is an agency initiated change resulting in a discontinuation of a service set forth in an IWRP, the following procedures shall be observed:~~

~~(1) The client shall be notified in writing at least ten (10) working days before the effective date of the proposed change; and~~

~~(2) The client's request for a review shall be made before the effective date of the proposed change. Should the client request an expedited administrative review, services shall continue until the review determination is received in writing, but in any case, no longer than thirty (30) days from the effective date of the proposed change.~~

~~Section 9. Hearing. Should an applicant or client be dissatisfied with any determinations made by the agency staff concerning the furnishing or denial of services or the findings and decision of an administrative review, the affected applicant or client may request a hearing by writing the Commissioner, Department of Vocational Rehabilitation. The following procedures shall be followed:~~

~~(1) An impartial hearing officer who has a background and experience in, and knowledge of, the delivery of vocational rehabilitation services; who has not taken part in the action under consideration; who is not an employee of the Department of Vocational Rehabilitation; and who has no personal or financial investment in the outcome of the hearing shall conduct a formal hearing.~~

~~(2) The hearing shall be held within forty five (45) days after receipt of the initial request for appeal. Reasonable time extensions may be made for good cause shown by a party or at the request of both parties.~~

~~(3) When practicable, the hearing shall be held at a time and place convenient to the applicant or client requesting the hearing; and the applicant or client shall be notified by the hearing officer in writing as to the time and place of the hearing and the right to be represented at the hearing by counsel or by a designated advocate.~~

~~(4) Agency staff involved in the action in dispute shall be present at the hearing. The applicant or client or a designated representative and the agency representative shall have the opportunity for cross-examination; to present evidence, information and witnesses; to examine all documents submitted by the Department of Vocational Rehabilitation and to examine all documents submitted by the applicant or client or a representative.~~

~~(5) The decision of the impartial hearing officer shall set forth the issues, relevant facts brought forth at the hearing, the pertinent provisions in the state plan and the Rehabilitation Act on which the decision is based and the reasoning that led to the decision.~~

~~(6) The verbatim transcript of the testimony presented during the hearing, together with all exhibits filed in the proceedings, shall constitute the exclusive record for the decision.~~

~~(7) The individual or designated representative and the Commissioner, Department of Vocational Rehabilitation shall be sent the decision within thirty (30) days from the completion of the hearing, unless both parties agree to a reasonable time extension to allow the hearing officer to review the transcript before finalizing the decision.~~

~~(8) If the commissioner elects not to review the impartial hearing officer's decision, that decision becomes the final state agency action.~~

~~(9) If the commissioner elects to review the impartial hearing officer's decision, within twenty (20) days of the mailing of the decision to the individual, the client or applicant shall be informed in writing of the intent to review the decision in whole or in part.~~

~~(10) The decision of the commissioner to review any impartial hearing officer's decision shall be based on the following standards:~~

~~(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion, or otherwise unreasonable.~~

~~(b) Whether the hearing officer's decision was supported by substantial evidence, i.e., consistent with facts and applicable federal and state laws and administrative regulations.~~

~~(c) Whether, in reaching the decision, the impartial hearing officer gave appropriate and adequate interpretation to such factors as:~~

~~1. The federal regulations and policies as they apply to the specific issue(s) in question;~~

~~2. State laws and administrative regulations as they relate to the issue(s) in question;~~

~~3. The state plan as it applies to the specific issue(s) in question;~~

~~4. The state procedures manual as it may apply to the specific issue(s) in question;~~

~~5. Key portions of conflicting testimony;~~

~~6. State agency options in the delivery of services where such options are permissible by the federal regulations; and~~

~~7. Restrictions in federal regulations with regard to such supportive services as maintenance and transportation.~~

~~(11) If the commissioner elects to review the decision of the impartial hearing officer, the applicant or client shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.~~

~~(12) The commissioner's review shall be limited to the findings with which the commissioner took issue and shall be a paper review of the transcript of testimony and exhibits presented at the hearing, the hearing officer's written decision, and any additional relevant written documentation submitted by the applicant or client or a representative.~~

~~(13) A final decision stating the findings and grounds for the decision shall be made in writing by the commissioner within thirty (30) days of the commissioner's decision to review the decision of the impartial hearing officer. The applicant or client may request a delay in order to submit additional evidence bearing on the final decision if the commissioner agrees to a reasonable time extension.~~

~~(14) When a final decision is made, a copy of that decision shall be provided to the applicant or client or a representative.~~

~~(15) The commissioner shall not delegate responsibility to make any such final decision to any other officer or employee of the Department of Vocational Rehabilitation.~~

~~(16) The decision of the commissioner shall be the final state agency action.~~]

Section 9. [~~10.~~] Legal Counsel. The department [~~of Vocational Rehabilitation~~] shall not provide legal counsel or reimburse the costs of legal counsel for an applicant or eligible individual [~~client~~] who appeals an action concerning the furnishing or denial of services.

SAM SERRAGLIO, Commissioner
APPROVED BY AGENCY: December 9, 1994
FILED WITH LRC: January 4, 1995 at 11 a.m.

WORKFORCE DEVELOPMENT CABINET
Department for the Blind
(As Amended)

782 KAR 1:040. Appeal procedures [~~for applicants and clients~~].

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

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

NECESSITY AND FUNCTION: KRS 163.470(6) requires the Department for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. Under its State Plan for Vocational Rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended, the department is required to establish procedures so that any applicant for or client of vocational rehabilitation services who is dissatisfied with determinations made by staff of the department concerning the furnishing or denial of services may request a timely review of those determinations.

Section 1. Definitions. (1) [~~"Eligible individual" or "client" means an applicant for vocational rehabilitation services who the department determines is an individual with a disability who requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.~~

~~(2)~~] "Applicant" means an individual who submits an application for vocational rehabilitation services.

(2) [~~(3)~~] "Agency" or "department" means the Department for the Blind, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) [~~(4)~~] "Commissioner" means the Commissioner of the Department for the Blind.

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

(5) "Impartial hearing officer" means an individual **who**:

(a) [~~Who~~] Is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education;

(b) [~~Who~~] Is not a member of the Department for the Blind Advisory Council;

(c) [~~Who~~] Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;

(d) [~~Who~~] Has knowledge of the delivery of vocational rehabilitation services, the federal and state laws and regulations governing the provision of vocational rehabilitation services;

(e) [~~Who~~] Has training with respect to the performance of official duties; and

(f) [~~Who~~] Has no personal or financial interest that would be in conflict with the objectivity of the individual.

Section 2. Right of Appeal and Information. (1) An applicant or eligible applicant [~~client~~] who is [~~may be~~] dissatisfied with any action by the department concerning the furnishing or denial of services shall have the right to appeal that action. [~~, and~~] All applicants or eligible individuals [~~clients~~] shall be informed of entitlements available under this section, including the names and addresses of department [~~such~~] individuals with whom an appeal may be filed. The request for appeal shall be made in writing **by telephone or by recording** [~~or alternative format~~].

(2) Unless the eligible individual, or an authorized representative of the individual, so requests, pending a final determination of a requested hearing or other final resolution, the department shall not institute a suspension, reduction, or termination of services being provided under the individualized written rehabilitation program unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the eligible individual.

(3) [~~(2)~~] The department shall advise all applicants and eligible individuals [~~clients~~] of the existence of the Client Assistance Program of the Workforce Development [~~Education and Humanities~~] Cabinet, the services provided by the program, and how to contact the program.

[~~(3) Each applicant shall be provided with written notification of any decision by the department concerning that person's eligibility or ineligibility for services, the basis for and the effective date of that decision, and the specific means of appealing that decision through an administrative review or impartial hearing.~~

~~(4) Each client shall be provided with an individualized written rehabilitation program, including the specific means for appealing any decisions through an administrative review or impartial hearing.~~

~~(5) An applicant or client who may be dissatisfied with any determination made by a counselor or other staff of the department concerning the furnishing or denial of services may request a review of that determination before an impartial hearing officer by contacting the executive director of the department. Since the impartial hearing is a formal process, requiring adherence to exacting procedures and somewhat lengthy time frames, applicants and clients are encouraged to first consider the informal and more timely administrative review as a means to resolve issues of dissatisfaction. The decision to first use the administrative review or the impartial hearing is a choice solely with the applicant or client, but with one (1) condition: the administra-~~

~~tive review may not delay the impartial hearing and its time frames unless both the department and the applicant or client agree to the delay. Since the choice may depend on a number of factors and may be confusing, the applicant or client shall be encouraged to consult with the Client Assistant Program to fully consider the appeal options available and their consequences.~~]

(4) [~~(6)~~] The department shall not provide legal counsel or reimburse the costs of legal counsel for an applicant or eligible individual [~~client~~] who appeals an action concerning the furnishing or denial of services.

Section 3. [~~2.~~] Choice of Appeal Procedures and Time Frames. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence, of agency action or inaction, an applicant or **eligible individual** [~~client~~] may appeal.

(2) Applicants or eligible individuals may choose:

(a) [~~either~~] An administrative review conducted by an agency staff member not involved in the agency action; or

(b) a [~~more~~] formal hearing conducted by an impartial hearing officer.

(3) If an administrative review is chosen and the applicant or eligible individual is dissatisfied with the resolution, a hearing may be requested within thirty (30) days after the receipt of administrative review decision. The hearing shall be held within forty-five (45) days of receipt of the hearing request. Reasonable time extensions may be made for good cause by the commissioner or hearing officer.

Section 4. Administrative Review. (1) If an applicant or eligible individual [~~client~~] is dissatisfied with an action regarding the furnishing or denial of services, the **applicant or eligible** individual may request an administrative review by contacting the Director of Client Services of the department.

(2) The following procedures shall be followed in an administrative review:

(a) The Director of Client Services or designee of the Director of Client Services shall conduct the administrative review;

(b) The administrative review shall be held within fifteen (15) working days of receipt of the request;

(c) The review shall be held at a time and place convenient to the **applicant or eligible** individual requesting the review;

(d) [~~, and~~] The **applicant or eligible** individual shall be notified in writing **of:**

1. [~~as to~~] The time and place of the review; and

2. The right to be represented at the review by counsel or designated advocate; and

(3)(a) A written report of the findings and grounds for the decision shall be sent to the applicant or eligible individual within ten (10) working days of the day on which the review was completed.

(b) The written report shall also state that:

1. The department shall be bound by the decision;

2. If the applicant or eligible individual is dissatisfied with the decision, a formal hearing may be requested within thirty (30) days after the receipt of administrative review decision;

3. The request for a formal hearing shall be made by contacting the Director of Client Services of the department;

4. The name and address of the Director of Client Services;

5. The formal hearing shall be held within forty-five (45) days of receipt of the hearing request;

6. Reasonable time extensions may be made for good cause by the commissioner or hearing officer;

7. Additional evidence, information, and witnesses may be presented by the applicant or eligible individual or, if appropriate, by his parent, guardian, or other representative;

8. The applicant or eligible individual may be represented by counsel or other appropriate advocate;

9. The applicant or eligible individual may examine all witnesses and other relevant sources of information and evidence. [~~(d) A report of the findings of the review shall be sent to the individual within ten (10) [fifteen (15)] working days from the completion date of the review and shall indicate an administrative review decision to be binding for all staff of the department.~~]

Section 5. [~~3.~~] Procedures for Impartial Hearings. (1) The hearing officer shall be selected by the applicant or eligible individual from the pool of approved and trained hearing officers maintained by the department.

(2) The department shall send a list of hearing officers to the applicant or eligible individual within five (5) working days from receipt of the hearing request.

(3) The applicant or eligible individual shall notify the department of the selected hearing officer within five (5) working days of receipt of the list.

(4) The notification from the applicant or eligible individual shall include any issue statement for the hearing and shall identify any accommodations required for the hearing (e.g., accessible formats for print materials or a sign language interpreter).

(5) The designated hearing officer may be disqualified by the department representative for a reasonable cause such as, personal knowledge or involvement with the case or the individual or a financial interest which would compromise the objectivity of the decision.

(6) If the commissioner determines that reasonable cause supports disqualification, the **applicant or eligible** individual shall be contacted to select another hearing officer.

(7) **When** [~~At the time~~] the selected hearing officer agrees to conduct the hearing, the hearing officer **shall be** [~~becomes~~] responsible for communication with each party concerning the hearing. **If** [~~At any time~~] the applicant or eligible individual obtains legal counsel, communication with counsel **shall constitute** [~~constitutes~~] notice to the **applicant or eligible** individual.

(8) The hearing officer shall send written notification of the scheduled hearing to the applicant or eligible individual and the department representative which shall include:

(a) A statement of the date, time, place of the hearing;

(b) The names, official titles, mailing addresses, and phone numbers of all parties to the hearing, including the department representative and counsel for the individual if any;

(c) A statement of the issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

(d) A statement advising the **applicant or eligible** individual **that he may be represented by counsel or other appropriate advocate;** [~~of the right to legal counsel;~~]

(e) A statement of the parties' right to inspect any documentary or tangible evidence to be used at the hearing or any relevant records in the possession of the department. **A statement that the applicant or eligible individual, or, if appropriate, his parent, guardian, or other representative, may present additional evidence;**

(f) A statement that the applicant or eligible individual may examine all witnesses and other relevant sources of information and evidence; and

(g) [~~(f)~~] A statement advising that if any party fails to attend or participate as required at any stage of the hearing process, a default judgment and recommended order against that party's interest may be entered.

(9)**(a)** The hearing officer may convene and conduct a prehearing conference upon request by either party or on his own with reasonable notice.

(b) The purpose of the prehearing conference **shall** [~~is~~] to clarify the issues for the hearing, explore settlement possibilities, rule on any pending motions, or on other matters that will promote the orderly and prompt conduct of the hearing.

(c) The hearing officer shall issue a prehearing order prior to the hearing incorporating all matters determined at the prehearing conference.

(10) At least five (5) calendar days prior to the hearing:

(a) All documents which will be presented as evidence shall be disclosed between the parties; and

(b) A list of witnesses to be called to testify during the hearing shall be submitted to the hearing officer by each party with a copy submitted to the other party.

(11)(a) Depositions **shall** [~~are~~] not **be** routinely available.

(b) The hearing officer may approve a request from either party to take the deposition of an unavailable witness.

(c) Videotape depositions may be approved by the hearing officer for introduction as evidence in lieu of a witness' appearance during the hearing if both parties agree.

(12)**(a) While the proceeding is pending,** the hearing officer shall not communicate off the record with any party to the hearing or other person who has a direct or indirect interest in the outcome of the hearing concerning any substantive issue [~~while the proceeding is pending~~].

(b) Ex parte communication concerning procedural or scheduling questions may be **permitted** [~~permissible~~] to expedite the proceeding. [~~Expedited Administrative Review. When the department initiates a change which discontinues a service set forth in an individualized written rehabilitation program, the following procedures shall be observed:~~

~~(1) The department shall notify the client of the decision and the basis for that decision at least ten (10) working days prior to the effective date of the change through a procedure which is verifiable (for example, certified mail with receipt requested), unless circumstances beyond the control of the department make the ten (10) day notice impossible;~~

~~(2) The notification shall advise the client that services may be continued while the client is afforded an opportunity to exercise appeal rights for an "expedited" administrative review;~~

~~(3) The notification shall advise if the client wishes any disputed service to continue during an expedited review, request for an expedited administrative review must be received by the Director of Client Services prior to the effective date of change; and~~

~~(4) The notification shall advise the client that, upon receipt of a request for an expedited administrative review, the expedited administrative review will be completed and decision rendered in not more than thirty (30) calendar days from the effective date of the change.~~]

Section 6. [~~4.~~] Conduct of the Hearing. (1) The hearing officer shall:

(a) Preside over the conduct of the hearing;

(b) [~~and shall~~] Make all decisions;

(c) [~~and~~] Rule on all matters concerning the conduct of the hearing; and

(d) [~~shall~~] Require an orderly and proper decorum at the hearing.

(2) The applicant or eligible individual shall designate whether the hearing will be open or closed.

(3) The rules of civil procedure **shall** [~~do~~] not apply.

(4)**(a)** The department shall present its case first, examine witnesses and submit documentation subject to cross examination.

(b) The applicant or eligible individual shall then present **the** [~~her or his~~] case, examine witnesses and submit documentation subject to cross examination.

(5) Each party shall provide three (3) copies of any exhibit to be introduced into evidence.

(6) The hearing officer shall exclude any evidence that has not been disclosed to the opposing party at least five (5) days before the hearing, **unless the** [~~,~~] parties [~~may~~] agree to enter undisclosed evidence which does not present an unfair surprise. [~~The hearing officer may enter rebuttal evidence in the record.~~]

(7) Judicial notice shall be taken of governing laws, regulations, and the department's state plan. [~~Policy statements or interpretive memoranda nor formally promulgated as regulations shall be produced to the opposing party prior to the hearing if introduced as evidence.~~]

(8) The tape recording of all testimony, motions, and objection in the hearing shall constitute the formal record of the hearing unless extraordinary circumstances justify preparation of a transcript at the request of the hearing officer or the **applicant or eligible** individual or department representative. The preparation of any transcript shall be at department expense. [~~Impartial Hearing. (1) If an applicant or client is dissatisfied with any determination made by a counselor or other staff of the department concerning the furnishing or denial of services or the findings and decision of an administrative review, the affected individual may request an impartial hearing by writing the executive director of the department who shall provide an impartial hearing according to the procedures of this section.~~

~~(2) The executive director shall appoint from a roster of available hearing officers to the department an impartial hearing officer who has a background and experience in, and knowledge of, the delivery of vocational rehabilitation services and who has not taken part in the action under consideration and who is not an employee of the department to conduct a formal hearing.~~

~~(3) The hearing shall be held within forty five (45) days after receipt of the initial request for appeal except reasonable time extensions may be made for good cause shown by a party or at the request of both parties.~~

~~(4) The hearing shall be held at a time and place convenient to the individual requesting the hearing, and the individual shall be notified in writing as to the time and place of the hearing and the right to be represented at the hearing by counsel, friend, parent or guardian, or other appropriate advocate.~~

~~(5) Employees of the department involved in the action of dispute shall be present at the hearing and the individual or designated representative shall have the opportunity for cross examination, to present evidence, information and witnesses, and to examine all documents submitted by the department.~~

~~(6) The decision of the impartial hearing officer shall set forth the issues, relevant facts brought out at the hearing, any relevant provisions in and the law on which the decision is based and the reasoning that led to the decision.~~

~~(7) The verbatim transcript of the testimony presented during the hearing, together with all exhibits filed in the proceedings, shall constitute the exclusive record for the decision.~~

~~(8) The individual or designated representative and the executive director shall be sent the decision within thirty (30) days from the completion of the hearing unless both parties agree to a reasonable time extension to allow the hearing officer to review the transcript before finalizing the decision.~~

~~(9) Within twenty (20) days of the mailing of the decision to the individual the executive director shall inform the individual in writing of his/her intention to accept or review such decision in whole or part.~~

~~(10) The decision of the executive director to review any impartial hearing officer's decision shall be based on the following standards:~~

~~(a) Is the hearing officer's decision arbitrary, capricious, an abuse of discretion, or otherwise unreasonable?~~

~~(b) Is the hearing officer's decision supported by substantial evidence, i.e., consistent with facts and applicable federal and state policy?~~

~~(c) In reaching the decision, has the impartial hearing officer given appropriate and adequate interpretation to:~~

~~1. The federal statute regulations, and policies as they apply to the specific issue(s) in question;~~

~~2. State law and regulations as they relate to the issue(s) in question;~~

~~3. The state plan as it applies to the specific issue(s) in question;~~

~~4. The procedures manual of the department as it applies to the specific issue(s) in question;~~

~~5. Key portions of conflicting testimony;~~

~~6. Options of the department in the delivery of services where~~

~~such options are permissible by the federal statute;~~

~~7. Restrictions in the federal statute with regard to such supportive services as maintenance and transportation; or~~

~~8. State law and regulations as they relate to the issue(s) in question?~~

~~(11) If the executive director decides to review the decision of the impartial hearing officer, the individual shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.~~

~~(12) The executive director's review shall be limited to the findings with which the executive director took issue and shall be a paper review of the transcript of testimony and exhibits presented at the hearing, the hearing officer's written decision, and any additional relevant written documentation submitted by the individual.~~

~~(13) A final decision stating the findings and grounds for the decision shall be made in writing by the executive director within thirty (30) days of the executive director's decision to review the decision of the impartial hearing officer unless the individual requests a delay in order to submit additional evidence bearing on the final decision and both the individual and executive director agree to a reasonable time extension for the final decision.~~

~~(14) When a final decision is made, a copy of such decision shall be provided to the individual or his/her representative.~~

~~(15) The executive director shall not delegate responsibility to make any such final decision to any other officer or employee of the Kentucky Department for the Blind; and~~

~~(16) The decision of the executive director shall be the final action of the department, and there shall be no further recourse that the individual can pursue administratively other than seeking judicial review of that decision in the courts.~~]

Section 7. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the commissioner the written recommended order within thirty (30) days from the completion of the hearing unless both parties agree to a reasonable time extension.

(2) The recommended order shall be based exclusively on the evidence on the record, making findings of fact and recommendations.

(3) Within twenty (20) days of the mailing of the decision, the commissioner shall notify the applicant or eligible individual of the intent to review the recommended order in whole or in part.

(4) The decision of the commissioner to review any impartial hearing officer's decision shall be based on the following standards:

(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion or otherwise unreasonable.

(b) Whether the hearing officer's decision was supported by facts in the record and applicable federal and state laws and regulations.

(5) If the commissioner elects to review the decision, the applicant or eligible individual shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.

(6) The commissioner's review shall be limited to the findings with which the commissioner took issue and shall be a [~~paper~~] review of the record evidence, the hearing officer's written recommended order, and any additional relevant written documentation submitted by the applicant or eligible individual.

(7) The commissioner shall not overturn or modify a decision of an impartial hearing officer, or part of a decision, that supports the position of the applicant or eligible individual unless the commissioner concludes, on the basis of clear and convincing evidence, that the decision of the independent hearing officer is clearly erroneous on the basis of being contrary to federal or state law or regulation.

(8) A final decision shall be made in writing by the commissioner within thirty (30) days of the commissioner's decision to review the recommended order of the hearing officer. The commissioner may grant a reasonable time extension in order for the applicant or eligible individual to submit additional evidence relevant to the final decision.

(9) The commissioner's final decision shall state the findings and the grounds for the decision.

(10) The commissioner shall not delegate responsibility to make a final decision to any administrator or employee of the department.

(11) The decision of the commissioner shall be the final state agency action.

(12) The commissioner shall provide a copy of the final decision to both parties.

PRISCILLA ROGERS, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: January 10, 1995
FILED WITH LRC: January 13, 1995 at 11 a.m.

LABOR CABINET
Department of Workers' Claims
(As Amended)

803 KAR 25:075. Attorney fee discount.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS 342.260
NECESSITY AND FUNCTION: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to prepare administrative regulations as he considers necessary to carry on the work of the department and the work of the administrative law judges. KRS 342.320 requires the administrative law judges to approve the payment of the attorney's fee in any case involving benefits under KRS Chapter 342, and KRS 342.120 provides the method by which an employer or its insurance carrier and the special fund share liabilities for awards or injuries occurring after April 4, 1994. The function of this administrative regulation is to establish a mechanism for crediting the employer, the employer's insurance carrier, and the special fund for the payment of attorneys' fees for injuries occurring and disabilities arising after April 4, 1994, when the claimant elects to repay an attorney's fee through the reduction of weekly benefits.

Section 1. Employer's Calculation. For injuries occurring and disabilities arising on or after April 4, 1994, the employer or the insurance carrier making payment on behalf of the employer shall be entitled to credit for the lump sum value of any attorney's fee paid. The following formula shall be used:

(1) Employer weeks awarded - weeks paid = remaining weeks.

(2) R weeks = P weeks (present worth).

(3) EMP % Attorney fee ÷ P weeks = Y rate.

(4) R weeks x Y rate = employer attorney fee and discount.

(5) EMP attorney fee and discount - EMP attorney fee = EMP discount.

(6) Weekly rate -Y rate = Employer reduced rate.

Section 2. Special Fund Credit. The Labor Cabinet, Department of Workplace Standards, Division of Special Fund shall calculate its lump sum credit for attorney's fees in cases involving injuries occurring and disabilities arising on or after April 4, 1994, as follows:

(1) Employer weeks awarded - weeks paid = remaining weeks.

(2) R weeks = P weeks (present worth).

(3) Total weeks awarded - weeks paid = total remaining weeks.

(4) TR weeks = PW weeks (present worth).

(5) PW weeks - P weeks = SF (special fund) weeks.

(6) SF % Attorney fee ÷ [+] SF weeks = SF rate reduction.

(7) SF rate reduction x SF weeks owed - [=] SF attorney fee and

discount.

(8) SF attorney fee and discount = SF attorney fee = SF discount.

Section 3. Procedure. The calculations set forth in Sections 1 and 2 of this administrative regulation shall be completed by the Division of the Special Fund and the results forwarded to the other payers, as well as to the plaintiff, when the plaintiff elects to repay an attorney's fee through the reduction of weekly benefits. Any disagreements as to the application of the formula shall be resolved by the administrative law judge upon motion by any party.

WALTER W. TURNER, Commissioner
APPROVED BY AGENCY: February 14, 1995
FILED WITH LRC: February 14, 1995 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended)

810 KAR 1:017. Objections and complaints.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS **230.260** [~~Chapter 13A~~]
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation relates to the requirements and procedures in lodging of objections and complaints.

Section 1. Persons Eligible to Lodge Objections or Complaints. Objections or complaints against a horse or jockey entered in a race shall be received only when duly lodged by the owner or authorized agent of the owner, the trainer, or the jockey, of another horse engaged in the same race and whose horse suffered or may suffer by the alleged violation of an administrative regulation. An inquiry may also be made by a racing official.

Section 2. Form for Objections and Complaints. Objections as to interference or fouls occurring during the running of the race shall be lodged with the stewards **orally or by telephone.** [~~in any manner which the commission may prescribe by rule.~~] [~~Objections as to interference or fouls occurring during the running of the race may be lodged orally with the clerk of scales or with the stewards.~~] All other objections or complaints shall be made in writing and bear the signature of the complainant. Objections or complaints lodged during a race meeting shall be addressed to the stewards. Objections or complaints lodged after the termination of a race meeting shall be addressed to the commission secretary at the commission general office. An objection or complaint once lodged shall not withdrawn without permission of the stewards.

Section 3. Time for Lodging Objections or Complaints. Objections or complaints based on the following violations administrative regulation shall be lodged by persons aggrieved thereby within the time prescribed; except the stewards may declare a horse ineligible or disqualified at any time:

(1) At least one (1) hour before post time, if objection is based on incorrect weight allowance claimed for a horse entered to race.

(2) Before the race has been posted as official on the infield result board, if objection is based on interference by a horse, improper course run by a horse, foul riding by a jockey, or any other matter occurring during and incident to the running of the race.

(3) Not later than one (1) year after the race was run, if the objection or complaint is based on fraudulent or willful misstatement in entry under which a horse has run.

(4) Not later than forty-eight (48) hours, exclusive of Sunday, after the race was run, if objections or complaints are based on any other violation of an administrative regulation.

Section 4. Final Determination of Objections to Acts in Race. The stewards shall make all findings of fact as to all matters occurring during and incident to the running of a race; shall determine all objections, and inquiries based on interference by a horse, improper course run by a horse, foul riding by a jockey, and all other matters occurring during and incident to the running of a race; and, shall determine the extent of disqualification, if any, of horses in a race for a foul committed during the race. Findings of fact and determination shall be final and no appeal may be taken thereon. In determining the extent of disqualification, the stewards in their discretion may:

(1) Disqualify and place the offending horse, and any horses coupled with it as an entry, behind any horse that as may have suffered by reason of the foul;

(2) Disqualify and declare the offending horse, and any horses coupled with it as an entry, unplaced;

(3) Disqualify the offending horse, and any horses coupled with it as an entry, from participation in all or any part of the purse;

(4) Declare void, a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry;

(5) Affirm the place judges' order of finish and suspend a jockey, if in the stewards' opinion the foul riding had no affect on the order of finish;

(6) Disqualify the offending horse and not suspend the jockey if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of the jockey.

Section 5. Dispute of a Race after Declared Official for Pari-mutuel Payoff. If the result of a race is placed in dispute by the lodging of an objection or complaint or by discovery of an alleged violation of an administrative regulation, after the race has been declared official for pari-mutuel payoff, then pending final determination of the disputed race:

(1) Purse money and trophy to which the horse objected to may have been entitled shall be withheld and placed in escrow by the association until final adjudication of the dispute; except, any portion of the purse money whose distribution would not be affected by the determination of the dispute, at the discretion of the stewards, may be distributed.

(2) If purse money or trophy has been awarded to an owner prior to the lodging of an objection or discovery of an alleged violation of an administrative regulation which places the outcome of a race in dispute, the money or trophy shall be returned immediately to the association on order of the stewards. Upon final adjudication of the dispute, the person deemed to be entitled to the purse money or trophy shall be entitled to an order of recovery from any person or association holding same.

(3) The horse which crossed the finish line first and any other horse for which the race is claimed, shall be liable for all penalties attaching to the winner of that race until the matter if finally adjudicated.

Section 6. Determination of a Disputed Race. The stewards shall determine all objections, complaints, or alleged violations of administrative regulation lodged or discovered after a race has been declared official for pari-mutuel payoff and shall issue a ruling thereon. If the stewards find that an administrative regulation was violated, the stewards may penalize the persons responsible, disqualify any horses in the disputed race, and award the purse money and trophy in accordance with any resulting revised order of finish in the disputed race.

Section 7. Revised Order of Finish after Race Declared Official for Pari-mutuel Payoff. If a horse is disqualified after a race has been declared official for pari-mutuel payoff and thereby causes revision of

the order of finish in the race:

(1) The pari-mutuel payoff shall in no way be affected.

(2) The stewards shall be responsible for causing appropriate corrections to be made in official records for the race and in racing statistics as may pertain to the respective horses, jockeys, trainers, owners, breeders, sires, dams, and broodmare sires, by reporting such corrections to the racing secretary and to the Daily Racing Form.

Section 8. Complaints Against Officials. All complaints or protests by any licensee based on any decision or act of a racing official other than the stewards, or concerning any matter as may occur on association grounds not provided for by Sections 4 and 5 of this regulation shall be made in writing, signed by the complainant, and submitted to the stewards. All complaints or protests by any persons based on any decision, act, or conduct of the stewards shall be submitted to the commission, as provided by 810 KAR 1:020.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: December 13, 1994
FILED WITH LRC: February 15, 1995 at 8 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(As Amended)

904 KAR 2:370. Technical requirements; job opportunities and basic skills.

RELATES TO: 45 CFR 250.0, 250.10, 250.11, 250.30, 250.32, 250.33, 250.34, 250.35, 250.36, 250.41, 250.43, 250.44, 250.45, 250.46, 250.48, 250.60, 250.61, 250.63

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC). KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of the Job Opportunities and Basic Skills (JOBS) Program participants as they relate to eligibility for receiving AFDC.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.

(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.

(3) "Case manager" means the Department for Social Insurance (DSI) individual or contractor who:

(a) [~~Determines ongoing AFDC or Medical Assistance (MA) or Food Stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;~~

~~(b)~~] Aids the JOBS participant by brokering services for the participant;

(b) [~~(c)~~] Identifies and resolves barriers to the extent possible; and

(c) [~~(d)~~] Delivers JOBS related services to the participant.

(4) "Conciliation" is a process in which participation problems in the JOBS Program can be resolved.

(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.

(6) "Target population" means that group composed of each individual who:

(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the preceding sixty (60) months;

(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;

(c) Is a custodial parent under the age of twenty-four (24) who:

1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or

2. Had little or no work experience in the preceding year; or

(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.

Section 2. Exemptions. All AFDC recipients are required to participate in the JOBS Program if the program is available in the county of residence unless the recipient:

(1) Is a child who:

(a) Is under age sixteen (16); or

(b) Attends, full time, an elementary, secondary, vocational or technical school (unless he was enrolled in school through the JOBS Program);

(2) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;

(3) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS Program. This may include a period of recuperation after childbirth if prescribed by a woman's physician;

(4) Is sixty (60) years old or older;

(5) Resides in a county which offers the JOBS Program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(6) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(7) Is working at least thirty (30) hours per week prior to determination of JOBS status;

(8) Is pregnant and the child is expected to be born within the following six (6) month period;

(9) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in Section 5(3) of this administrative regulation;

(10) Is a full-time Volunteers in Service to America (VISTA) volunteer.

(11) Is the parent age twenty (20) years or older or other relative personally providing care for a child under six (6) years of age unless:

(a) The agency assures that child care will be guaranteed; and

(b) The state agency guarantees that required program participation will not exceed twenty (20) hours per week.

Section 3. Volunteers. All persons in active JOBS counties as specified in Section 2 of this administrative regulation may volunteer to participate in the JOBS Program.

(1) The DSI shall give first priority for JOBS services to volunteers within the target population to be served, as described in Section 1 of this administrative regulation.

(2) A volunteer who is exempt, as specified in Section 2 of this administrative regulation, and who stops participating without good cause shall lose priority status for JOBS services if he volunteers at a later time.

(3) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in Section 10 of this administrative regulation.

Section 4. Components. With the exception of the component described in subsection (8) of this section, all JOBS counties shall offer the following services and activities:

(1) Education below the postsecondary level shall include:

(a) High school education or education designed to prepare a person to qualify for a high school equivalency certificate;

(b) Basic and remedial education that shall provide an individual with a basic literacy level, equivalent to at least grade 8.9; and

(c) Education in English proficiency to allow employment commensurate with his employment goal for an individual who is not sufficiently competent to:

1. Understand;
2. Speak;
3. Read; or
4. Write the English language.

(2) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(3) Job readiness activities that help prepare a participant for work by familiarizing him with workplace expectations, attitudes and appropriate behavior.

(4) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for a participant.

(5) Job search which provides group and individual assistance and training with job-seeking activities.

(a) Job search shall be provided in a group setting where a participant is taught job-seeking skills, and may include a phone bank from which he contacts potential employers;

(b) Individual job search shall be offered as needed to provide on a one-to-one basis:

1. Counseling;
2. Information;
3. Dissemination; and
4. Support;

(c) Participation in the job search component shall not exceed eight (8) weeks in any period of twelve (12) consecutive months unless it is required as part of another educational, training, or employment component designed to improve the individual's employment prospects.

(6) On-the-job training (OJT) in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job.

(a) A participant in OJT shall be compensated by the employer at the same rate as a similarly situated employee or trainee;

(b) The wage shall be subsidized through payments to the employer for OJT, not to exceed an average of fifty (50) percent of the wages paid to the participant during the training;

(c) At the conclusion of the OJT, the participant shall be retained as a regular employee.

(7) Community Work Experience Program (CWEP) which provides unpaid work experience and training in nonprofit organizations to assist a participant to move promptly into regular public or private employment.

(a) A CWEP assignment shall be limited to projects which serve a useful public purpose in a field such as:

1. Health;
2. Social service;
3. Environmental protection;
4. Education;
5. Urban and rural development;
6. Welfare;
7. Recreation;
8. Public facilities;
9. Public safety; and
10. Day care;

(b) The maximum number of hours of participation shall be determined by dividing the family's monthly AFDC grant amount by the greater of the federal or state minimum wage;

(c) The agency shall reassess and revise, if necessary, the individual's employability plan:

1. After each six (6) months of CWEP participation; and
2. At the conclusion of participation in the component.

(d) After an individual has been assigned to CWEP for nine (9) months, the individual shall not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the highest of:

1. Federal minimum wage;
2. State minimum wage; or
3. The rate of pay for an individual employed in the same or similar occupations by the same employer at the same site.

(8) Alternative Work Experience Program (AWEP) which provides unpaid work experience and training to assist a participant to move promptly into regular public or private employment.

(a) An AWEP assignment shall be made with [~~limited to a~~] for-profit entities. [~~health care facility such as:~~

~~1. Home health agency;~~
~~2. Hospital; and~~
~~3. Nursing home.~~]

(b) AWEP placements shall be developed and monitored by the Department for Social Insurance or contracting agencies.

(c) Placements shall be made in conjunction with the participant's assessment and employability development plan to ensure that the placement meets the participant's training needs.

(d) The AWEP component shall not be mandatory in every JOBS county.

(e) AWEP participants are required to participate a minimum of twenty (20) hours per week.

(f) The agency shall reassess and revise, if necessary, the individual's employability plan at the conclusion of participation in the component. [~~:~~

~~1. After each six (6) months of AWEP participation; and~~
~~2. At the conclusion of participation in the component.~~]

(9) Other work experience program (OWEP) which provides unpaid work experience and training in nonprofit organizations to assist a participant to move promptly into regular public or private employment.

(a) An OWEP assignment shall be limited to projects which serve a useful public purpose in a field such as:

1. Health;
2. Social service;
3. Environmental protection;
4. Education;
5. Urban and rural development;
6. Welfare;
7. Recreation;
8. Public facilities;
9. Public safety; and
10. Day care;

(b) OWEP placements shall be developed and monitored by the Department for Social Insurance or contracting agencies;

(c) Placements shall be made in conjunction with the participant's assessment and employability development plan to ensure that the placement meets the participant's training needs;

(d) OWEP participants shall be required to participate a minimum of twenty (20) hours per week;

(e) The agency shall reassess and revise if necessary, the individuals employability plan at the conclusion of participation in the component. [~~:~~

~~1. After each six (6) months of OWEP participation; and~~
~~2. At the conclusion of participation in the component.~~]

(10) Post secondary education may be provided if:

(a) The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

(b) The participant has or is capable of achieving the basic literacy skills required by the occupation; and

(c) Jobs are available in the specific occupation for which

education and training is needed.

Section 5. JOBS Participation Requirements. (1) Assessment.

(a) When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager;

(b) The case manager shall make an assessment of the individual's employability;

(c) Other agencies will assist in the assessment process as needed;

(d) The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers;

(e) The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant; and

4. Any other relevant factors.

(2) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

(a) An employment goal for the participant;

(b) Services to be provided by the agency (including child care);

(c) JOBS activities to be undertaken to achieve the employment goal; and

(d) Other needs of the family.

(3) Special participation requirements for education.

(a) An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

1. The parent is not otherwise exempt; and

2. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

(b) The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

1. The parent fails to make good progress in successfully completing educational activities; or

2. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in education activities is inappropriate for the parent.

(c) For purposes of this requirement, the exemption contained at Section 2(9) of this administrative regulation shall not qualify the participant for exemption from JOBS activities.

Section 6. Self-initiated JOBS Activities. The agency shall consider an individual self-initiated if the definition specified in 904 KAR 2:017 is met. This shall include the following provisions:

(1) These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training.

(2) **Enrollments in postsecondary programs shall be full time as defined by the education or training institution.** **[**~~Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan.~~**]**

(3) Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity.

(4) The participant shall be attending:

(a) A JTPA-funded training program; or

(b) A public source or private institution that is:

1. Licensed by the Kentucky Board for Proprietary Education; or

2. Recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(c) **A** **[**~~An associate degree~~**]** program which will qualify the participant for a recognized occupation; or

(d) Other education or training which would otherwise be an approved JOBS activity **unless the participant resides in a JOBS county and is enrolled less than twenty (20) hours in:** **[**~~, for example:~~**]**

1. GED;

2. Adult basic education;

3. Literacy; or

4. Other educational activities which could lead to employment.

Section 7. Good and Satisfactory Progress. (1) Each participant in an education or training component shall meet good and satisfactory progress requirements.

(2) Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution.

(3) Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

(a) Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at intervals determined by the educational providers.

(b) High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

(c) Vocational school. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

(d) Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, not to exceed a twelve (12) month period.

(e) College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

(f) JTPA funded training. Good and satisfactory progress shall be measured at intervals determined by the providers.

Section 8. Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in Section 10 of this administrative regulation).

(2) The conciliation shall be conducted by:

(a) The DSI;

(b) The DES; or

(c) Both agencies jointly.

1. During conciliation, the agency shall determine if additional services are needed to assist with JOBS participation.

2. Participation shall be monitored for **fifteen (15)** **[**~~thirty (30)~~**]** days following the issuance of form JOBS-204.

3. The **fifteen (15)** **[**~~thirty (30)~~**]** day period may be extended for an additional thirty (30) days, if necessary.

(3) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

Section 9. Good Cause. (1) Good cause for noncompliance in the JOBS Program or refusal to accept employment shall be found if:

(a) The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;

(b) Dependent care is:

1. Not available for a dependent child;

2. Not available for any incapacitated individual living in the same household as a dependent child;

3. Not available or nonreimbursable for a nondependent child over age six (6).

(c) The agency determines that employment would result in a net loss of cash income.

1. The family's gross income less necessary actual work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment was made; and

2. Child care costs exceeding the child care disregard shall be considered in the determination;

(d) The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;

(e) Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

(f) Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

(g) Illness of another household member requiring the presence of the participant;

(h) The participant is temporarily incarcerated;

(i) The agency determines there is discrimination by an employer based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;

(j) Work demands or conditions render continued employment unreasonable, such as:

1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;

(k) Wage rates are decreased subsequent to acceptance of employment;

(l) The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

(m) A household emergency occurs, such as:

1. Death of a member of the immediate family;
2. Entry into a spouse abuse center;
3. Natural disaster;
4. Court appearance;
5. Victim of crime; or
6. Flooded basement; [~~or~~]

(n) The participant receives a temporary military assignment;

(o) The participant leaves employment in an attempt to improve skills, become self-sufficient and leave the AFDC rolls;

(p) The participant is enrolled in a component activity which is not scheduled for the entire month, such as:

1. Summer school break; or
2. July break for adult education providers;

(q) The participant is employed and receiving wages for thirty (30) or more hours per week.

(2) The duration of good cause criteria may vary according to individual circumstances.

Section 10. Sanctions. (1) When a nonexempt AFDC recipient fails to comply with the requirements of the JOBS Program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

(a) Fails without good cause to participate in required activities, including but not limited to:

1. An interview;
2. An assessment; or
3. Employability plan development;

(b) Fails without good cause to participate in the program;

(c) Refuses without good cause to accept employment; or

(d) Terminates employment or reduces earnings without good cause.

(2) A person who has failed to comply without good cause shall be sanctioned, as follows:

(a) The participant is excluded from JOBS activities and services:

1. For the first failure to comply, until the failure to comply ceases;
2. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and
3. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.

(b) In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin.

(c) In a case based on unemployment, the agency shall not take into account the needs of the second parent, unless the second parent:

1. Is exempt for reasons other than those in Section 2(6), (9) and (11) of this administrative regulation;
2. Is participating; or
3. Has volunteered to participate in JOBS.

(d) A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.

Section 11. Material Incorporated by Reference. (1) Forms necessary for participation in the JOBS Program are being incorporated effective May 1, 1993. These forms include:

(a) PA-33C, revised 1/92;
(b) PA-33D, revised 1/92;
(c) PA-218A, revised 7/94 [~~2/93~~];
(d) PA-219, revised 7/94 [~~11/92~~];
(e) JOBS-105, revised 6/91;
(f) JOBS-201, revised 1/91;
(g) JOBS-202, revised 10/94 [~~10/90~~];
(h) JOBS-204, revised 1/94; [~~and~~]
(i) JOBS-205, revised 8/91;
(j) JOBS-241A, revised 5/94;
(k) JOBS-245A, revised 2/94; and
(l) JOBS-246A, revised 2/94.

(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: February 14, 1995
FILED WITH LRC: February 15, 1995 at 11 a.m.

KENTUCKY HEALTH POLICY BOARD
(As Amended)

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

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

Section 1. Definitions. (1) "Twenty-four (24) hour pilot insurance program" **or "pilot insurance program"** means a **combined program including** [~~combination of group~~] health coverage plus the medical portion of worker's coverage, as required by KRS 342.020 **providing twenty-four (24) hour coverage and approved by the Kentucky Health Policy Board**.

(2) "Commissioner" means the Commissioner of Workers' Claims,

or the commissioner's designee.

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

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

[~~(5)~~] "Group health plan" means an insurance **contract** [~~policy and/or contractual agreement~~] under which medical services for nonwork related conditions are extended to the employees of an employer **subject to KRS Chapter 342** [~~or employers' association~~].

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

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

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

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

(7) [~~(10)~~] "Pilot insurance program administrator" means the entity which provides the day-to-day administration of **a** [~~the~~] pilot insurance program.

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

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

Section 2. Prohibitions. [~~No person or entity shall:~~]

(1) **An insurer shall not issue** [~~Market~~] an insurance **contract providing health care benefits for both** [~~product, policy or plan of rendition of health care services as providing twenty-four (24) hour coverage for~~] compensable and noncompensable conditions **unless the contract qualifies** [~~absent first qualifying~~] as a twenty-four (24) hour pilot insurance program under this administrative regulation.

(2) [~~There shall be no transfer of~~] Labilities or expenses **shall not be transferred** between or among **insurers whose coverages** [~~particular lines of insurance whose medical or health components~~] have been combined into **a** twenty-four (24) hour **pilot insurance program** [~~coverage for health care~~].

Section 3. Pilot Insurance Programs in General. (1) A pilot insurance program shall deliver twenty-four (24) hour coverage through **one (1) or more insurers as defined in KRS 304.17A-010(12). Each insurer shall provide only the type of coverage it is authorized by law to provide.** [~~a coordinated plan, integrated plan, or a single policy plan~~]. Each program shall be designed and operated to eliminate, or minimize, differences in the delivery and administration of medical services for compensable and noncompensable conditions.

(2) A pilot insurance program may provide twenty-four (24) hour coverage to employees of one (1) or more employers **only to the extent each insurer may lawfully provide coverage for the employees of one (1) or more employers.** The program may cover all or a portion of the subject workforce of a participating employer. If only a portion of the workforce is covered by a pilot insurance program, **compensable** medical coverage for the remainder shall be governed by KRS 342.020 and **noncompensable medical coverage for the remainder shall be governed by KRS Chapter 304.** [~~any group health care plan which may otherwise be in effect.~~]

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

(1) The name, address, and telephone numbers of the pilot insurance program administrator and a description of **the administrator's** [~~its~~] role in funding, insuring, and operating the pilot insurance program;

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

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

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

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

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

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

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

(a) Number of employees treated by the **pilot insurance** program.

(b) Number of work-related injuries or diseases by ICD-9 code treated under the **pilot insurance program and during the twelve (12) month period** [~~plan and during the year~~] preceding the adoption of the plan.

(c) Breakdown by ICD-9 codes of injuries and diseases treated.

(d) Total medical costs for a noncompensable condition **for the first twelve (12) months of the pilot insurance program and for the twelve (12) month period preceding adoption of the pilot insurance program.** [~~during the plan and in the year preceding adoption of the plan.~~]

(e) Average medical cost per injured employee by type of injury.

(f) Average medical cost per diseased employee by type of disease.

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

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

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

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

(a) Reasonable provider choice;

(b) Quality care;

(c) Availability of emergency care;

(d) Strong case management; and

(e) Utilization review.

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

Section 5. Authorization of Pilot Plans. (1) The commissioner and the Kentucky Health Policy Board with consultation of the Commissioner of Insurance shall authorize **twenty-four (24) hour** pilot insurance programs. Applications will be evaluated in order of their receipt. Within thirty (30) days of receiving a complete application, the Kentucky Health Policy Board shall provide a written notice of findings upon review to the **pilot insurance** program administrators. That notice shall:

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

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

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

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

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

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

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

(e) The availability of **Kentucky Health Policy Board** [~~agency~~] resources to monitor the pilot insurance program.

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

(a) The pilot insurance program or **the pilot insurance** [~~any~~] program administrator does not comply with the provisions of **KRS Chapter 216 or 304** [~~this regulation or other applicable provisions of statute~~];

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

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

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

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

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

(3) After reviewing the response, the Kentucky Health Policy Board and commissioner **may** [~~shall~~] issue an order directing the **pilot insurance program** administrator**, the health care services contractor or the insurer** to remedy specific defects; may revoke the certificate of authority or in the discretion of the commissioner and Kentucky Health Policy Board, **and** set a time and place for hearing.

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

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

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

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

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

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

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

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

(b) A description of the administrator's findings, conclusions, and disposition of the grievance**; and** [~~.~~]

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

(4) Any employee or provider dissatisfied with the **pilot insurance program** administrator's, [~~or~~] health care service contractor's**, or insurer's** resolution of a grievance relating to a purportedly compensable condition, may apply for review by a workers' claims administrative law judge by filing a request for resolution within thirty (30) days of the date of the [~~administrator's~~] final decision. Upon review by a workers' claims administrative law judge, the movant shall be required to prove that the administrator's final decision is unreasonable or otherwise fails to conform with KRS Chapters 342 or 216.

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

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

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

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

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

(b) Coverage of noncompensable **conditions** [~~injuries~~] must comply with the terms of the group health plan portion of the pilot **insurance program** [~~plan~~]; and

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

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

(3) Copayments and deductibles.

(a) Coverage of compensable **conditions** [~~injuries~~] shall not require any copayment or deductible to be paid by **pilot insurance program members** [~~subject workers~~]. Coverage of noncompensable **conditions** [~~injuries~~] may require copayments or deductibles to be paid by [~~plan~~] members;

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

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

(5) Payment of premiums.

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

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

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

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

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

(2) The group health portion of a pilot **insurance program** [~~plan~~]. The administrators of a pilot **insurance program** [~~plan~~] shall report the experience of the group health portion of the **pilot insurance program** [~~plan~~] in accordance with the administrative regulations of the **Kentucky** Health Policy Board.

Section 13. (1) "24-Hour Coverage Pilot Program Application (April 1995)" is incorporated by reference.

(2) It may be inspected, copied, or obtained from the Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JACK B. HALL, Chairman

APPROVED BY AGENCY: February 15, 1995

FILED WITH LRC: February 15, 1995 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

TRANSPORTATION CABINET
Department of Highways
Division of Design
(Amended After Hearing)

603 KAR 9:020. Automatic gates at public grade [~~railroad/highway~~] crossings.

RELATES TO: KRS 189.561

STATUTORY AUTHORITY: KRS 189.561, 23 CFR Part 924

NECESSITY AND FUNCTION: KRS 189.561 requires the Transportation Cabinet to investigate any public [~~railroad/highway~~ at-] grade crossing not equipped with automatic crossing gates, which has an average daily traffic volume of 4000 or more vehicles and at which two (2) or more accidents involving a train and other vehicle have occurred within a five (5) year period. Excluded are nonfatal accidents caused by mechanical failure of the motor vehicle, accidents in which the operator of the highway motor vehicle was in violation of KRS Chapter 189A, or other nonwarning signal related cause as set forth by the Transportation Cabinet in administrative regulation. This administrative regulation sets forth the list of nonwarning signal related accidents.

Section 1. **Definition. "Public grade crossing" means as defined in KRS 177.010(4).**

Section 2. Qualifying Accident. In evaluating the **public grade** [~~at-grade railroad/highway~~] crossing accident reports, the Transportation Cabinet shall exclude the reports showing the following causes or circumstances associated with the highway vehicle/train collision which are not related to a warning device:

(1) The highway vehicle was not performing a railroad/highway crossing maneuver at the time of the collision;

(2) The driver of the highway vehicle made a willful decision to disregard the warning that a train was approaching and to place self at risk;

(3) The driver of the highway vehicle was warned of the approach of the train but was unable to stop the highway vehicle because of excessive speed or adverse highway conditions;

(4) The driver of the highway vehicle left the scene of the accident prior to the investigation;

(5) The driver of the highway vehicle was stopped on the railroad tracks prior to the approach of a train because of traffic congestion on the highway;

(6) The highway vehicle was struck by another vehicle and propelled into the crossing; or

(7) The driver of the highway vehicle did not hold an operator's license of the type necessary for the operation of that highway vehicle; or [.]

(8) The driver of the highway vehicle was not in control of the vehicle due to external circumstances such as illness.

Section **3.** [~~2.~~] Abandoned Rail Line. If the rail line has been proposed for abandonment, the Transportation Cabinet shall not consider placement of automatic crossing gates unless the abandonment proposal is rejected.

J. M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: April 11, 1995
FILED WITH LRC: April 13, 1995 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services
(Amended After Hearing)

908 KAR 2:090. Decriminalization of mental illness.

RELATES TO: KRS Chapters 202A, 202B, 645

STATUTORY AUTHORITY: KRS 194.050, 202A.008, 202A.028(3), (4), 202A.041(1), 202A.051(6), 202A.101(3), 202A.241, 645.120

NECESSITY AND FUNCTION: In accordance with the 1994 legislative revisions to KRS Chapters 202A, 202B and 645, the Cabinet for Human Resources has the authority for promulgating administrative regulations to carry out the revisions. This administrative regulation sets forth the cabinet's services and procedures for: providing crisis stabilization units; transporting and holding individuals; using restraints; providing privacy to individuals who are held for evaluation; identifying rights for individuals held to communicate by phone; and planning and coordinating the required services.

Section 1. Definitions. (1) "Community mental health - mental retardation center" or "center" means a facility licensed by the cabinet pursuant to KRS Chapter 216B that provides inpatient, outpatient, psychosocial rehabilitation, emergency, [~~and~~] consultation, and education services to persons needing mental health, mental retardation, and substance abuse services as provided within KRS 210.410 and 908 KAR 2:010.

(2) "Evaluation" means a mental health evaluation performed by a qualified mental health professional, as defined in KRS 202A.011 and 600.020, conducted to determine if an individual meets the criteria for involuntary hospitalization as defined in KRS 202A.026 or 645.090.

(3) "Facility" means any hospital or psychiatric facility as defined in KRS 202A.011 or a mental health facility as defined in KRS 645.020 used for the purpose of conducting an evaluation pursuant to KRS Chapters 202A or 202B or 645.120.

(4) "Hold", "held" or "holding" means the detainment of an individual by a peace officer or a provider of transportation services authorized by the peace officer.

(5) "Individual" means a person who is being held and evaluated under KRS Chapters 202A, 202B or 645.

(6) "Peace officer" means a law enforcement officer as defined in KRS 446.010(24).

(7) "Providers of transportation services" or "providers" means peace officers and ambulance services designated by the cabinet, service providers, or agencies on contract with the cabinet. The providers **of emergency or nonemergency transportation services** include those service providers or agencies that are approved by the Department for Medicaid Services or the centers [~~to provide emergency or nonemergency transportation services~~].

Section 2. Crisis Stabilization Unit. (1) Centers may establish crisis stabilization units for the purpose of reducing hospitalization in the treatment of mental illness. Services shall include:

(a) Evaluations;

(b) Crisis intervention and emergency mental health services; and

(c) Referral for follow-up care.

(2) Crisis stabilization units shall be operated as twenty-four (24) hour per day, seven (7) days per week facilities.

(3) Crisis stabilization units may admit individuals who voluntarily

seek mental health services or who are in need of evaluation pursuant to KRS Chapters 202A or 202B or 645.120.

Section 3. Transportation. (1) A peace officer shall:

(a) Transport an individual pursuant to KRS Chapter 202A or 645.120 for evaluation; and

(b) Hold the individual until the evaluation is completed**, unless the facility agrees to hold the individual**.

(2) Following the evaluation, the provider shall transport the individual to:

(a) A hospital if the evaluation criteria are met and so ordered by the court; or

(b) The location of the individual's choice in either the individual's home county or county where the holding originated, if the evaluation criteria are not met.

(3) The provider shall not use sirens or emergency lights of any kind except in a bona fide emergency.

(4) The peace officer who has taken the individual into custody under KRS 202A.041 shall:

(a) Document the behavior of the individual by describing:

1. How the situation was brought to the attention of the peace officer; and

2. The behavior of the individual that was considered a danger to self or others; and

(b) Provide this documentation to the qualified mental health professional evaluating the individual.

(5) Reimbursement of transportation costs may be negotiated by the center in accordance with the center's contract with the cabinet.

(6) Reimbursement for the individual transported to a facility shall be paid by the center if:

(a) The individual is transported pursuant to KRS 202A.028, 202A.041, 202A.051, or 645.120; and

(b) A center or a designated subcontractor of the center conducts the evaluation.

(7) Transportation provided to the individual upon discharge **from the hospital** to their home county **[**~~from the hospital~~**]** shall be:

(a) Reimbursed by the center, if a provider is the most appropriate means of transportation; or

(b) The responsibility of the hospital, if the hospital determines that an alternate form of transportation is more appropriate.

(8) No payment shall be made by the center if reimbursement of these costs is otherwise available from:

(a) Private insurance;

(b) Other source of payment;

(c) Medicare; or

(d) The Department for Medicaid Services.

(9) The authority of the cabinet to negotiate rates of reimbursement and enter into contracts with providers may be delegated to the center.

Section 4. Use of Restraints. (1) A peace officer, ambulance provider, physician or facility may use restraints only if the individual exhibits or is threatening to exhibit assaultive or self-injurious behavior.

(2) Restraints may be applied through physical contact or devices used by peace officers, ambulance providers, or facilities in a manner consistent with the practice of each profession. Restraint may also be applied through the appropriate use of medications ordered by a licensed physician and administered by a qualified health care professional.

(3) The peace officers, ambulance providers, physician or facility shall document in writing the use of any restraint. The documentation shall include:

(a) The reason for using the restraint;

(b) Type of restraint used;

(c) When the restraint was initiated; and

(d) Length of time the restraint was used, or if medication was used, name of medications, dosage and effect on individual.

(4) Documentation concerning the use of restraint shall be given to:

(a) The qualified mental health professional who performs the evaluation; and

(b) The facility, crisis stabilization unit, or intermediate care facility where the individual is being held or treated.

Section 5. Privacy. (1) A provider or facility shall not disclose the psychiatric condition or other personal information regarding the individual except to:

(a) Persons acting under the provisions of KRS Chapters 202A, 202B and 645;

(b) The individual;

(c) The individual's legal guardian;

(d) The individual's parent(s) or person exercising custodial control or supervision of the individual, if a minor; or

(e) Any person given legal authority to receive that information on the individual's behalf.

(2) Facilities shall **maintain the individual's privacy during the holding period. [**~~provide a private area for the individual.~~**]**

(3) The qualified mental health professional shall evaluate the individual in an examining room or clinician's office.

(4) The individual or the other persons identified in subsection (1) of this section may receive copies of all documents generated during the transportation and holding as provided in KRS 61.878 and 61.884.

(5) The qualified mental health professional who performed the evaluation or other facility staff shall inform the individual of the availability of the documents and the opportunity to review the individual's medical record.

Section 6. Communication. (1) At the time of holding, the provider shall inform the individual that reasonable access to telephone communication shall be offered at the facility.

(2) The facility shall:

(a) Inform the individual of the availability of phone calls;

(b) Provide telephone communications to the individual at the earliest opportunity available;

(c) Assist the individual in completing phone calls to persons of their choice; and

(d) Pay for no more than two (2) completed long distance phone calls, if the individual has insufficient funds.

Section 7. Community Mental Health - Mental Retardation Centers Responsibilities. (1) Under the authority of KRS 210.040(7) and (8), the cabinet may delegate to the community mental health - mental retardation centers the responsibility to plan**, prepare written protocols,** and coordinate services as provided within KRS Chapters 202A and 202B and 645.120.

(2) The center shall:

(a) Designate **[**~~psychiatric~~**]** facilities for the purpose of conducting evaluations by qualified mental health professionals;

(b) Notify providers of transportation services, district judges and the cabinet of the identity and location of the facilities that are designated for the purpose of evaluating individuals; **[**~~and~~**]**

(c) Make qualified mental health professionals available twenty-four (24) hours per day, seven (7) days per week at designated facilities to perform evaluations**;**

(d) Conduct evaluation requested by facilities within three (3) hours of the time of the request unless extensions of time are negotiated between the facility and the centes; and

(e) Assist the facility in referring the individual to a hospital for treatment if the evaluation criteria are met and the individual has not been admitted to the hospital where the evaluation is conducted.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner

MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: April 7, 1995
FILED WITH LRC: April 7, 1995 at 11 a.m.

KENTUCKY HEALTH POLICY BOARD
(Amended After Hearing)

909 KAR 1:070. Data reporting by health care providers.

RELATES TO: KRS 216.2905, 216.2920 to 216.2947
STATUTORY AUTHORITY: KRS 216.2905, 216.2925
NECESSITY AND FUNCTION: KRS 216.2905 and 216.2925 mandate the Kentucky Health Policy Board to promulgate administrative regulations requiring specified health care providers to provide the board with data on cost, quality and outcomes of health care services provided in the Commonwealth. This administrative regulation sets forth the data elements, forms, and timetables the board requires to carry out this mandate.

Section 1. Definitions. (1) "Board" means the Kentucky Health Policy Board.

(2) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay and discharge date, and further identified by a provider-assigned patient control number unique to that inpatient episode. Excluded from this definition are inpatient services a hospital may provide in swing, dual licensed, nursing facility, skilled, intermediate or personal care beds, hospice, and major ambulatory procedures notwithstanding that these may occur in hospitals.

(3) "Major ambulatory procedure" means the provision to an ambulatory patient of any ambulatory surgery, any cardiac catheterization, or any patient service using lithotripsy, magnetic resonance imaging or megavoltage radiation by linear accelerator or cobalt 60. Major ambulatory procedures may be related or unrelated to hospitalizations, may involve the use of either fixed or mobile medical equipment, and may occur in a physician office, a clinic, a hospital emergency, ambulatory or outpatient department by any name, or any other noninpatient situation or location where a major ambulatory procedure is provided.

(4) "**Selected** **[~~Major~~]** ambulatory surgery" means the following specific surgeries:

Dilation and curettage	Myringotomy with or without ventilation tubes
Hernia repair	Colonoscopy
Gastroscopy	Cystoscopy with or without retrograde urography
Bronchoscopy	Tubal ligation
Vasectomy	Cataract surgery
Laser surgery (eye)	Arthroscopy
Angioplasty	Septoplasty
Hemorrhoid surgery	Lymph node biopsy
Colposcopy with or without conization	Breast biopsy
Laparoscopic cholecystectomy	Carpal tunnel release
Arteriogram with or without angioplasty	Tonsillectomy

(5) "UB-92" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1450, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations and ambulatory encounters, as incorporated by reference in Section 9 of this administrative regulation.

(6) "HCFA-1500" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1500, approved by the American Medical Association Council on Medical Service and commonly used to bill for ambulatory patient encounters, as incorporated by reference in Section 9 of this administrative regulation.

(7) "Coding and transmission specifications" means the technical directives the board issues concerning technical and technological matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the UB-92 and HCFA-1500 and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(8) "Record" means the documentation of a hospitalization or major ambulatory procedure in the format of a UB-92 or HCFA-1500 regardless whether constituted as a paper form or on a computer-readable electronic medium.

(9) "Agent" means any entity with which the board may contract pursuant to carrying out its statutory mandates and may designate to act on behalf of the board to collect, edit or analyze data from providers.

(10) "Provider" means a hospital, ambulatory facility, physician office, clinic or other entity of any nature providing hospitalizations or major ambulatory procedures as defined in this administrative regulation.

Section 2. Data Collection. (1) Hospitalization records. Beginning January 1, 1995, hospitals shall document on a UB-92 record each hospitalization they provide, and shall from every record copy and provide to the board or its agent not less than the data specified in Section 7 of this administrative regulation.

(2) Major ambulatory procedure and mammography records.

(a) Beginning January 1, 1995, ambulatory facilities and hospitals providing major ambulatory procedures or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the board, every major ambulatory procedure and mammogram they provide, and shall from every record copy and provide to the board or its agent not less than the data specified in Section 7 of this administrative regulation.

(b) Beginning July 1, 1995, physician offices, clinics and other entities of any nature providing major ambulatory procedures or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the board, the major ambulatory procedures and mammograms they provide, except that reporting of surgeries shall be limited to **selected** **[~~major~~]** ambulatory surgeries as defined in this administrative regulation, and shall from every record copy and provide to the board or its agent not less than the data specified in Section 7 of this administrative regulation.

(3) Data collection on all patients. Providers shall submit all required data on every patient as provided in this administrative regulation, regardless whether a bill is to be generated or the services are to remain unbilled.

Section 3. Data Finalization and Submission. (1) Submission of final data. Data shall be deemed final for purposes of submission to the board or its agent as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless whether the record has actually been submitted to a payor.

(a) Finalized data shall not be withheld from submission to the board on grounds that it remains subject to adjudication by a payor.

(b) Data on hospitalizations shall not be submitted to the board or its agent before a patient is discharged or before the record is sufficiently final that it could be used for billing.

(2) Submission responsibility.

(a) When a patient is served by a mobile health service, specialized medical technology service, or other situations where one provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the board or its agent shall reside with the entity that bills for the service

or otherwise would do so in the event a service is unbilled.

(b) All charges for physician services occurring within a hospital shall be reported to the board. Responsibility for reporting the physician charge data shall rest with the hospital only when the physician is an employee of the hospital. Any physician charge(s) contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the board may ensure comparability when aggregating them with other hospital records that do not contain any physician charges.

(3) Transmission of records.

(a) Data submitted to the board or its agent shall be uniformly completed and formatted according to coding and transmission specifications issued by the board.

(b) Hospitals shall submit data on computer-readable electronic media, and all other providers with capability to submit records on computer-readable electronic media shall do so.

(c) All providers shall provide back-up security against accidental erasure or loss of the data until incomplete or inaccurate records identified by the board, if any, have been corrected and resubmitted.

(d) Any data submitted by mail shall be by registered mail.

(e) Any provider who submits records in the form of paper copies shall either deliver the copies to the board or its agent, or send them in secure packaging by mail postmarked no later than the due date.

(f) Personal identification fields including the patient's name, Social Security number, street address and four (4) digit ZIP code suffix if any (but not city or five (5) digit ZIP code) shall be rendered unreadable on paper copies before the copies are submitted to the board, and shall not be included with electronically submitted data.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of all data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the board.

(b) The board or its agent shall periodically, by electronic message or mail, verify to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the board of any discrepancy between the provider's date log and a verification notice.

Section 4. Data Submission Timetable. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall contain data, from all records of patients admitted on or after January 1, 1995, which during that quarter became final as specified in subsection 3(1) of this administrative regulation, and shall be submitted to the board not later than thirty (30) days after the last day of the quarter.

(a) If the 30th day falls on a weekend or holiday the submission due date shall become the next following working day.

(b) Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(c) The **[~~latest~~]** date for the first required data submission under this administrative regulation shall be**, for quarterly data collected after January 1, 1995, sixty (60) days following official release of the board's coding and transmission specifications. [~~April 30, 1995 for the quarter ending March 31, 1995.~~]**

(2) Submissions more frequent than quarterly. Providers may submit data at any time after records become final as specified in Section 3(1) of this administrative regulation, and at any frequency each provider deems convenient for accumulating and submitting batch data.

Section 5. Data Corrections. (1) Editing. All data received by the board or its agent will upon receipt be edited to ensure completeness and validity of the data for further processing. Computer editing routines will identify for correction every record in which the submitted contents of required fields are not consistent with the board's coding and transmission specifications.

(2) Time permitted for corrections. The board shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the board or its agent identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the board's notice informing the provider that corrections are required.

(b) Providers shall submit corrected data by either electronic transmission or postmarked mailing within the thirty (30) days.

(c) Corrected data submitted to the board or its agent shall be uniformly completed and formatted according to the board's coding and transmission specifications.

(d) During the start-up months between January 1, 1995 and September 30, 1995, the board may in its discretion grant a provider an extension of time to submit corrections, provided that the provider has informed the board of significant problems in performing the corrections and has formally requested an extension of time beyond the thirty (30) day limit.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the board or its agent shall identify and return to the provider for correction every record in which any one (1) or more required data elements fails to pass the edit, and shall count the total number of required data elements returned to be corrected as 100 percent of the data elements for that submission subject to correction by the provider.

(b) When editing data that a provider has resubmitted following corrections, the board or its agent shall check for a remaining error rate no greater than two (2) percent of the data elements originally returned to the provider for correction.

(c) The board may return for further correction(s) any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate of ninety-eight (98) percent or greater of the data elements originally returned to the provider to be corrected.

(d) For the first data submission, the board shall not count as errors any data for patients admitted prior to thirty (30) days following official release of coding and transmission specifications.

(4) Postsubmission data changes. A provider shall initiate, as a correction, a resubmission of data previously submitted to the board if at any time up to six (6) months after the original submission date the provider issues a rebilling in which the rebilled record contains one (1) or more changes from the originally submitted data as follows:

(a) Any change which constitutes an aggregate change of the originally submitted total charge by at least three (3) percent or $500, whichever is greater, if a hospitalization; or ten (10) percent or $100, whichever is greater, if an ambulatory encounter; or

(b) Any change of or addition to primary or secondary diagnoses or procedures.

Section 6. Working Contacts. (1) Beginning January 20, 1995 and annually thereafter by January 1, each provider who is required by this administrative regulation to submit data shall report by letter to the board the names and telephone numbers of a designated working contact person and a back-up person to facilitate technical staff follow-up in dealing with daily working details by employees of the board or its agent. A provider's designated contact and back-up may not be the chief executive officer unless no other person(s) employed by the provider has the requisite technical expertise.

(2) If the chief executive officer, designated contact person or back-up person changes during the year the name of the replacing person shall be reported immediately to the board.

Section 7. Required Data Elements. (1) UB-92 data. Providers shall ensure that each copy of UB-92 data submitted to the board contains at least the following data elements as provided for on the UB-92 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the board's coding and transmission specifications.

Field #	Data Element Label
2	* Ethnicity
3	* Provider Assigned Patient Control Number
4	* Type of Bill (inpatient, outpatient or other)
5	* Federal Tax Number or Employer Identification Number (EIN)
6	* Statement Covers Period
11	Patient Birth Weight (state-reserved field)
13	* Patient City and Zip Code
14	* Patient Birthdate
15	* Patient Sex
16	Patient Marital Status
17	* Admission/Start of Care Date
18	Admission Hour
19	* Type of Admission
20	* Source of Admission
21	Discharge Hour
22	* Patient Status (at end of service or discharge)
23	* Provider Assigned Medical Record Number
32-35	[±] Occurrence Codes & Dates
36	Occurrence Span Codes & Dates
39-41	[±] Value Codes and Amounts
42	* Revenue Codes/Groups
46	[±] Units of Service
47	* Total Charges by Revenue Code Category
50	* Payor Identification
56	KenPAC Authorization (Provider) Number
67	* Principal Diagnosis Code
68-75	[±] Secondary and Other Diagnosis Codes
76	* Admitting Diagnosis Code
77	**External Cause of Injury Code (E-code)**
78a	Unusual Occurrence: Readmission
78b	Unusual Occurrence: Nosocomial Infection
79	* Procedure Coding Method Used
80	[±] Principal Procedure Code & Date
81	[±] Secondary and Other Procedure Codes & Date
82	* Attending Physician Unique Physician Identification Number (UPIN) or alternate number
83	[±] Other Physician UPIN or alternate number

(2) HCFA-1500 data. Providers shall ensure that each copy of HCFA-1500 data submitted to the board contains at least the following data elements as provided for on the HCFA-1500 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the board's coding and transmission specifications.

Field #	Data Element Label
1	* Payor Identification
3	* Patient Birthdate and Patient Sex
5	* Patient City and Zip Code
8	Patient Marital Status
10a	Patient Condition Related to Employment
10b	Patient Condition Related to Auto Accident
10c	Patient Condition Related to Other Accident
14	* Date of Current Illness, Injury, or Pregnancy
15	First Date of Previous Same/Similar Illness
17a	* Referring/Ordering Physician UPIN or alternate number
18	Hospitalization Dates Related to Current Services
19	* Ethnicity
20	Outside Lab Use & Charges
21	* Diagnosis or Nature of Illness or Injury
24a	* Date(s) of Each Procedure/Service/Supply
24b	* Place of Service Code
24d	* CPT/HCPCS Code for Each Procedure/Service/Supply
24e	Diagnosis Code
24f	* Dollar Charges for Each Procedure/Service/Supply
24g	* Number of Days or Units
25	* Provider's (Physician/Supplier) Federal Tax Identification Number (EIN)
26	* Provider (Physician/Supplier)-assigned Patient Account Number
28	* Total Charges for Services

Section 8. Noncompliance and Penalties. (1) Failure to comply. As provided in KRS 216.2923(4), the board may impose civil fines on a provider who fails to provide required data or information after the board has provided written notice to the provider that the provider is in violation of a requirement specified in Sections 2 through 7 of this administrative regulation and has specified a due date by which the provider is to cease the violation(s).

(2) Multiple fines. In determining the number of fines that may be levied, the board may count each violation of the requirements in Sections 2 through 7 as constituting a separate violation, may count each day in violation of a single requirement as constituting a separate violation, and may stipulate that multiple fines continue to accrue until the provider ceases the violation(s).

(3) A provider who complies with all data correction requirements in Section 5 of this administrative regulation shall not be held in violation or noncompliance with regard to uncorrected data elements.

Section 9. Incorporations by Reference. (1) As defined in Section 1 of this administrative regulation, Form UB-92 and Form HCFA-1500 are incorporated by reference.

(2) These forms may be inspected or copied at the Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky, 40601, from 8 a.m. to 4:30 p.m., Monday through Friday except holidays.

JACK B. HALL, Chairman
APPROVED BY AGENCY: April 13, 1995
FILED WITH LRC: April 13, 1995 at 4 p.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, APRIL 14, 1995

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 12:060. Cancellation and payment of refund.

RELATES TO: KRS 164A.325(5), 164A.345
STATUTORY AUTHORITY: KRS 164A.325(9)
NECESSITY AND FUNCTION: KRS 164A.345(1) provides, in pertinent part, that any participant may cancel a participation agreement at will and specifies the amount of refund the participant is entitled to at various stages. That statute authorizes an administrative fee to be charged by the trust. This administrative regulation is necessary to establish the procedures for cancellation and refund and to specify the administrative fee. This amendment is necessary to conform the language to the definition in 11 KAR 12:010, Section 1(5).

Section 1. Definitions. "Hardship" or "emergency" shall mean those circumstances and conditions of a sudden nature, including catastrophic illness, which deprive the participant or his dependent from the basic necessities or comforts of life or proper health care.

Section 2. Cancellation. (1) A participant may at any time cancel a participation agreement, without cause, by submitting to the program administrator a notice to terminate the participation agreement.

(2) Except as provided in KRS 164A.345(2) or subsection (3) of this section, an administrative [~~refund~~] fee shall be deducted from the amount [~~account balance~~] refunded to the participant. [~~The administrative fee shall be the lesser amount of two (2) percent of the total balance in the participant's account or twenty-five (25) dollars.~~] The amount to be refunded pursuant to KRS 164A.345, less the administrative fee, shall be mailed or otherwise sent to the participant within sixty (60) days after receipt by the program administrator of notice to terminate the participation agreement.

(3) Hardship or emergency. If a participant terminates or cancels the participation agreement under conditions of hardship or emergency, then the program administrator shall immediately refund money from the account in accordance with KRS 164A.345(1), without deduction of an administrative refund fee. The participant shall submit verifiable evidence of the hardship to the program administrator simultaneous with submission of the notice to terminate the participation agreement.

MARY JO YOUNG, Chairperson
APPROVED BY AGENCY: March 17, 1995
FILED WITH LRC: March 23, 1995 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, May 30, 1995 at 10 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, May 25, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Contact person: Paul P. Borden
(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust. Qualifying participants or beneficiaries would be those having "Kentucky ties" and beneficiaries who have not attained the age of 15 as of the designation date. There are currently approximately 2,000 accounts established. Only those participants who wish to cancel an account would 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: 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 cost (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: No additional reporting and paperwork requirements.
(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue is anticipated.
(5) Source of revenue to be used for implementation and enforcement of administrative regulation. The source of revenue to be used for implementation and enforcement of the administrative regulation is the savings plan trust.
(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 are in which implemented and on Kentucky: No effects.
(b) State whether a detrimental effect on the environment or public health would result if not implemented: No effects.
(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. This regulation is being amended to conform to the definition in 11 KAR 12:010, Section 1(5), and will thus remove a prior conflict between regulations.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Conflict with 11 KAR 12:010, Section 1(5) will be removed by amendment of this regulation.

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. If no, explain why tiering was not applied. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by the statutes, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 12:070. Benefits payable from the Kentucky educational savings plan trust program fund.

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335(1)

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY AND FUNCTION: KRS 164A.310(8), 164A.335(5) and 164A.335(1) establish the statutory framework for payment of benefits to an institution from the program fund. This administrative regulation is necessary to establish the maximum benefits payable in any academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund. This amendment is necessary to clarify aspects of the disbursement process.

Section 1. Definitions. (1) "Academic year" shall mean the period beginning July 1 and ending June 30 of the following year.

(2) "Higher education costs" (as defined in KRS 164A.305(7)).

(3) "Investment income" shall mean the earnings from the investments in the program fund.

Section 2. Distribution of Benefits. (1) Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant may elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in any academic period by notifying the program administrator in writing.

(2) Distribution of benefits shall begin after receipt by the program administrator of a notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education, or until the account balance has been exhausted, whichever occurs first.

(3) In the event a participant transfers ownership rights pursuant to KRS Chapter 385, Uniform Transfers to Minors Act, notwithstanding KRS 385.202(1), which mandates the transfer of custodial property to the minor upon attainment of age eighteen (18), the property shall be distributed for postsecondary educational purposes in accordance with the terms of the participation agreement during each academic period of the beneficiary's educational program.

(4) Except as provided in Section 3 of this administrative regulation, each distribution of benefits shall be paid directly to the beneficiary's institution of higher education.

Section 3. Beneficiary Residing Off Campus. If a beneficiary resides off campus, then, upon written request of the participant the program administrator may pay to the beneficiary, in addition to the amounts paid to the institution, an amount equal to the cost of room and board for an academic period as established by said institution for on-campus students. However, the amounts paid to the institution and the beneficiary shall not exceed the amount payable in any academic period from the program fund or exceed the higher education costs for that institution.

Section 4. Nonenrollment. If the trust does not receive a completed notice to use trust benefits or a notice to delay trust benefits ~~[If a beneficiary does not enroll in an institution of higher education]~~ by the first academic period of the academic year that begins after the beneficiary attains the age of eighteen (18), or if the beneficiary interrupts enrollment (other than normal intersemester vacation periods), and the trust does not receive a notice to delay benefits, then the program administrator shall refund the balance of payments and investment income remaining in the account in accordance with KRS 164A.350. A participant may delay distribution of benefits no more than a total of eight (8) academic periods. After delay of distribution of benefits for eight (8) academic periods, distributions shall be made each academic period until the beneficiary graduates from an institution of higher education or the account balance has been exhausted, whichever occurs first, or the balance shall be refunded to the participant pursuant to KRS 164A.350. ~~[, unless the participant submits either a notice to delay benefits under the participation agreement or a notice to use trust benefits.]~~

Section 5. Unused Benefits. (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for any academic period, then that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in any academic period not exceeding the higher education costs may be paid to the institution for the beneficiary in the next succeeding academic period.

(2) After graduation. If the beneficiary graduates from an institution of higher education, and a balance in the beneficiary's account [~~remains~~], then the program administrator shall pay the balance of the payments and the investment income to the participant. The program administrator shall make the payment from the program fund within sixty (60) days from the date of the beneficiary's graduation. The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed notice to delay benefits or notice to use trust benefits.

MARY JO YOUNG, Chairperson

APPROVED BY AGENCY: March 17, 1995

FILED WITH LRC: March 23, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, May 30, 1995 at 10 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, May 25, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust. Qualifying participants or beneficiaries would be those having "Kentucky ties" and beneficiaries who have not attained the age of 15 as of the designation date. There are currently approximately 2,000 accounts established, all which could potentially be affected by this amendment.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The proposed amendments to Section 4 and Section 5 will provide no direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The proposed amendments to Section 4 and Section 5 will provide no direct or indirect costs or savings on the cost of doing business in the geographical area.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: A participant must still submit to the Savings Plan Trust a "Notice to Use Benefits" or a "Notice to Delay Benefits", and the amendment to Section 4 will not increase the paperwork filed with the Savings Plan Trust. This amendment allows greater flexibility. The amendment to Section 5 will not increase or change the paperwork filed with the Savings Plan Trust. The amendments to Sections 4 and 5 will not result in an increase in the compliance, reporting, and paperwork requirements. The Savings Plan Trust is required to make payments of benefits on behalf of beneficiaries to an institution. These amendments will reduce the amount of paperwork produced by the administrative agency, while clarifying that the participants must notify the Savings Plan Trust of the intended distribution of the accounts.

2. Second and subsequent years: Same as first year following implementation.

(3) Effects on the promulgating administrative body: The amendment to Section 4 provides greater guidance to the Savings Plan Trust as to the course of action to take with respect to distributions from Participants' accounts. The net effect of Section 5 on the administrative agency in adopting this proposed amendment will be minimal, as it merely clarifies that a refund will be made unless the Participant otherwise directs.

(a) Direct or indirect costs or savings: Sections 4 and 5 will allow the Savings Plan Trust to receive guidance from the participants as to the distribution of accounts, affording the participants flexibility in directing the distribution of accounts. Slightly decreased costs are anticipated, since the participants will no longer be allowed to delay distribution of benefits indefinitely.

1. First year: Minimal savings to administrative agency.

2. Continuing costs or savings: Minimal savings to administrative agency.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The amendments to Sections 4 and 5 will not result in an increase in the compliance, reporting, and paperwork requirements. The Savings Plan Trust is required to make payments of benefits on behalf of beneficiaries to an institution. These amendments will reduce the amount of paperwork produced by the administrative agency, while clarifying that the participants must notify the Savings Plan Trust of the intended distribution of the accounts.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on any state or local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. The source of revenue to be used for implementation and enforcement of the administrative regulation is the Savings Plan Trust.

(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 economic impact.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to KRS 164A.310(8), 164.330 (5) and 164A.335, this regulation establishes guidelines for the disbursement of benefits from the Savings Plan Trust. This proposed amendment streamlines the benefits payable process for the administrative agency, participant, and beneficiary. The current administrative regulation requires more inquiries on behalf of the Savings Plan Trust as to the intentions of the participant; these amendments make the benefits payable process less complicated. The proposed amendments are necessary to provide a course of action for the program administrator in the event that the participant does not inform the program administrator as to the disbursement of benefits after the beneficiary becomes eligible for benefits.

(8) Assessment of expected benefits: The Savings Plan Trust will be able to more effectively and efficiently administer participants' accounts and assess the intentions of participants with regard to those accounts.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare.

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

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect.

(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 conflicts with, overlaps, or duplicates the proposed amendments.

(a) Necessity of proposed regulation if in conflict: Not applicable. See (9).

(b) In conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable. See (9).

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. This regulation prescribes the procedures for benefit payments in a voluntary program providing student financial assistance benefits. Tiering was not applied, because the regulation sets uniform procedures. Disparate treatment of any person or entity affected by this administration 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.

FINANCE AND ADMINISTRATION CABINET
(Proposed Amendment)

200 KAR 20:010. Health insurance coverage for nonstate employees.

RELATES TO: KRS 18A.2251 ~~[1994 Ky. Acts ch. 512, §93]~~

STATUTORY AUTHORITY: KRS 18A.2251 ~~[1994 Ky. Acts ch. 512, §93]~~

NECESSITY AND FUNCTION: The provisions of KRS 18A.2251 ~~[the 1994 Ky. Acts ch. 512, §93,]~~ require the Secretary of the Finance and Administration Cabinet and the Secretary of the Cabinet for Human Resources to provide a system to enroll any citizen who

elects to purchase health insurance coverage pursuant to provisions of the Act. This legislation also requires that the Finance and Administration Cabinet promulgate an administrative regulation which establishes the manner in which the premiums for health insurance coverage shall be paid.

Section 1. Enrollment for Health Insurance Coverage. (1) The provisions of KRS 18A.2251 [~~the 1994 Ky. Acts ch. 512, §93,~~] provide that any citizen of the United States, who has been a Kentucky resident for the previous one (1) year period, may elect to purchase health insurance coverage as provided to state employees pursuant to KRS 18A.225 and 18A.2281. In order to purchase this health insurance coverage, an individual shall obtain a "Request for Application for Health Insurance Coverage Form" from a county field office of the Cabinet for Human Resources located in the county of the citizen's residence, or at other locations designated by the Cabinet for Human Resources, and deliver it directly to the Kentucky Department of Personnel.

(2) Upon receipt of the "Request for Application for [~~of~~] Health Insurance Coverage Form," the Department of Personnel shall mail to the applicant a "CommonHealth [~~Commonwealth~~] of Ky. Application." This application shall be filled out completely by the individual desiring to purchase health insurance coverage, and delivered to the Kentucky Department of Personnel, along with the applicant's annual or first quarterly premium for the health insurance coverage as established by the Kentucky Department of Personnel. The applicant's premium shall be paid in the manner established in Section 2 of this administrative regulation.

Section 2. Payment of Premiums. (1) An applicant for health insurance coverage provided for under the provisions of KRS 18A.2251 [~~the 1994 Ky. Acts ch. 512,~~] shall pay, in advance on an annual or quarterly basis, the premium charged for this coverage as established by the Kentucky Department of Personnel.

(2)(a) If an applicant elects to pay the premium for health insurance coverage on a quarterly basis, then the applicant's advance quarterly premium shall be paid either in its entirety at the time of filing of the Department of Personnel's "CommonHealth [~~Commonwealth~~] of Ky. Application" or in monthly installments as provided for in paragraph (b) of this subsection.

(b) The applicant's quarterly premium may be paid in monthly installments, with the first two (2) monthly installments of the quarterly premium to be paid when the applicant's "CommonHealth [~~Commonwealth~~] of Ky. Application" is filed with the Kentucky Department of Personnel. [~~Depending on whether the applicant has elected to purchase the health insurance coverage provided by KRS 18A.2281 or 18A.225,~~] The applicant's last monthly installment of the quarterly premium shall be postmarked or received either by the Department of Personnel, for insurance purchased under KRS 18A.2281 or the commercial health insurance carrier, for insurance purchased under KRS 18A.225 by the tenth day of the month preceding the month the health insurance coverage is to take effect.

(c) Subsequent quarterly payments shall be paid in monthly installments and postmarked or received either by the Department of Personnel or the commercial health insurance carrier by the tenth day of each month starting with the first month the health insurance is effective.

[~~(d) The last monthly installment for any quarter shall be postmarked or received either by the Department of Personnel for insurance purchased under KRS 18A.2281 or the commercial health insurance carrier, for insurance purchased under KRS 18A.2281 by the tenth day of the month preceding the first month of any quarter of health insurance coverage.~~]

(3) The applicant's payment of premiums for health insurance provided by KRS 18A.2281, shall be made by cashier's or certified check, or by money order made payable to the Kentucky State Treasurer and delivered to the Kentucky Department of Personnel, who shall deposit these funds into the Kentucky Kare Insurance Trust Fund authorized by KRS 18A.2281. Personal checks may be accepted when, in the Commissioner of Personnel's judgment, the payor is financially solvent.

(4) The applicant's initial payment of insurance premium or installments for commercial health insurance provided for under KRS 18A.225, shall be made by cashier's or certified check, or by money order made payable to the commercial health insurance company chosen by the applicant and delivered to the Kentucky Department of Personnel, who shall forward said payment to the health insurance company with a copy of the "CommonHealth [~~Commonwealth~~] of Ky. Application." Personal checks may be accepted when, in the Commissioner of Personnel's judgment, the payor is financially solvent. Subsequent quarterly payments or premium installments shall be paid directly from the applicant to the commercial health insurance company.

(5) If an applicant fails to comply with the provisions of this section, then the applicant's coverage shall not go into effect, or if already in effect, the applicant's insurance coverage shall be cancelled, at which time the installments previously paid by the applicant shall be reimbursed to the applicant within thirty (30) working days.

(6)(a) Except as provided in paragraph (b) of this subsection, the initial health insurance coverage provided by KRS 18A.2251 [~~the 1994 Ky. Acts ch. 512, §93,~~] shall not be effective until the first day of the second calendar month following the Kentucky Department of Personnel's receipt of the applicant's payment of the entire annual or quarterly premium.

(b) If the applicant elects to pay the quarterly premium on an installment basis, then the applicant's health insurance coverage shall be effective the first day of the second calendar month following the Department of Personnel's or the commercial health insurance carrier's receipt of payment of the first two (2) months installment of the quarterly premium, provided the final installment of the quarterly premium is received within the time established under subsection (2)(b) of this section [~~Section 2(2)(d) of this administrative regulation~~].

Section 3. (1) Material Incorporated by Reference. The following material is incorporated by reference:

(a) Kentucky Department of Personnel "Request for Application for Health Insurance" (1994);

(b) Kentucky Department of Personnel "CommonHealth [~~Commonwealth~~] of Ky. Application" (1994).

(2) This material may be inspected, obtained, or copied at the Kentucky Department of Personnel, 200 Fair Oaks Lane, Suite 511, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., EDT, Monday through Friday.

CRIT LUALLEN, Secretary

APPROVED BY AGENCY: April 13, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 25, 1995, at 10 a.m., EDT in the Department of Personnel Conference Room, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 20, 1995, five (5) calendar days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angela C. Robinson, Finance and Administration

Cabinet, Office of Legal and Legislative Services, Room 374, Capitol Annex Building, Frankfort, Kentucky 40601, (502) 564-6660.

REGULATORY IMPACT ANALYSIS

Contact Person: Angela C. Robinson, Attorney

(1) Type and number of entities affected: Undeterminable 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 the public comments received. None expected.

(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. Nominal

(c) Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be a decrease in the administrative paperwork for the Department of Personnel due to the amendment which allows the commissioner to accept personal checks. Currently, the Department of Personnel has been unable to accept personal checks and has been required to return any personal checks received to the individual or employer explaining that payments must be by certified or cashier's check or by money order.

2. Second and subsequent years: Annual costs should not change. There should be no effect upon competition.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs to the Finance and Administration Cabinet will be minimal. Possible costs would be those associated with collection of any bad checks received.

2. Continuing costs or savings: Minimal to the Finance and Administration Cabinet.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required of the Finance and Administration Cabinet.

(4) Assessment of anticipated effect on state and local revenues: Undeterminable at this time.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None. There are no costs involved in implementation and enforcement of the regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received at this time. However, this amendment is expected to have no economic impact.

(b) Kentucky: No public comments have been received at this time. However, this amendment is expected to have no economic impact.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare will result.

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

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

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

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. This regulation has been narrowly tailored to affect only those nonstate employees who are eligible to purchase health insurance coverage under KRS 18A.2251.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:050. Examination, education, and experience requirement.

RELATES TO: KRS 324A.030, 324A.035, 324A.040, 324A.065

STATUTORY AUTHORITY: KRS 324A.035, 324A.040

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to set policies and procedures and to protect the public. The function of this administrative regulation is to establish the examination, education, and experience requirements for certification as a certified general real property appraiser, certified residential real property appraiser, licensed real property appraiser, and trainee real property appraiser.

Section 1. Examination. An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, and licensed real property appraiser shall pass an examination that is specific for the certification or license applied for and has been:

(1) Approved by the board; and

(2) Approved by the Appraiser Qualifications Board of the Appraisal Foundation.

Section 2. Required Hours of Instruction. (1) An applicant for the certified general real property appraiser examination shall have completed 165 hours of approved instruction.

(2) An applicant for the certified residential real property appraiser examination shall have completed:

(a) 105 hours of approved instruction, for certification prior to January 1, 1994; and

(b) 165 hours of approved instruction, for certification on or after January 1, 1994 if required by the federally-established Appraiser Qualifications Board.

(3) An applicant for the licensed real property appraiser examination shall have completed seventy-five (75) hours of approved instruction.

(4) An applicant for a license as a trainee real property appraiser shall have completed seventy-five (75) hours of approved instruction of which fifteen (15) hours shall relate to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

(5)(a) Completed hours of instruction for one (1) type of appraiser may be credited to the number of hours of approved instruction required for another type of appraiser.

(b) Required hours of instruction may have been completed at any time prior to application for certification or licensure.

Section 3. Approved Instruction. Approved instruction for certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall be subjects related to real estate appraisal that:

(1) Include coverage of the "Uniform Standards of Professional Appraisal Practice" of the Appraisal Standards Board of the Appraisal

Foundation, incorporated by reference in 201 KAR 30:040; and

(2) For licensed real property appraisers and certified residential real property appraisers, place particular emphasis on the appraisal of one (1) to four (4) unit residential properties;

(3) For certified general real property appraisers, place particular emphasis on the appraisal of nonresidential properties; and

(4) Include coverage of:

(a) Influences on real estate value;

(b) Legal consideration in appraisal;

(c) Types of value;

(d) Economic principles;

(e) Real estate markets and analysis;

(f) Valuation process;

(g) Property description;

(h) Highest and best use analysis;

(i) Appraisal statistical concepts;

(j) Sales comparison approach;

(k) Site value;

(l) Cost approach; and

(m) Income approach, including:

1. Gross rent multiplier analysis;

2. Estimation of income and expenses;

3. Operating expense ratios; and

4. Direct capitalization;

(n) Valuation of partial interests;

(o) Appraisal standards and ethics; and

(p) Narrative report writing.

Section 4. Credit for Instruction. (1) Credit for instruction shall be granted if:

(a) It is approved by the board;

(b) It complies with the provisions of this administrative regulation;

(c) It is documented by the applicant;

(d) It is a course that requires at least fifteen (15) hours of instruction; and

(e) An applicant has passed a written examination of the subject matter of the course.

(2)(a) Credit toward the classroom hour requirement may be granted to a teacher of appraisal courses.

(b) A teacher of appraisal courses who wishes to receive credits shall:

1. File a written request with the board for receipt of credit;

2. Document the appraisal courses taught by title, date, place taught, and length of course; and

3. Elect to receive credit for either the:

a. Classroom hour requirement; or

b. Experience requirement.

(3) The board shall grant credit for courses to an applicant in which:

(a) The applicant received credit from the course provider by challenge examination;

(b) The credit was granted by the course provider prior to July 1, 1990; and

(c) The board is satisfied with the quality of the challenge examination that was administered by the course provider.

Section 5. Approved Providers of Instruction. (1) Instruction may be obtained from approved:

(a) Colleges or universities;

(b) Community or junior colleges;

(c) Real estate appraisal or real estate related organizations;

(d) State or federal agencies or commissions

(e) Proprietary schools; or

(f) Other providers.

(2) A provider shall be approved by the board if the provider:

(a) Applies to the board for approval on the "Appraisal Education Provider Application Form;" and

(b) Is determined by the board to be a qualified appraisal education provider.

Section 6. Required Experience. (1)(a) Prior to certification as a general real property appraiser or a residential real property appraiser, an applicant shall have acquired two (2) calendar years appraisal experience.

(b) 1,000 hours of appraisal experience acquired within a calendar year shall constitute a calendar year appraisal experience.

(c) The two (2) calendar years appraisal experience may have been acquired in any two (2) calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(d) For certification as a general real property appraiser, fifty (50) percent of the appraisal experience shall consist of nonresidential appraisal experience.

(2) An applicant shall have acquired 2,000 hours of appraisal experience:

(a) Prior to initial licensure; or

(b) Within two (2) years of initial licensure for transitional licenses.

(3)(a) An applicant shall verify experience credit on forms approved and provided by the board.

(b) The board may request reports, file memoranda, and other documentation of appraisal experience.

(4) Acceptable appraisal experience shall include:

(a) Fee and staff appraisal;

(b) Ad valorem tax appraisal;

(c) Review appraisal;

(d) Appraisal analysis;

(e) Real estate counseling;

(f) Highest and best use analysis;

(g) Feasibility analysis or study; and

(h) Teaching of appraisal courses as provided by this section.

Section 7. Continuing Education: Number of Hours Required. (1) Certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall:

(a) Complete ten (10) hours of approved continuing education each license year; and

(b) Furnish the board with proof of compliance.

(2) Trainee real property appraisers who remain in this classification in excess of two (2) years shall be required in the third and successive years to:

(a) Complete fourteen (14) hours of approved continuing education before license renewal each license year; and

(b) Furnish the board with proof of compliance.

Section 8. Continuing Education. (1) Continuing education credit may be granted for ten (10) hours:

(a) Of approved continuing education courses; or

(b) For participation, other than as a student, in appraisal educational programs and processes.

(2) Appraisal educational programs and processes shall include:

(a) Teaching;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and

(c) Has been approved by the board.

(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

Section 9. Material Incorporated By Reference. (1) [~~The following material is incorporated by reference:~~

~~(a)~~] "Appraisal Education Provider Application Form" (1992) is incorporated by reference [~~; and~~

~~(b) "Uniform Standards of Professional Appraisal Practice," (January 1993), Appraisal Standards Board of the Appraisal Foundation~~].

(2) It [~~(a) These documents~~] may be inspected, copied, or obtained at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

[~~(b) The "Uniform Standards of Professional Appraisal Practice," may be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave, N.W., Suite 900, Washington DC, 20005.~~]

JED DETERS, Chairman

APPROVED BY AGENCY: March 31, 1995

FILED WITH LRC: April 4, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 26th day of May, 1995, at 10 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by the 22nd day of May, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Agency Contact: James P. Daniels

(1) Type and number of entities affected: Approximately 1200 licensed or certified appraisers in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation was amended to update the standards of practice for licensed and certified appraisers. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all licensed and certified appraisers are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:120. Temporary appraisal licenses and certificates.

RELATES TO: KRS 324A.015, 324A.020, 324A.030, 324A.035, 324A.040, 324A.045, 324A.050, 324A.070, 324A.075, 12 USC 3331-3351

STATUTORY AUTHORITY: KRS 324A.020

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (12 USC 3331 through 12 USC 3351), to set standards, and to protect the public.

Section 1. A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in such state may apply for registration to receive temporary appraiser licensing or certification privileges in this state by paying a fee of fifty (50) dollars and filing with the board a notarized application on a form prescribed by the board for such purpose which shall set forth and include:

(1) The applicant's name, address, Social Security number and such other information as may be necessary to identify the applicant;

(2) A statement under seal issued by the appraiser licensing or certifying agency in the applicant's resident state setting forth:

(a) The applicant's name, business name and address;

(b) The type license or certificate held by the applicant and the license or certificate number;

(c) The dates of licensure or certification and the expiration date of the applicant's current license or certificate;

(d) Whether or not the license or certificate was issued as a result of passing a licensure/certification examination, by reciprocity, or by some other means; and

(e) A complete record of any disciplinary actions taken or disciplinary proceedings pending against the applicant;

(3) An irrevocable consent that service of process in any action against the applicant arising out of the applicant's appraisal activities in this state may be made by delivery of the process on the executive director of the board;

(4) A statement that the applicant has read and agrees to abide by all appraiser laws and rules in this state and agrees to cooperate with any investigation initiated by the board at the direction of the board including supplying relevant documents and personally appearing before the board or its investigators;

(5) Information sufficient to identify the appraisal assignment to be performed under the temporary practice certificate or license, including the projected beginning and ending dates for performing such appraisal assignment, but shall not require the applicant to divulge any information concerning the appraisal assignment which would breach the applicant's duty of confidentiality to his client under the provisions of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040; and

(6) Such other information as may be necessary to determine the applicant's eligibility for temporary appraiser licensing or certification privileges in this state.

Section 2. Upon filing a properly completed application accompanied by the required fee, and otherwise satisfying the board as to his qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice certificate of license by the board authorizing the applicant to perform in this state the appraisal assignment described in such application, provided that the length of time projected by the applicant for the completion of the assignment is reasonable given the scope and complexity of the assignment.

Section 3. Licensing and certification privileges granted under the provisions of this rule shall expire upon the completion of the appraisal assignment described in the application for temporary licensing or certification privileges or on the expiration date set forth in the temporary practice certificate of license, whichever shall come first. However, upon a showing by the applicant satisfactory to the board that, notwithstanding the applicant's diligent attention to the appraisal assignment, additional time is needed to complete the assignment, the board shall extend the licensing or certification privileges granted under the applicant's temporary practice certificate of license to afford him additional time to complete the appraisal assignment.

Section 4. Persons granted temporary licensing or certification privileges under this rule shall not advertise or otherwise hold themselves out as being a Kentucky state-licensed or state-certified appraiser.

JED DETERS, Chairman

APPROVED BY AGENCY: March 31, 1995

FILED WITH LRC: April 4, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 26th day of May, 1995, at 10 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by the 22nd day of May, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Agency Contact: James P. Daniels

(1) Type and number of entities affected: Approximately 1200 licensed or certified appraisers in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation was amended to update the standards of practice for licensed and certified appraisers. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all licensed and certified appraisers are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Proposed Amendment)

201 KAR 30:140. Transitional licensed real property appraiser.

RELATES TO: KRS 324.010, 324A.030, 324A.035, 324A.040, 324A.045, 324A.050, 324A.065

STATUTORY AUTHORITY: KRS 324A.035

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to establish a temporary class of transitional licensed real property appraiser.

Section 1. "Transitional licensed real property appraiser" means an appraiser who has fulfilled the requirements previously established by the board for transitional licensure and has been issued a transitional license by the board to appraise real property in connection with federally and nonfederally related transactions.

Section 2. (1) "Transitional licensed real property appraiser" is a type of appraiser.

(2) A transitional licensed real property appraiser may perform appraisals of:

(a) Noncomplex, one (1) to four (4) residential units that have a transaction value of less than $1,000,000;

(b) Complex, one (1) to four (4) residential units that have a transaction value of less than $250,000; and

(c) Nonresidential real property that has a transaction value of less than $250,000.

Section 3. A transitional licensed real property appraiser shall comply with the ["]Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040 ["].

Section 4. A transitional licensed real property appraiser license issued by the board shall automatically expire two (2) years after the date of its issuance by the board and the license shall not be renewable.

Section 5. A transitional licensed real property appraiser license issued by the board shall automatically expire six (6) months from the effective date of this administrative regulation, if the licensee does not provide the board with proof of having obtained at least seventy-five (75) hours of approved appraisal education or at least 2,000 hours of appraisal experience within six (6) months of the effective date of this administrative regulation.

Section 6. The board shall not administer examinations for transitional real property appraiser after the effective date of this administrative regulation.

Section 7. The board shall not issue any additional licenses for transitional real property appraiser after the effective date of this administrative regulation.

JED DETERS, Chairman

APPROVED BY AGENCY: March 31, 1995

FILED WITH LRC: April 4, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 26th day of May, 1995, at 10 a.m. in Room 308, 3572 Iron Works Pike, Lexington, Kentucky 40511. Individuals interested in attending this hearing shall notify this agency in writing by the 22nd day of May, 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: James P. Daniels, Executive Director, Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511, (606) 255-0144.

REGULATORY IMPACT ANALYSIS

Agency Contact: James P. Daniels

(1) Type and number of entities affected: Approximately 1200 licensed or certified appraisers in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation was amended to update the standards of practice for licensed and certified appraisers. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all licensed and certified appraisers are treated uniformly under the law.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:050. Land Between the Lakes hunting requirements [~~rules~~].

RELATES TO: KRS 150.010, 150.025, 150.170, 150.250, 150.360, 150.640, 150.680

STATUTORY AUTHORITY: KRS [~~13A.350,~~] 150.025, 150.680

NECESSITY AND FUNCTION: This administrative regulation pertains to general rules for hunting on the Kentucky portion of Land Between the Lakes as defined in KRS 150.680 [~~located in Trigg and Lyon Counties~~]. This administrative regulation is necessary to specify special hunting rules at Land Between the Lakes and [~~. The function of this administrative regulation is~~] to authorize conservation officers to enforce [~~special~~] Land Between the Lakes hunting rules. This amendment is necessary to rescind special Land Between the Lakes hunter education requirements, to remove deer and turkey tagging requirements that are covered in other administrative regulations, and to bring the language and formatting into compliance with KRS Chapter 13A.

Section 1. License Requirements. (1) [~~Kentucky hunting license and Land Between the Lakes permit.~~] Hunters shall [~~must~~] have: [~~a valid Kentucky hunting license and~~]

(a) A Land Between the Lakes hunting permit; and

(b) Unless exempted by KRS 150.170(3) through (8), a valid Kentucky hunting license.

(2) Permits are nontransferable and may be cancelled if rules and administrative regulations are violated [~~and~~/] or if the holder is [~~deemed to be~~] careless with firearms.

(3) Permits may be obtained at any information station or at the Administrative Office, Golden Pond, KY 42211 [~~42231~~].

(4) Unless exempted by KRS 150.170(3) through (8):

(a) Deer hunters shall [~~must also~~] possess a valid Kentucky deer tag.

(b) [~~and~~] Turkey hunters shall [~~must~~] possess a valid Kentucky turkey tag.

[~~(2) Hunter Safety Training Certificate Requirement. Every person born on or after January 1, 1969, before hunting shall possess, in addition to all other licenses and permits required, proof of satisfactory completion of a state approved hunter education course except that this provision shall not apply to persons under ten (10) years of age accompanied by an adult at least twenty one (21) years of age. For the purposes of this section, accompanied is defined as being able to take immediate control of the hunting device. This provision shall take effect April 1, 1985.~~]

Section 2. General Requirements [~~Rules~~]. (1) Except as noted, state and federal regulations shall apply.

(2) Persons shall not:

(a) Take or molest wildlife except as authorized. [~~No species of wildlife may be molested or taken except as authorized.~~]

(b) [~~(3)~~] Target practice [~~is prohibited~~] except at designated ranges and with Land Between the Lakes approval.

(c) Operate [~~(4) Operation of~~] motorized vehicles except [~~is permitted only~~] within the designated off-highway [~~road~~] vehicle area and on Land Between the Lakes legal [~~system~~] roads as [~~. System roads are those~~] designated by signs and listed on a map available free of charge from Land Between the Lakes.

(d) Drive [~~Driving~~] in woods, fields, foot trails, or utility rights of way; or

(e) Block [~~and blocking~~] access to roads, trails, or [~~and~~] entryways [~~is prohibited~~].

Section 3. Firearms and Archery Equipment. (1) Persons shall not:

(a) Carry handguns on their person [~~Weapons. (1) Prohibitions. (a) Handguns cannot be carried on the person~~] except during legal hunting hours while participating in authorized gun hunts.

(b) Carry firearms or [~~and~~] bows and arrows, except target and fishing arrows, [~~are prohibited~~] except during authorized hunts by legally licensed and permitted hunters. [~~. At this time, hunters must have in their possession a valid Land Between the Lakes hunting permit and a valid Kentucky hunting license, or as otherwise authorized by special administrative regulations. Such hunters camping on Land Between the Lakes may possess legal hunting weapons one (1) day prior to and one (1) day after an authorized hunt.~~]

(c) Transport in vehicles firearms with ammunition in either the chamber or magazine. [~~Firearms transported in vehicles during authorized hunts must be unloaded in both chamber and magazine.~~]

(2) Hunters camping on Land Between the Lakes may possess legal hunting firearms or archery equipment one (1) day prior to, during, and one (1) day after an authorized hunt.

(3) [~~Permitted Weapons. All~~] Firearms and archery equipment shall [~~must~~] conform to applicable [~~statewide~~] administrative regulations for the species being hunted. [~~unless specified in other administrative regulations.~~]

Section 4. Hunting and Chasing. (1) Persons shall not hunt in [~~Hunting is prohibited in all~~] developed public use areas, safety zones or [~~and~~] posted areas unless the area is [~~so~~] designated by signs as open to hunting.

(2) A state permit shall be [~~is~~] required to conduct a field trial.

(3) Between sunrise and sunset, persons shall not:

(a) Hunt raccoon or opossum; or

(b) Chase foxes with dogs. [~~Fox chasing and raccoon and opossum hunting are permitted from sunset to sunrise during the designated season.~~]

(4) Raccoons may be bagged or taken for restocking.

(5) Dogs shall [~~must~~] be removed by 8 a.m.

(6) Persons participating in deer quota hunts:
(a) Shall be selected for each hunt by computerized drawing.
(b) Shall not submit more than one (1) application.
(c) If under sixteen (16) years old, shall apply with an adult unless participating in a youth quota hunt.
(d) Shall not hunt except on dates assigned to them.
(e) Shall not change hunt dates.
(f) Shall remain in assigned areas.
(g) Shall take the sex of deer specified on the permit.

~~[(4) Quota deer hunting applicants are selected for each hunt by computerized drawing. Hunters must hunt only during the period assigned to them and must stay within their assigned hunt area. Hunt areas and dates cannot be changed. Only one (1) application is permitted per hunter. Groups are limited to no more than five (5) hunters. For quota hunts, other than special youth hunts, hunters under sixteen (16) must apply and hunt with an adult. Some Land Between the Lakes permits for deer may be valid for antlerless deer or either sex deer as specified on the permit.~~

~~(5) Deer and turkey bow hunting. During the concurrent deer and turkey bow hunting season, only those turkey hunters who have a valid Kentucky deer and turkey hunting permit are eligible to hunt turkey. Turkey hunting will not be allowed after the hunter is successful in bagging a deer. This rule applies only when deer and turkey are hunted concurrently and not during the spring turkey only hunting season. Turkey taken must be checked out and have both a Land Between the Lakes permanent game tag and a Kentucky turkey tag attached before being removed from the area.]~~

Section 5. Tree Stands. (1) Nails, spikes, tree climbers, screw-in devices, or wire shall [~~must~~] not be used for attaching stands or for climbing trees.
(2) [~~No~~] Existing permanent stands shall not [~~may~~] be used.
(3) Portable stands and climbing devices that do not injure trees may be used.
(4) Portable stands:
(a) Shall not [~~may~~] be placed on trees [~~no~~] more than two (2) weeks prior to the hunting season.
(b) Shall [~~and must~~] be removed within one (1) week following a hunting season or portion of a split season.
(c) Shall [~~All portable stands must~~] display the name and address of the owner.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman
APPROVED BY AGENCY: March 3, 1995
FILED WITH LRC: April 14, 1995 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 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 May 21, 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: Don Walker, Acting Director, 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, Division of Wildlife
(1) Type and number of entities affected: Approximately 12,000 persons are issued Land Between the Lakes hunting permits annually.
(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 amendment to an existing regulation will have no impact on cost of living or employment.
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This amendment to an existing regulation will have no impact on costs of doing business.
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: This administrative regulation continues a requirement that persons apply in advance for some hunts and check in and out.
2. Second and subsequent years: Same as first year.
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: 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:
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds will be expended by Land Between the Lakes enforcement personnel; Fish and Game Fund monies will be used for any state enforcement of the provisions of this administrative regulation on LBL.
(6) To the extend available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: No public comments received. This amendment to an existing administrative regulation will have no economic impact.
(b) Kentucky: No economic impact.
(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternates are (1) to permit hunting on Land Between the Lakes under statewide regulations, or (2) close the area to hunting. Alternative (1) was rejected because of the need for individualized requirements for the use of LBL by hunters. Alternative (2) was rejected because closing the area would mean a loss of recreational activity and the loss of economic activities associated with that recreation.
(8) Assessment of expected benefits:
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Controlling hunter access and activities will lead to increased public safety and better management of the wildlife resources at Land Between the Lakes.
(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: An increased potential for hunting accidents if access for some popular hunts were not controlled, and a decrease in the effectiveness of wildlife management practices.
(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? 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.

DEPARTMENT OF AGRICULTURE
Division of Shows and Fairs
(Proposed Amendment)

302 KAR 15:010. Administration; state aid to local fairs.

RELATES TO: KRS 247.220

STATUTORY AUTHORITY: KRS 247.220

NECESSITY AND FUNCTION: Provides rules and administrative regulations by which the state aid to local fairs program must be administered. It explains to the Department of Agriculture, Division of Shows and Fairs, and to the local fairs their responsibilities in the program.

Section 1. General Administration. (1) The Director of the Division of Shows and Fairs in the Department of Agriculture shall only make premium allocations to the authorized agent of an incorporated local fair board that conducts a qualified local agricultural fair in compliance with KRS 247.220.

(2) Local fair boards applying for state funds shall see that a reasonable effort is made by local fair officials to develop a program that will supplement agricultural educational and promotional activities that coincide with the objectives of agencies officially charged with these responsibilities.

(3) Local fair boards seeking state assistance shall plan and conduct a qualified local agricultural fair with educational exhibits running for at least three (3) consecutive days (thirty-six (36) hours of exhibition). All fair events must be held on consecutive days with the following exceptions:

(a) Fairs may be closed on Sundays, if the local board desires; and

(b) Fairs may conduct certain events, such as harness horse racing, on separate dates providing the local board files a request to do so with the Division of Shows and Fairs and that request is approved by the Kentucky Fair Council at the next regular meeting and thereafter transmitted to the Commissioner of Agriculture with a recommendation by the Kentucky Fair Council that the Commissioner of Agriculture approve or reject the local board's request.

(4) Local boards shall establish premiums related to the economic importance of the commodity in the area, the relative value of the exhibit and the difficulty in preparing for and showing the entry. Local boards shall establish classes based upon the Department of Agriculture's "Uniform Classes" booklet since no divisions other than these set up by this booklet will qualify for aid, but within each division, deviation will be accepted provided the additional classes are based on the participation in that area.

(5) State funds shall be limited to crops, foods, domestic livestock, poultry, 4-H, FFA and FHA projects, harness horse racing and other horse events, provided they have a good potential for profitable expansion or the improvement of the agriculture economy of the area.

(6) Ribbon colors used at each local fair shall coincide with those adopted by the International Association of Fairs.

(7) Fair boards seeking state funds shall provide adequate health facilities for exhibitors tending exhibits and for fair attendants.

(8) Fair events held at a location other than the fairgrounds may qualify for aid if such an event is held during corresponding consecutive dates with the fair and publicized in the fair's catalog as being a fair event.

Section 2. Records. (1) Requests for state assistance shall be made annually on appropriate forms and mailed to the Division of Shows and Fairs by March 1. The Commissioner of Agriculture shall have the authority to allow a fair to enter the program after the application deadline has passed.

(2) An appropriate information form concerning the fair's beef, dairy, and sheep shows shall be mailed to the Division of Shows and Fairs by May 1.

(3) Fairs shall submit a rough copy of their catalog to the Division of Shows and Fairs at least forty-five (45) days before their fair. This shall include the same information required in the printed catalog, excluding advertisements. A printed copy of the fair's catalog shall be submitted no later than thirty (30) days before the start of the fair. No payment can be made before the printed catalog is received by the Division of Shows and Fairs.

(4) A complete financial statement for events previously requesting state funds shall be submitted to the Department of Agriculture prior to the second fair payment, this payment including the second agricultural premium payment, the second harness racing payment and the payment for horse events. This annual financial statement shall cover all crops, foods, domestic livestock, poultry, harness horse racing, other horse events and other agricultural classes that may qualify for aid. It shall be complete and prepared in detail showing receipts and disbursements as well as number of exhibitors and premiums awarded by fair departments. This certified, notarized statement shall be presented to the Director of the Division of Shows and Fairs within forty-five (45) days following the event and no statement will be accepted for payment after December 1.

Section 3. Entries. (1) Fairs qualifying for state funds shall provide for adult and youth divisions. Youth exhibits shall include 4-H, FFA, FHA and may include other official groups recognized by the extension service or the Office of Secondary Vocational Education. All projects approved by these official groups may be approved for state funds. Fair boards may restrict youth participation to a particular district, county or trade area.

(2) All exhibitors, adult and youth, shall have equal opportunity to enter open classes.

(3) Local fair boards receiving state money shall see that exhibits eligible in more than one (1) class [~~and~~/]or section are exhibited only in the class [~~and~~/]or section for which it best qualifies. Under no circumstances may an exhibitor show the same kind of animal or the same entry in both FFA and 4-H classes or in classes for other organized junior organizations.

(4) No more than two (2) exhibits shall be made from a household in any one (1) class with the exception of official 4-H or FFA projects and where purebred animals are registered to other members of the household.

(5) All crop, domestic livestock and horse entries receiving state premium money shall conform to official show classifications adopted by the state's Fair Council, and comply with the State Board of Agriculture and the Department of Agriculture regulations. The age classification of all domestic livestock shall be listed in the official fair catalog and all classes shall conform to the standards recommended by the various breed associations. Dairy cattle classes shall conform to the standards recommended by the Kentucky Purebred Dairy Cattle Association. English horse classes shall comply with regulations recommended by the American Horse Show Association. A western bred show shall comply with the regulations set by that specific breed and open western horse classes shall comply with the regulations set by the American Quarter Horse Show Association. Classes with less than three (3) entries each may be combined for

show purposes.

(6) All domestic livestock, poultry, and horse entries shall meet the specifications of the health administrative regulations of the State Board of Agriculture relating to the exhibition of livestock in Kentucky.

Section 4. Catalog. (1) All qualified fairs shall have an official fair catalog. A rough copy of the catalog including premium lists and classes, excluding advertisements, shall be submitted to be approved by the Division of Shows and Fairs at least forty-five (45) days prior to the opening of the fair. The finished catalog shall be submitted to the Director of the Department of Agriculture's Division of Shows and Fairs no later than thirty (30) days before the fair is held.

(2) Classes advertised in the catalog shall be reviewed annually by the local fair board to make certain that competitive events are being held and that premiums offered are not out of balance with entries.

(3) The official fair catalog shall contain the following information:

(a) The fair is "planned and conducted according to the Department of Agriculture regulations for the use of state funds."

(b) A list of fair officials and their assigned responsibilities with the following organizations being represented on the agriculture advisory board:

1. Vocational Agriculture.
2. Extension Service.
3. Farm Bureau.
4. Local Livestock Association (if one exists).
5. Local Horsemen's Association (if one exists).

(c) A schedule of events planned as a part of the fair.

(d) Local fair rules and administrative regulations including a statement to the effect that "open classes are open to all exhibitors unless otherwise specified."

(e) General information and administrative regulations by fair departments showing classes and premium lists.

(f) Health administrative regulations by types of livestock to be exhibited.

(g) A rule to the effect that "entries made in 4-H, FFA and FHA classes must have been produced in conjunction with an approved project sponsored by these organizations."

(4) Catalogs shall be mailed and distributed by the local fair board no later than thirty (30) days prior to the opening of the fair.

Section 5. Judges. (1) To assist with the educational objectives of each event, judges shall be encouraged to present reasons for their evaluations and decisions.

(2) No person shall be an exhibitor or act as an agent in any division or department for which he serves as a judge.

Section 6. State Allocation. (1) The Department of Agriculture's agricultural premium money shall be allocated to all approved local fairs on the basis of total money offered for approved classes in the catalog and total money spent in approved classes taken from the fair's financial statement available as indicated by fair records including catalogs. In no instance shall the total agricultural premium payment for one (1) or more fairs held annually in a single county exceed $4,000. In addition, state money for each class shall not exceed fifty (50) percent of the total premiums awarded. The first agricultural premium payment to each fair will be made after the printed catalog is received and will be up to one-fourth (1/4) of the amount of money offered in approved classes by the local fair up to a maximum of $2,125 [~~2,000~~]. The second agricultural premium payment will be made after the fair's financial statement is received provided all remaining requirements have been met and the necessary records submitted, and will be based on the amount of money paid for premiums and awards in approved agricultural classes up to a maximum of $4,250 [~~4,000~~] less the amount of the first agricultural premium payment. The combination of county fairs or community fairs of a number of counties shall not be approved to justify a larger state premium payment.

(2) An additional $1,750 [~~1,500~~] grant may be made to a qualified local agricultural fair to be used for horse events' premiums and awards. This grant is on an equal matching fund basis and is based completely on the amount of money paid in premiums and awards for horse events' classes. The payment of this grant will come after the financial statement of the fair is received by the Department of Agriculture and will be included in the fair's second fair payment. The qualified fair must submit with its financial statement, records of premiums paid, number of exhibitors, and number of entries for these horse events.

(3) The Department of Agriculture shall make available to a qualified agriculture fair, up to $7,000 [~~an additional $5,000~~] on an equal matching basis for harness horse racing, with a maximum of $750 per race being matched by the department. To qualify, a fair must meet the regulations and specifications set up by the United States Trotters Association, Kentucky Harness Racing Association and the Department of Agriculture. Harness racing payments will also be disbursed in two (2) payments, the first being one-fourth (1/4) the amount of purses offered in the printed catalog, up to a maximum of $3,500 [~~2,500~~]. This payment shall be combined with the fair's first agricultural payment. The second harness racing payment will be based on the amount of money spent in harness racing purses, up to a maximum of $7,000 [~~5,000~~] less the first harness racing payment, and will be included in the second fair payment, providing the fair has included sufficient information on their financial statement in regard to the harness racing results.

(4) When the Department of Agriculture provides the total cost of premiums for a carcass class, a class for performance tested beef animals, or a dairy production class, all classes, rules, and facilities for the respective contest must be approved by the department. Carcass evaluations for meat animals shall be conducted in accordance with standards recommended by the Reciprocal Meats Conference and approved by the Meats Section of the University of Kentucky. Carcass contests financed by state funds shall be conducted in adequate facilities and they should permit spectators to view the carcasses and receive the full educational opportunity. Contest rules for local fairs shall specify that purebred animals and grades will show together. Carcass contests or production or performance classes that will make the greatest contribution to the agriculture of an area and that have the necessary facilities available for their effective operation shall be chosen by fair officials.

(5) The director of the department's show and fair program shall provide from the appropriation for county fairs an attractive trophy that will be rotated and engraved and presented annually to the local fair that had made the most progress in twelve (12) months. In addition, appropriate engraved plaques shall be presented to the first, second, and third placed fairs making the most progress in the twelve (12) months period and also for the most outstanding new fair in the program for that year. The presentation shall be made by the Department of Agriculture's Fair Council based on records submitted to the department and substantiated by other evidence.

Section 7. Building Program. (1) A qualified local agricultural fair can make application for an additional $3,000 grant of state funds to be used for the establishment of new buildings and facilities or for improvement to existing facilities. Applications for the building program are due in the Division of Shows and Fairs' office no later than June 1 of the year that the work is to be completed, and it must be preceded by a request for state aid application. Such grants shall be on an equal matching basis with the local fair board matching the amount of the state grant. The application form Request for State Aid for the Building Program is incorporated by reference. The form is effective October 12, 1990, and may be obtained at the Division of Shows and Fairs, A-3 Suburban Park, Frankfort, Kentucky 40601, during regular working hours (from 8 a.m. to 4:30 p.m.). In no event shall the payment for facilities result in a decrease in the approved

agricultural classes or premiums being offered in the fair catalog.

(2) The buildings and facilities must be used primarily in conjunction with the qualified local agricultural fair and must either be constructed on land owned by the local fair board or on land that the fair group holds a renewable lease.

(a) Some suggested items that may qualify are:

1. The purchase of land for a fairground or the purchase of land adjoining the original grounds.

2. The construction of new buildings.

3. Repair of any existing facilities on the fairgrounds.

4. Grandstands or bleachers used to seat people during the fair.

5. Grading and improvement work done to an existing track or show ring.

6. Loading chutes, wash racks or tie-outs for livestock.

(b) Other items not listed above may qualify for state assistance provided the local fair provides evidence to the Department of Agriculture that the item meets the minimum requirements and is justifiable.

(3) Applying for state assistance. Application for state assistance must be made in writing by the qualified local agricultural fair to the Division of Shows and Fairs, Department of Agriculture, by June 1 of the year that the work is to be completed. The application should include a description of the proposed buildings or improvements to be made, use to be made of these improvements, itemized list of approximate cost, and the date to be completed. Application forms will be available from the Department of Agriculture, Division of Shows and Fairs, and will be distributed after fair program applications are received or upon request.

(4) Financial report of building program. Upon acceptance of qualified local fair's request for assistance by the Department of Agriculture, the local fair will be supplied a financial report form. The financial report should contain a description of the buildings or improvements and an itemized cost of the same. This notarized report shall be presented to the Division of Shows and Fairs within forty-five (45) days following the completion of the building or repair work. No report will be accepted for payment after December 1.

(5) When building program payments will be made. Building program payments will be disbursed in two (2) payments, with the first payment representing one-fourth (1/4) of the total amount submitted on the fair's building report up to a maximum of $1,500. The second building program payments will be made after all financial statements and building reports have been received in the office of the Division of Shows and Fairs and the total amount required for all grants is known. At this point, the second building payment amount shall be adjusted on an equal basis to bring the total grants in line with the funds available in the Aid to Fairs Program budget.

Section 8. Effect of Overspending of Fair Program Budget. In the event that the local agricultural fair program payments exceed the amount of money budgeted for the total fair program, reductions will be made in payments as recommended by the fair council and as determined by the Commissioner of Agriculture.

ED LOGSDON, Chairman

APPROVED BY AGENCY: March 28, 1995

FILED WITH LRC: March 29, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, May 22, 1995 at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by May 17, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact Person: William Bruce

(1) Type and number of entities affected: All local fairs.

(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.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No increased or decreased cost.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No change in direct or indirect costs.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: Same

(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: Administered by the Division of Shows and Fairs.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: Same

(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: No effect.

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

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All fairs are treated the same.

ECONOMIC DEVELOPMENT CABINET
Kentucky Economic Development
Finance Authority
(Proposed Amendment)

307 KAR 2:010. Kentucky Jobs Development Act Program [~~General operations~~].

RELATES TO: KRS 154.24-010 through 154.24-150 [~~160~~]
STATUTORY AUTHORITY: KRS 154.24-040(7)
NECESSITY AND FUNCTION: This administrative regulation is necessary to set out the application process, hearing procedure and project selection criteria for the Kentucky Jobs Development Act [~~Authority Tax Credit Incentive~~] Program established pursuant to KRS 154.24-010 through 154.24-150 [~~160~~].

Section 1. Definitions. (1) "Act" means KRS 154.24-010 through KRS 154.24-150[~~160~~].
(2) "Approved company" is defined in KRS 154.24-010.
(3) "Assessment" is defined in KRS 154.24-010.
(4) "Authority" is defined in KRS 154.24-010
(5) "Commonwealth" is defined in KRS 154.24-010.
(6) "Economic development project" is defined in KRS 154.24010.
(7) "Eligible company" means a company defined in KRS 154.24-010 which meets the requirements of this administrative regulation.
(8) "Full-time job" means a job for which an employee works, and is paid for, a minimum of thirty (30) hours per calendar week.
(9) "Inducements" is defined in KRS 154.24-010.
(10) "KRS" means the Kentucky Revised Statutes, as they may be amended from time to time.
(11) "Rent" is defined in KRS 154.24-010.
(12) "Service or technology" is defined in KRS 154.24-010.
(13) "Start-up costs" is defined in KRS 154.24-010.

Section 2. Service or Technology; Excluded Classifications. (1) "Service or technology" defined in KRS 154.24-010 shall not include the following classifications listed by division in the index of the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget and incorporated by reference in Section 6 [~~7~~] of this administrative regulation:
(a) Division A. Agriculture, forestry, and fishing;
(b) Division B. Mining;
(c) Division C. Construction; and
(d) Division D. Manufacturing.
(2) Notwithstanding classifications excluded by subsection (1) of this section, those service and technology activities of a company engaged in an ineligible activity may be approved for the Kentucky Jobs Development Act [~~Authority Tax Credit Incentive~~] Program if the company's service and technology activity:
(a) Complies with the requirements of this administrative regulation;
(b) Is operated by the company in [~~Operates as~~] a separate division; and
(c) Is approved by the authority.

Section 3. Kentucky Jobs Development Act [~~Authority Tax Credit Incentive~~] Program. (1) Companies wishing to participate in the Kentucky Jobs Development Act [~~Authority Tax Credit Incentive~~] Program shall file an application with the authority which shall contain:
(a) Documentation and certification required pursuant to KRS 154.24-090(1). Documentation of services provided for persons located outside the Commonwealth [~~This documentation~~] shall include the annual gross revenues directly generated from the economic development project. In the case of those economic development projects which for purposes of the approved company and in accordance with generally accepted accounting principles do not generate revenues, such documentation shall include the annual gross revenues generated by the entity for which the services from the economic development project are provided;
(b) Information required pursuant to KRS 154.24-090(2), (3) and (4);
(c) A list of the competitors of the applicant in the Commonwealth;
(d) Notice that a $500 nonrefundable application fee payable to the authority shall be submitted with the application;
(e) A brief history of the business and description of the project, including description of service or technology activities;
(f) A letter of support from the appropriate local elected officials, including an acknowledgment that the local community is supportive of the job assessment incentive;
(g) Notice that an administrative fee of one-tenth (.1) of one (1) percent of the estimated approved costs for the entire period, with a minimum administrative fee of $1,000 in addition to the $500 application fee, is payable upon execution of the service and technology agreement. If the approved costs, as finally determined, are adjusted upward, the administrative fee shall be increased to include the increase;
(h) Notice that for companies applying on or before December 31, 1995, a one (1) time fee of $2,500 is due upon execution of the service and technology agreement for the benefit of the Kentucky Research and Development Infrastructure Fund;
(i) Notice that for companies applying on or after January 1, 1996, an annual fee shall be paid to the State Treasurer in an amount equal to five (5) percent of the total amount of the tax credits and wage assessments taken by the companies for their previous fiscal years under the service and technology agreements entered into pursuant to KRS 154.24-120;
(j) Notice that a completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form shall be submitted with the application;
(k) [~~(h)~~] Projected costs and a breakdown of those costs, including:
1. Annual rent of the building or the fair rental value if the building is being purchased;
2. Start-up costs as of project completion, including:
a. Cost of furnishing and equipping the building for ordinary business functions, including:
(i) [~~; b.~~] Computers;
(ii) [~~c.~~] Nonrecurring costs of fixed telecommunication equipment;
(iii) [~~d.~~] Furnishing; and
(iv) [~~e.~~] Office equipment; and
b. [~~f.~~] Relocation costs;
(l) [~~(i)~~] For the ten (10) year period of the financial assistance:
1. The annual estimated wages to be paid;
2. The annual wage assessment; and
3. The annual income tax credit;
(m) [~~(j)~~] The current number of jobs at the project location, both full time and part time;
(n) [~~(k)~~] The [~~increase in the~~] number of new full-time and part-time jobs to be created at the project location within one (1) year after the date of the final resolution authorizing the economic development project [~~after an eighteen (18) month period~~];
(o) [~~(l)~~] The total projected number of full-time and part-time jobs that will exist at the project within one (1) year after the date of the final resolution authorizing the economic development project [~~projected two (2) years after project completion~~];
(p) [~~(m)~~] The number of skilled, semiskilled, unskilled, managerial and technical jobs created by the projects.
(2) Pursuant to KRS 154.24-100 the authority may preliminarily approve eligible companies after consideration of the application for the Kentucky Jobs Development Act [~~Authority Tax Credit Incentive~~] Program if it determines the company meets all the requirements of the Act and this administrative regulation.

Section 4. Hearing Procedure. (1) The authority shall appoint a

hearing agent and hold at least one (1) public hearing to solicit public comments and at the hearing the company shall address the criteria in KRS 154.24-090.

(2) The hearing shall be held in Frankfort and notice of the hearing shall include the date, time and precise location, including street address, where the hearing shall be held.

(3) The public shall be afforded the opportunity to present evidence and comment on the application at the public hearing.

(4) Public hearings shall be conducted informally to allow reasonable commentary on the application.

(5) Public hearings shall be tape recorded by the authority and copies made available to the public at a cost which shall not exceed the expense of making the copy.

(6) The hearing agent shall summarize the comments offered at the public hearing and shall submit the summary to the authority for its consideration of whether to designate the eligible company as an approved company.

(a) The hearing agent shall not express an opinion about whether the eligible company should be designated by the authority as an approved company.

(b) Two (2) copies of the report of the hearing agency shall be completed and provided to the authority at least ten (10) days prior to its meeting set to consider designating the eligible company as an approved company.

~~[Section 5. Consent of Authority under KRS 154.24-150. Before any service and technology agreement shall become effective, the requirements of KRS 154.24-150 shall be met. Prior consent of the authority shall be required for any service benefit or in kind contribution proposed to be offered by the legislative body of the local jurisdiction pursuant to KRS 154.24-150(2).]~~

Section 5 [~~6.~~] Service and Technology Agreement Contents. The authority may require the following additional information as a part of the negotiated terms of a service and technology agreement pursuant to KRS 154.24-120:

(1) Annual, quarterly or monthly progress reports to the authority;

(2) Annual, quarterly or monthly certifications to assure compliance with KRS 154.24-090(1), 154.24-120(2)(b) and 154.24-140(4);

(3) Annual certifications of rental payments referred to in KRS 154.24-130(2);

(4) Annual, quarterly or monthly financial reports to the authority; and

(5) Access to the approved company's records.

Section 6. [~~7.~~] Incorporation by Reference. (1) The "Application for [~~the~~] Kentucky Jobs Development Act [~~Authority Tax Credit Incentive~~] Program" (March 1995 [~~1993~~]) and the "Standard Industrial Classification Manual" (1987 ed.) from the United States Office of Management and Budget are incorporated by reference.

(2) Copies of the "Manual" and the form of "Application" referred to in subsection (1) of this section may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

HAROLD G. DORAN, JR., Chairman

APPROVED BY AGENCY: April 13, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 30, 1995, at 10 a.m. at 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If no notification or intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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: Larry R. Brown, Commissioner, Financial Incentives, Kentucky Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Larry R. Brown

(1) Type and number of entities affected: This amended regulation affects companies which apply for status as approved companies under KRS 154.24-010 to 154.24-150 (the "Act"), entitling them to certain benefits provided under the Act. The number of companies which will apply is unknown.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no direct and indirect costs or savings to those affected entities because the amended regulation does not require information in excess of the requirements mandated by the Act.

(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: None (a) Direct and indirect costs or savings: This amended regulation will not result in any direct or indirect costs or savings to the Kentucky Economic Development Finance Authority since the amended regulation merely clarifies the requirements set forth in the statutes.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Some additional reporting or paperwork requirements will be created by this amended regulation since the result of its promulgation will be an expansion of the information required in the application of an applicant for the incentives provided under the Kentucky Jobs Development Act Program.

(4) Assessment of anticipated effect on state and local revenues The Act's tax credit incentive program affects state and local revenues by reducing future revenues to the Commonwealth of Kentucky through the granting of income tax credits to both the companies and the employees of the companies. However, the regulation itself has no anticipated effect on state and local revenues since it merely clarifies the standards for applications by eligible companies.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Although future revenues to the Commonwealth of Kentucky are reduced by the Act's tax credit incentive program, no revenues are used to implement and enforce the regulation since it merely clarifies the standards for applications by eligible companies.

(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: The amended regulation should have no economic impact since it does not require information in excess of the requirements mandated by the Act.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are available to accomplish the purpose of the amended regulation because the Act requires the selection criteria for the approval of eligible companies to be addressed by administrative regulations.

(8) Assessment of expected benefits: The amended regulation will provide those interested persons with accurate and updated information regarding the project selection criteria, hearing procedure and application process for the Kentucky Jobs Development Act Program.

(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: A detrimental effect on the environment and public health will not result if the amended regulation is 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: No statute, administrative regulation or government policy was found to be in conflict with amended regulation.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. No tiering was applied because all eligible companies applying for benefits under the Kentucky Jobs Development Act Program will be treated in a uniform manner.

ECONOMIC DEVELOPMENT CABINET
(Proposed Amendment)

307 KAR 3:010. Kentucky Industrial Revitalization Act Tax Credit Program [~~General operations~~].

RELATES TO: KRS 154.26-010 through 154.26-100

STATUTORY AUTHORITY: KRS 154.26-030(5)

NECESSITY AND FUNCTION: This administrative regulation is necessary to set out the application process, hearing procedure and project selection criteria for the Kentucky Industrial Revitalization Act [~~Authority~~] Tax Credit [~~Incentive~~] Program established pursuant to KRS 154.26-010 through 154.26-100.

Section 1. Definitions. (1) "Act" means KRS 154.26-010 through 154.26-100.

(2) "Agreement" is defined in KRS 154.26-010.

(3) "Approved company" is defined in KRS 154.26-010.

(4) [~~(3)~~] "Authority" is defined in KRS 154.26-010.

(5) [~~(4)~~] "Commonwealth" is defined in KRS 154-26.010.

(6) [~~(5)~~] "Economic revitalization project" is defined in KRS 154.26-010.

(7) [~~(6)~~] "Eligible company" is defined in KRS 154.26-010.

(8) [~~(7)~~] "Inducements" is defined in KRS 154.26-010.

(9) [~~(8)~~] "Manufacturing" is defined in KRS 154.26-010.

Section 2. Eligibility Standards. (1) The authority shall approve eligible companies based upon the:

(a) Information supplied to the authority in the application, pursuant to Section 3(2)(a) through (i) of this administrative regulation; and

(b) Comments received at the public hearing pursuant to Section 4(1) of this administrative regulation.

(2) In determining whether to approve an eligible company for the Kentucky Industrial Revitalization Act [~~Authority~~] Tax Credit [~~Incentive~~] Program the authority shall give greatest weight to the:

(a) Information supplied in the application pursuant to Section 3(2)(a) through (c) of this administrative regulation; and

(b) Comments received at the public hearing pursuant to Section 4(1) of this administrative regulation.

Section 3. Kentucky Industrial Revitalization Act [~~Authority~~] Tax Credit [~~Incentive~~] Program. (1) Companies that wish to participate in the Kentucky Industrial Revitalization Act [~~Authority~~] Tax Credit [~~Incentive~~] Program shall file an application with the authority.

(2) The application shall contain the following information:

(a) The eligible company's need for the economic revitalization project, and the reasons for the intent of the eligible company to close its manufacturing facility. As a part of this needs analysis the eligible company shall provide to the authority[~~, the company's~~]:

1. The company's financial history;

2. Written evidence of support in the community, including a letter of [~~the~~] support from [~~of~~] the local elected officials, including an acknowledgment that the local community is supportive of the job assessment inducement [~~developmental authority or chamber of commerce~~]; and

3. Written evidence of the projected cost of the project, including:

a. Building improvements;

b. Equipment purchase or upgrade;

c. Machinery purchase or upgrade;

d. Additional inventory required; and

e. Additional personnel required;

(b) The specific projected amount and timing of capital investment by the eligible company that will result in financial stability for the manufacturing facility of the eligible company. The authority shall, as a part of its analysis of projected amount and timing of capital investment review the information and documentation provided in the application pursuant to paragraph (a)3 of this subsection;

(c) The projected number of employees to be retained and to be hired in the future at the manufacturing facility of the eligible company over a five (5) year period from the commencement date of the [~~revitalization~~] agreement and as a result of the receipt of the inducements. As a part of its analysis pursuant to this paragraph the authority shall consider the following information:

1. The current number of jobs at the project location, both full time and part time;

2. The increase in the number of full-time and part-time jobs at the project location after an eighteen (18) month period;

3. The total number of full-time and part-time jobs projected two (2) years after project completion;

4. The number of skilled, semiskilled, unskilled, managerial and technical jobs created by the project; and

5. The number of full-time and part-time jobs retained by the project;

(d) Evidence, based upon the financial information provided pursuant to this section, that except for a substantial investment in the economic revitalization project, assisted by the inducements authorized by the act, the eligible company will close its manufacturing facility, permanently lay off its employees and cease operations;

(e) A detailed description of the company's productivity, efficiency and financial stability as required by KRS 154.26-080(4);

(f) A list of alternatives to closing the manufacturing facility available to the eligible company pursuant to KRS 154.26-080(4);

(g) Copies of the eligible company's financial statements for the most current fiscal year end;

(h) The lending source for the project; [~~and~~]

(i) Notice that a $500 nonrefundable application fee payable to the authority shall be submitted with the application;

(j) Notice that an administrative fee of one-tenth (.1) of one (1) percent of fifty (50) percent of the estimated approved costs for the entire period, with a minimum administrative fee of $1,000 in addition to the $500 application fee, is payable upon execution of the agreement;

(k) Notice that for companies applying on or before December 31, 1995, a one (1) time fee of $2,500 is due upon execution of the agreement for the benefit of the Kentucky Research and Development Infrastructure Fund; and

(l) Notice that for companies applying on or after January 1, 1996, an annual fee shall be paid to the State Treasurer in an amount equal to five (5) percent of the total amount of the tax credits and wage assessments taken by the companies for their previous fiscal years under the revitalization agreements entered into pursuant to KRS 154.26-090;

(m) Notice that a completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form shall be submitted with the application.

Section 4. Hearing Procedure. (1) The authority shall appoint a hearing agent and hold at least one (1) public hearing to solicit public comments and at the hearing the consultant referred to in KRS 154.26-080 shall address the standards in KRS 154.26-080.

(2) The hearing shall be held in Frankfort and notice of the hearing shall:

(a) Be given pursuant to KRS 424.130; and

(b) Include the date, time and precise location, including street address, where the hearing shall be held.

(3) The public shall be afforded the opportunity to present evidence and comment on the application at the public hearing.

(4) Public hearings shall be conducted informally to allow reasonable commentary on the application.

(5) Public hearings shall be tape recorded by the authority and copies made available to the public at a cost which shall not exceed the expense of providing the copy.

(6) The hearing agent shall summarize the comments offered at the public hearing and shall submit the summary to the authority for its consideration of whether to designate the eligible company as an approved company.

(a) The hearing agent shall not express an opinion about whether the eligible company should be designated by the authority as an approved company.

(b) Two (2) copies of the report of the hearing agent shall be completed and provided to the authority at least ten (10) days prior to its meeting set to consider designating the eligible company as an approved company.

Section 5. [~~Revitalization~~] Agreement Contents. The authority may require the following additional information as a part of the negotiated terms of an [~~revitalization~~] agreement pursuant to KRS 154.26-090:

(1) Annual, quarterly or monthly progress reports to the authority;

(2) Annual, quarterly or monthly financial reports to the authority; and

(3) Access to the approved company's records.

Section 6. Incorporation by Reference. (1) The "Application for the Kentucky Industrial Revitalization Act [~~Authority~~] Tax Credit [~~Incentive~~] Program" (March 1995 [~~1993~~]) is incorporated by reference.

(2) Copies of the form of application may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

HAROLD G. DORAN, JR., Chairman

APPROVED BY AGENCY: April 13, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 30, 1995, at 10:30 a.m. at 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If no notification or intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. 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: Larry R. Brown, Commissioner, Financial Incentives, Kentucky Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Larry R. Brown

(1) Type and number of entities affected: This regulation affects companies which apply for status as approved companies under KRS 154.26-010 to 154.26-100 (the "Act"), entitling them to certain benefits provided under the Act. The number of companies which will apply is unknown.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no direct and indirect costs or savings to those affected entities because the regulation does not require information in excess of the requirements mandated by the Act.

(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: None

(a) Direct and indirect costs or savings: This amended regulation will not result in any direct or indirect costs or savings to the Kentucky Economic Development Finance Authority since the amended regulation merely clarifies the requirements set forth in the statutes.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Some additional reporting or paperwork requirements will be created by this amended regulation since the result of its promulgation will be an expansion of the information required in the application of an applicant for the incentives provided under the Kentucky Industrial Revitalization Act Tax Credit Program.

(4) Assessment of anticipated effect on state and local revenues: The Act's tax credit program affects state and local revenues by reducing future revenues to the Commonwealth of Kentucky through the granting of income tax credits to both the companies and the employees of the companies. However, the regulation itself has no anticipated effect on state and local revenues since it merely clarifies the standards for applications by eligible companies.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Although future revenues to the Commonwealth of Kentucky are reduced by the Act's tax credit

program, no revenues are used to implement and enforce the regulation since it merely clarifies the standards for applications by eligible companies.

(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: The amended regulation should have no economic impact since it does not require information in excess of the requirements mandated by the Act.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are available to accomplish the purpose of the amended regulation because the Act requires the selection criteria for the approval of eligible companies to be addressed by administrative regulations.

(8) Assessment of expected benefits: The amended regulation will provide those interested persons with accurate and updated information regarding the project selection criteria, hearing procedure and application process for the Kentucky Industrial Revitalization Act Tax Credit Act Program.

(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: A detrimental effect on the environment and public health will not result if the amended regulation is 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: No statute, administrative regulation or government policy was found to be in conflict with amended regulation.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. No tiering was applied because all eligible companies applying for benefits under the Kentucky Industrial Revitalization Act Tax Credit Program will be treated in a uniform manner.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This amended administrative regulation will affect the treasury departments of local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This amended administrative regulation relates to the local government's collection of revenues. KRS 154.26-080 sets forth the standards to be included in administrative regulations for the determination and approval of eligible companies and their economic revitalization projects. KRS 154.26-090 and 154.26-100 provide the inducements available to these companies, one of which is a credit against the employee's local occupational license fees.

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.

Revenues (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Specific dollar estimates cannot be determined.

Other Explanation: The purpose of this amended administrative regulation is to set out the application process, hearing procedure and project selection criteria for the Kentucky Industrial Revitalization Act Program established pursuant to KRS 154.26-010 through 154.26-100. This amended administrative regulation indirectly may increase the number of persons from whom the local government may collect tax revenues by preserving and creating jobs, although not necessarily in the first year. For those employees whose employers require them to pay a job revitalization assessment fee and whose jobs have been determined to have been preserved or created as a result of the economic revitalization project, local government revenues will be decreased to the extent that such employee receives a credit against his local occupational license fee in the form of an adjustment of his local occupational license fee equal to one-sixth (1/6th) of the job revitalization assessment fee. KRS 154.26-090 provides that if more than one local tax is incurred, the credit shall be prorated among the taxes. KRS 154.26-090(1)(d)2b provides that a company can secure from all local government authorities responsible for collecting local occupational fees, in lieu of the credit against the local occupational license fee, an agreement with local governmental entities by which such governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company. Unless such an agreement as described in KRS 154.26-090(1)(d)2b is consummated, neither state nor local government expenditures should be increased or decreased as a result of this administrative regulation. This amended administrative regulation should have no effect on the number of employees or other cost factors of local governments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 33 USC 1288, 1314(b), 1342, 40 CFR Parts 116, 136, 401-471

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 33 USC 1288, 1314(b), 1342, 40 CFR Parts 116, 136, 401-471

NECESSITY AND FUNCTION: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. This chapter establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This administrative regulation establishes definitions for terms and acronyms, abbreviations, and symbols used in 401 KAR Chapter 5, relating to the issuance of those permits.

Section 1. Definitions. The definitions established in this administrative regulation govern the subject matter of this chapter. Terms not defined in this administrative regulation shall have the meanings given them by KRS 224.01-010.

(1) "Act" means the Federal Water Pollution Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

(2) "Activity" means, for purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with facility, any KPDES point source, or any other activity, including land or appurtenances thereto, that is subject to regulation under the KPDES program.

(3) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an LC_{50}, of an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(4) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed for a brief period of time without causing unacceptable harmful effects.

(5) "Acute toxicity" means lethality or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests, due to a short-term exposure (ninety-six (96) hours or less) to a specific toxic substance or mixture of toxic substances.

(6) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect (LC_{50}) by the end of the acute exposure period.

(7) "Administrator" means the administrator of the United States Environmental Protection Agency, or the administrator's authorized representative.

(8) "Adversely affect" means to alter the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.

(9) [~~(4)~~] "Agricultural wastes handling system" means a no-discharge structure or equipment that conveys, stores, or treats manure from a concentrated animal feeding operation prior to land application.

(10) [~~(5)~~] "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under 401 KAR 5:055.

(11) [~~(6)~~] "Animal feeding operation" means, for purposes of 401 KAR 5:050 to 5:080, a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(a)1. Animals other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(12) [~~(7)~~] "Animal unit" means, for purposes of 401 KAR 5:050 to 5:080, the unit of measurement for any animal feeding operation, calculated according to the following equation:

$$\text{Animal Unit} = (N_1 \times 1.0) + (N_2 \times 1.4) + (N_3 \times 0.4) + (N_4 \times 0.1) + (N_5 \times 2.0)$$

Where:

N_1 = Number of slaughter and feeder cattle;
N_2 = Number of mature dairy cattle;
N_3 = Number of swine weighing over twenty-five (25) kg;
N_4 = Number of sheep; and
N_5 = Number of horses.

(13) [~~(8)~~] "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject under KRS Chapter 224, and administrative regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, and toxic effluent standards.

(14) [~~(9)~~] "Application" means the document submitted by an applicant to the cabinet which provides information used by the cabinet in the issuance of a permit or approval. The application may have several different forms, depending on the type of permit which is requested. The specific forms are required in the applicable administrative regulation.

(15) [~~(10)~~] "Approved POTW pretreatment program", "POTW pretreatment program", "pretreatment program", or "program" means a program administered by a POTW that meets the criteria established in 401 KAR 5:057 and which has been approved by the cabinet.

(16) [~~(11)~~] "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(17) [~~(12)~~] "Area of review" means a fixed radius around a facility of not less than one-fourth (1/4) mile.

(18) [~~(13)~~] "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.

(19) [~~(14)~~] "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.

(20) [~~(15)~~] "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.

(21) [~~(16)~~] "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(22) [~~(17)~~] "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(23) [~~(18)~~] "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. Such a community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence of abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(24) [~~(19)~~] "Barrel" means forty-two (42) U.S. gallons.

(25) [~~(20)~~] "BAT" means best available technology economically achievable.

(26) [~~(21)~~] "BCT" means best conventional pollutant control technology.

(27) [~~(22)~~] "Best management practices" or "BMPs" means, for purposes other than agriculture operations, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(28) [~~(23)~~] "Biochemical oxygen demand", "BOD", or "BOD_5" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(29) "Biological assessment" means an evaluation of the biological condition of a surface water using biological surveys and

other direct measurements of resident aquatic biota in surface waters.

(30) "Biological integrity" means the condition of the aquatic community occurring in natural habitats of unimpaired surface waters as measured by community structure and function.

(31) [~~(24)~~] "BMPs" means best management practices.

(32) [~~(25)~~] "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(33) [~~(26)~~] "BOD" or "BOD_5" means biochemical oxygen demand.

(34) [~~(27)~~] "BPT" means best practicable technology currently available.

(35) [~~(28)~~] "Bypass" means the intentional diversion of sewage or waste streams from a portion of a facility or industrial user's treatment facility.

(36) [~~(29)~~] "°C" means degrees Celsius.

(37) [~~(30)~~] "CAH" means cold water aquatic habitat.

(38) [~~(31)~~] "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(39) [~~(32)~~] "CBOD" means carbonaceous biochemical oxygen demand.

(40) [~~(33)~~] "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 USC 9601 et seq.).

(41) [~~(34)~~] "Certificate" means the certificate of competency issued by the secretary or the secretary's designated agent stating that the operator has met the requirements for the specified operator classification as set by 401 KAR 5:010.

(42) [~~(35)~~] "Certified operator" means a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of 401 KAR 5:010.

(43) [~~(36)~~] "cfm" means cubic feet per minute.

(44) [~~(37)~~] "CFR" means Code of Federal Regulations.

(45) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful effect.

(46) "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(47) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

(48) [~~(38)~~] "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended (33 USC Section 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.

(49) [~~(39)~~] "Coal remining operation" means a surface coal mining operation which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977. It also means a surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before August 3, 1977.

(50) [~~(40)~~] "COD" means chemical oxygen demand.

(51) [~~(41)~~] "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(52) [~~(42)~~] "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water run-off as well as sanitary wastewater.

(53) [~~(43)~~] "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(54) [~~(44)~~] "Composite sample" means:

(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow:

(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow:

(c) An effluent portion collected continuously over a period of twenty-four (24) hours at a rate proportional to the flow; or

(d) An effluent portion consisting of a minimum of four (4) combined equal volume grab samples taken approximately two (2) hours apart.

(55) [~~(45)~~] "Concentrated animal feeding operation" means, for purposes of 401 KAR 5:050 to 5:080, an animal feeding operation where:

(a) More than the following numbers of indicated animals are confined:

1. 1,000 slaughter and feeder cattle;

2. 700 mature dairy cattle, whether milked or dry cows;

3. 2,500 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);

4. 500 horses;

5. 10,000 sheep or lambs;

6. 55,000 turkeys;

7. 100,000 laying hens or broilers if the facility has continuous overflow watering;

8. 30,000 laying hens or broilers if the facility has a liquid manure system;

9. 5,000 ducks; or

10. 1,000 animal units; or

(b)1. More than the following number and types of animals are confined:

a. 300 slaughter or feeder cattle;

b. 200 mature dairy cattle, whether milked or dry cows;

c. 750 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,500 turkeys;

g. 30,000 laying hens or broilers if the facility has continuous overflow watering;

h. 9,000 laying hens or broilers if the facility has a liquid manure system;

i. 1,500 ducks; or

j. 300 animal units; and

2. Either pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the Commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(c) If an animal feeding operation discharges only during a twenty-five (25) year, twenty-four (24) hour storm event or greater, the animal feeding operation shall not be considered to be a concentrated animal feeding operation.

(56) [~~(46)~~] "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in 401 KAR 5:060 or which the cabinet designates under 401 KAR 5:060.

(57) [~~(47)~~] "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(58) [~~(48)~~] "Control authority" means the POTW if the POTW has

an approved pretreatment program or the cabinet if the POTW does not have an approved pretreatment program.

(59) [~~(49)~~] "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(60) [~~(50)~~] "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(61) [~~(51)~~] "Copermittee" means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the discharge for which it is the operator.

(62) [~~(52)~~] "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(63) [~~(53)~~] "CSO" means combined sewer overflow.

(64) [~~(54)~~] "CWA" means the Clean Water Act, as amended.

(65) [~~(55)~~] "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(66) [~~(56)~~] "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program under CWA Section 402 (33 USC Section 1342).

(67) [~~(57)~~] "Day" means a twenty-four (24) hour period.

(68) [~~(58)~~] "Designated project area" means the portions of the waters of the Commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

(69) [~~(59)~~] "Direct discharge" means the discharge of a pollutant into waters of the Commonwealth if the discharge is not included under the definition of indirect discharger.

(70) [~~(60)~~] "Discharge" or "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any point source. This definition includes, but is not limited to, additions of pollutants into waters of the Commonwealth from surface run-off which is collected or channelled by human effort; discharges through pipes, sewers or other conveyances whether publicly or privately owned which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

(71) [~~(61)~~] "Discharge monitoring report" or "DMR" means the report including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by KPDES permittees.

(72) [~~(62)~~] "Disposal well" means a borehole drilled or proposed to be drilled, or a well converted to be used, for the sole purpose of disposing of any water, gas, produced water, or other fluid by injection or other method into a subsurface zone.

(73) [~~(63)~~] "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet.

(74) [~~(64)~~] "DMR" means discharge monitoring report.

(75) [~~(65)~~] "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(76) [~~(66)~~] "Domestic sewage" means sewage devoid of industrial or other wastes and which is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(77) [~~(67)~~] "Domestic water supply" or "DWS" means surface waters that with conventional treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in any food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 USC 300f - 300j.

(78) [~~(68)~~] "Draft permit" means a document prepared under 401 KAR 5:075 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue, revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent to deny a permit as provided in 401 KAR 5:075. It does not include a proposed permit; a denial of a request for modification, renovation, and reissuance; or a denial of a request for revocation.

(79) [~~(69)~~] "Drilling pit" means an earthen excavation for the collection of fluids associated with the drilling, construction, completion, acidizing, or fracturing of an oil or gas well.

(80) [~~(70)~~] "Dry gas well" means a gas well producing one (1) barrel or less of produced water at maximum production conditions during a given twenty-four (24) hour period.

(81) [~~(71)~~] "DWS" means domestic water supply.

(82) [~~(72)~~["Effluent ditch" means that portion of a treatment system which is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger, which transports a discharge to surface waters of the Commonwealth.

(83) [~~(73)~~] "Effluent lagoon" means a treatment lagoon.

(84) [~~(74)~~] "Effluent limitation" means any restriction imposed by the cabinet on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the Commonwealth.

(85) [~~(75)~~] "Effluent limitations guideline" means a federal regulation published by the administrator under CWA Section 304(b) (33 USC Section 1314(b)) to adopt or revise technology-based effluent limitations.

(86) [~~(76)~~] "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.

(87) [~~(77)~~] "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(88) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.

(89) [~~(78)~~] "EPA" means the United States Environmental Protection Agency.

(90) "Eutrophication" means the enrichment of surface waters of the state by the discharge or addition of nutrients.

(91) [~~(79)~~] "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.

(92) "Existing uses" means those legitimate uses being attained in or on a surface water of the Commonwealth on or after November 28, 1975, irrespective of its use designation.

(93) "Expanded discharge" means an increase in pollutant loading.

(94) [~~(80)~~] "°F" means degrees Fahrenheit.

(95) [~~(81)~~] "Facility" means:

(a) For purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with activity, any KPDES point source, or any other facility, including land or appurtenances thereto, that is subject to regulation under the KPDES program; or

(b) For purposes of 401 KAR 5:090, any well, tank, pit, structure, appurtenance or improvement used in the exploration, drilling, or production of oil or gas or used for treating, storing, or disposing of produced water.

(96) [~~(82)~~] "Facilities or equipment" means buildings, structures, process or production equipment, or machinery which form a

permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(97) [~~(83)~~] "Fecal coliform" means the portion of the coliform group of bacteria which are present in the intestinal tract or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C.

(98) [~~(84)~~] "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

(99) [~~(85)~~] "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(100) [~~(86)~~] "Geologically isolated" means a zone separated from drinking water aquifers and free of known open faults or fractures and free of any unprotected wells within the area of review.

(101) [~~(87)~~] "GPD" means gallons per day.

(102) [~~(88)~~] "Grab sample" means:

(a) For purposes of 401 KAR 5:045, a single instantaneous portion of the effluent; or

(b) For purposes of 401 KAR 5:050 to 5:080, a single effluent portion which is not a twenty-four (24) hour composite sample.

(103) [~~(89)~~] "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(104) [~~(90)~~] "Hazardous substance" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant designated under 40 CFR Part 116.

(105) "High quality waters" or "HQ" means those surface waters that fully support all applicable designated uses and whose quality is better than that necessary to support propagation of fish, shellfish, wildlife and recreation. High quality waters shall include any of the following:

(a) Surface waters designated as Kentucky Wild Rivers, unless they are classified as outstanding national resource waters;

(b) Outstanding state resource waters other than those that support federally threatened or endangered aquatic species;

(c) Surface waters that contain fish communities that are rated "excellent" by the use of the Index of Biotic Integrity, which is in "Methods of Assessing Biological Integrity of Surface Waters", incorporated by reference in Section 3 of this administrative regulation; and

(d) Waters in the cabinet's reference reach network, as indicated in 401 KAR 5:026, Section 10.

(106) [~~(91)~~] "Holding pit" means an earthen excavated depression which receives and stores produced water at a facility.

(107) "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir that extends below the metalimnion to the bottom.

(108) "IC_{25}" means an inhibition concentration of twenty-five (25) percent.

(109) [~~(92)~~] "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a KPDES permit, other than the KPDES permit for discharges from the municipal separate storm sewer, and discharges resulting from fire fighting activities.

(110) "Impact" means a change in the chemical, physical, or biological quality or condition of a surface water.

(111) "Impairment" means a detrimental impact to a surface water that prevents attainment of a designated use.

(112) [~~(93)~~] "Inactive mining operations" means mining sites that are not being actively mined, but which have an identifiable owner or operator. Inactive mining operations do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(113) [~~(94)~~] "Incorporated place" means a city, town, township, or village that is created under the Kentucky Revised Statutes.

(114) "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from any given surface water.

(115) [~~(95)~~] "Indirect discharge" or "discharge" means, for purposes of 401 KAR 5:057, the introduction of pollutants into a POTW from a nondomestic industrial source regulated by the program.

(116) [~~(96)~~] "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(117) [~~(97)~~] "Industrial user" or "user" means a source of indirect discharge.

(118) "Inhibition concentration of twenty (25) percent" or "IC_{25}" means the concentration that is determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which no unacceptable chronic effects are observed.

(119) [~~(98)~~] "Interference" means a discharge which, alone or in conjunction with discharges from other sources:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and

(b) Therefore, is a cause of a violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and administrative regulations or permits issued thereunder or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended, the Solid Waste Disposal Act as amended (SWDA), including RCRA, and including any administrative regulations contained in a sludge management plan prepared pursuant to Subtitle D of the SWDA as amended, the Clean Air Act as amended, and the Toxic Substances Control Act as amended.

(120) [~~(99)~~] "Intermediate facility" means a WWTP with an average daily design capacity of 10,000 to 49,999 gallons per day (GPD) or sewer lines of 2,500 feet to 5,000 feet in length including appurtenances.

(121) [~~(100)~~] "Intermediate nonpublicly owned treatment works" means a facility which has a design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(122) "Intermittent water" means a stream that flows only at certain times of the year as when it receives water from springs or precipitation in its immediate watershed.

(123) [~~(101)~~] "Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator under the CWA or KRS Chapter 224.

(124) [~~(102)~~] "KAR" means Kentucky administrative regulations.

(125) [~~(103)~~] "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements. The KPDES administrative regulations are 401 KAR 5:050 to 5:080.

(126) [~~(104)~~] "kg" means kilograms.

(127) [~~(105)~~] "KPDES" means the Kentucky Pollutant Discharge Elimination System.

(128) [~~(106)~~] "KPDES permit" means a Kentucky Pollutant Dis-

charge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(129) [~~(107)~~] "KRS" means Kentucky revised statutes.

(130) [~~(108)~~] "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or sewer lines of more than 5,000 feet in length including appurtenances.

(131) [~~(109)~~] "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the latest census of the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet may, upon petition, designate as a large municipal separate storm sewer system, those municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(132) [~~(110)~~] "Large nonpublicly owned treatment works" means a facility which has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(133) "LC_t" means that concentration of a toxic substance or mixture of toxic substances which is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(134) "LC_{50}" means that concentration of a toxic substance or mixture of toxic substances which is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

(135) [~~(111)~~] "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to 5:080, facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

(136) "Maintain" means to preserve or keep in present condition by not allowing adverse permanent or long-term changes to water quality or to populations of aquatic organisms or their habitat.

(137) [~~(112)~~] "Major facility" means any KPDES facility or activity classified as such by the cabinet in cooperation with the regional administrator. Designation as a major industry as used in KRS 224.70-120, does not indicate automatic classification as a major facility.

(138) [~~(113)~~] "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criteria for classification as a major facility.

(139) [~~(114)~~] "Major municipal separate storm sewer outfall" or "major outfall" means:

(a) A municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of thirty-six (36) inches or more or its equivalent of a discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than fifty (50) acres; or

(b) For municipal separate storm sewers that receive storm water from lands zoned for industrial activity based on comprehensive zoning plans or the equivalent, an outfall that discharges from a single pipe with an inside diameter of twelve (12) inches or more or from its equivalent of a discharge from other than a circular pipe associated with a drainage area of two (2) acres or more.

(140) [~~(115)~~] "Major outfall" means a major municipal separate storm sewer outfall.

(141) [~~(116)~~] "Manmade" means constructed by humans.

(142) [~~(117)~~] "Maximum daily discharge limitation" means the highest allowable daily discharge.

(143) [~~(118)~~] "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(144) [~~(119)~~] "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest census by the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet, may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(145) "Metalimnion" means the region of the thermocline.

(146) "Micrograms per liter" or "µg/l" means the micrograms of substance per liter of solution, and is equivalent to parts per billion in water, assuming unit density.

(147) [~~(120)~~] "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(148) [~~(121)~~] "Minor industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a major industry.

(149) "Mixing zone" means a domain of a water body contiguous

to a treated or untreated wastewater discharge of quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(150) [~~(122)~~] "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(151) [~~(123)~~] "mgd" means million gallons per day.

(152) [~~(124)~~] "mg/l" means milligrams per liter, same as ppm, assuming unit density.

(153) [~~(125)~~] "Municipal separate storm sewer" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

(a) Owned or operated by a state, city, town, county, district, association, or other public body created by or pursuant to law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the Commonwealth;

(b) Designed or used for collecting or conveying storm water;

(c) Which is not a combined sewer; and

(d) Which is not part of a POTW.

(154) [~~(126)~~] "Municipality" means a city, district, or other public body created by or under the Kentucky revised statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under CWA Section 208 (33 USC 1288).

(155) [~~(127)~~] "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements.

(156) [~~(128)~~] "National pretreatment standard", "pretreatment standard", or "standard" means a federal regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 401 KAR 5:057.

(157) "Natural temperature" means the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

(158) "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.

(159) "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(160) [~~(129)~~] "New discharger" means, for purposes of 401 KAR 5:050 to 5:080, any building, structure, facility or installation:

(a)1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. Which has never received a finally effective NPDES or KPDES permit for discharges at that site; and

4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

(161) [~~(130)~~] "New source" means:

(a) For purposes of 401 KAR 5:050 to 5:080, any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced:

1. After promulgation of EPA's standards of performance or pretreatment standards which are applicable to such source; or

2. After proposal of EPA's standards of performance or pretreatment standards which are applicable to such source, but only if the federal standards are promulgated within 120 days of their proposal; or

(b)1. For purposes of 401 KAR 5:057, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to the source if the standards are thereafter promulgated if:

a. The building, structure, facility or installation is constructed at a site at which no other source is located;

b. The building, structure, facility or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or

c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph 1b or c of this paragraph but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

(i) A placement, assembly, or installation of facilities or equipment;

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which may be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this clause.

(162) [~~(131)~~] "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(163) [~~(132)~~] "Nonpoint" means any source of pollutants not defined by a point source, as used in this chapter.

(164) [~~(133)~~] "Nonprocess industry" means an industry that generates and discharges only nonprocess wastewater while engaged in commercial activities including manufacturing, resource recovery, products distribution, and wholesale and retail trade. Each industry discharges nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharges wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration for fifty (50) percent mortality (ninety-six (96) LC_{50}) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be from a minor industry.

(165) [~~(134)~~] "NPDES" means National Pollutant Discharge Elimination System.

(166) [~~(135)~~] "Oil" means, for purposes of 401 KAR 5:090, natural crude oil or petroleum and other hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form and which are

not the result of condensation of gas after it leaves the underground reservoir.

(167) [~~(136)~~] "O&M" means operation and maintenance.

(168) [~~(137)~~] "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction, operation, or maintenance of any facility.

(169) [~~(138)~~] "Operator" means:

(a) Any person involved in the operation of a facility or activity;

(b) For purposes of 401 KAR 5:010, any person involved in the operation of a wastewater system; or

(c) For purposes of 401 KAR 5:090, any person who operates a facility.

(170) [~~(139)~~] "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

(171) [~~(140)~~] "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the Commonwealth, but does not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the Commonwealth and are used to convey waters of the Commonwealth.

(172) "Outstanding national resource waters" or "ONRW" means those waters that are the highest quality surface waters in the Commonwealth. That quality may reflect characteristics that are related to outstanding ecological, scenic, or recreational attributes of national significance.

(173) "Outstanding state resource waters" or "OSRW" means surface waters classified by the cabinet as outstanding state resource waters pursuant to 401 KAR 5:026.

(174) [~~(141)~~] "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(175) [~~(142)~~] "Overflow" means:

(a) Any intentional or unintentional diversion of flow from a facility; or

(b) For purposes of 401 KAR 5:057, the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(176) [~~(143)~~] "Owner" means any person who possesses any interest in:

(a) The right to develop, operate, or produce oil or gas; or

(b) Any facility or activity.

(177) [~~(144)~~] "Pass through" means a discharge which exits the POTW into waters of the Commonwealth in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation.

(178) [~~(145)~~] "pCi/l" means picocuries per liter.

(179) [~~(146)~~] "PCR" means primary contact recreation.

(180) [~~(147)~~] "Permit" means a KPDES permit, or for purposes of a coal remining operation, a permit issued by the Department for Surface Mining Reclamation and Enforcement (DSMRE).

(181) [~~(148)~~] "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants are or may be discharged. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(182) "Pollution tolerant species" means species capable of existing or thriving in impaired surface waters.

(183) [~~(149)~~] "POTW" means publicly owned treatment works as defined in KRS 224.01-010.

(184) [~~(150)~~] "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation, of municipal sewage and industrial waste.

(185) [~~(151)~~] "ppb" means parts per billion; assuming unit density, same as µg/l.

(186) [~~(152)~~] "ppm" means parts per million; assuming unit density, same as mg/l.

(187) [~~(153)~~] "Preexisting discharge" means any discharge that is occurring when applying for a KPDES permit under 401 KAR 5:029 or 5:040.

(188) [~~(154)~~] "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited by 401 KAR 5:057. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that may interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit, calculated in accordance with 401 KAR 5:057.

(189) [~~(155)~~] "Pretreatment requirement" means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(190) [~~(156)~~] "Pretreatment standard" means a national pretreatment standard.

(191) [~~(157)~~] "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(192) [~~(158)~~] "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.

(193) [~~(159)~~] "Primary responsibility" means having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the Commonwealth, or to supervise others in conducting these practices.

(194) [~~(160)~~] "Privately-owned treatment works" means any device or system which is used to treat wastes from any facility or source of sewage whose owner or operator is not the owner or operator of the treatment works and which is not a POTW.

(195) [~~(161)~~] "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(196) [~~(162)~~] "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

(197) "Productive aquatic communities" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(198) [~~(163)~~] "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(199) "Propagation" means the continuance of species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of species by artificial culture and stocking.

(200) [~~(164)~~] "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(201) [~~(165)~~] "RCRA" means the Resource Conservation Recovery Act as amended (42 USC 6901 et seq.).

(202) [~~(166)~~] "Reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (seeding or planting) work has commenced.

(203) [~~(167)~~] "Recommencing discharger" means a source which recommences discharge after terminating operations.

(204) [~~(168)~~] "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(205) [~~(169)~~] "Register" means to file forms with the division which contain information as to oil and gas well geographic location, production, produced water production, methods used for treating, storing, or disposing of produced water, and other information deemed necessary by the division.

(206) [~~(170)~~] "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(207) [~~(171)~~] "Removal" means, for purposes of 401 KAR 5:057, a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration may be obtained by physical, chemical, or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal shall not mean dilution of a pollutant in the POTW.

(208) [~~(172)~~] "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

(209) "Representative indicator organisms" means those aquatic organisms designated for use in toxicity testing because of their relative sensitivity to toxicants and their widespread distribution.

(210) [~~(173)~~] "Requester" means any industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

(211) [~~(174)~~] "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(212) [~~(175)~~] "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(213) [~~(176)~~] "SARA" means the Superfund Amendments and Reauthorization Act, as amended.

(214) [~~(177)~~] "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(215) [~~(178)~~] "SCR" means secondary contact recreation.

(216) [~~(179)~~] "Secondary contact recreation waters" means those waters that are suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(217) [~~(180)~~] "Secondary industry category" means any industry category which is not a primary industry category.

(218) [~~(181)~~] "Secondary treatment" means that degree of treatment which results in an effluent quality which meets the minimum requirements of 401 KAR 5:045.

(219) [~~(182)~~] "Seven-Q-ten" or "$7Q_{10}$" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(220) [~~(183)~~] "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage shall not mean economic loss caused by delays in production.

(221) [~~(184)~~] "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places together with industrial wastes or underground, surface, storm or other water, as may be present.

(222) [~~(185)~~] "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a wastewater treatment plant. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water run-off, that are discharged to or otherwise enter a wastewater treatment plant.

(223) [~~(186)~~] "Sewer line" means those devices used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer which serves an individual building. A sewer line begins at the junction of two (2) building sewers which serve different buildings.

(224) [~~(187)~~] "SIC" means Standard Industrial Classification.

(225) [~~(188)~~] "Significant industrial user" means:

(a) Except as provided in paragraph (b) of this subsection:

1. Industrial users subject to categorical pretreatment standards promulgated by EPA and codified in 40 CFR Chapter I, Subchapter N (Parts 401 through 471); and

2. Any other industrial user that:

a. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater;

b. Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

c. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria for a significant industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement, the control authority may, on its own initiative or in response to a petition received from an industrial user or a POTW, and in accordance with 401 KAR 5:057, determine that the industrial user is not a significant industrial user.

(226) [~~(189)~~] "Significant materials" means, but is not limited to, and for purposes of 401 KAR 5:050 to 5:080: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

(227) [~~(190)~~] "Silvicultural point source" means, for purposes of 401 KAR 5:050 to 5:080, any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the Commonwealth. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off.

(228) [~~(191)~~] "Site" means, for purposes of 401 KAR 5:050 to 5:080, the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(229) [~~(192)~~] "Sludge requirements" means the following statutory provisions and administrative regulations or permits issued thereunder, or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended; the Solid Waste Disposal Act (SWDA), as amended, including Title II, more commonly referred to as the Resource Conservation Recovery Act (RCRA) and administrative regulations contained in any sludge management plan prepared pursuant to Subtitle D of SWDA, as amended; the Clean Air Act, as amended; and the Toxic Substances Control Act, as amended.

(230) [~~(193)~~] "SMCRA" means the Surface Mining Control and Reclamation Act, as amended (33 USC 1201 et seq.).

(231) [~~(194)~~] "Small facility" means a WWTP with an average daily design capacity less than 10,000 GPD or sewer lines of less than 2,500 feet in length including appurtenances.

(232) [~~(195)~~] "Small nonpublicly owned treatment works" means a facility which has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(233) [~~(196)~~] "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(234) [~~(197)~~] "SPCC" means spill prevention control and countermeasure.

(235) [~~(198)~~] "Standard" means:

(a) For purposes of 401 KAR 5:026, 5:029, 5:030, or 5:031, a water quality standard; or

(b) For purposes of 401 KAR 5:057, a pretreatment standard.

(236) [~~(199)~~] "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(237) [~~(200)~~] "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.

(238) [~~(201)~~] "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw material storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the KPDES program under 401 KAR 5:055. For the categories of industries identified in paragraphs (a) to (j) of this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handing sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas including tank farms for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (k) of this subsection, the term includes only storm water discharges from all the areas except access roads and rail lines, that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this subsection, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in this subsection, include those facilities designated under 401 KAR 5:060, Section 12(1)(a). The following categories of facilities are considered to be engaging in an industrial activity for purposes of this subsection:

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 401 KAR 5:065, Section 4, except facilities with toxic pollutant effluent standards which are exempted under paragraph (k) of this subsection;

(b) Facilities classified as Standard Industrial Classifications 24 except 2434; 26 except 265 and 267; 28 except 283; 29; 311; 32 except 323; 33; 3441; and 373;

(c) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations, except for areas of coal mining operations that are no longer reclamation areas because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of these operations;

(d) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(e) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, that is waste that is received from any of the facilities described under this subsection, including those that are subject to regulation under Subtitle D of RCRA;

(f) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(g) Steam electric power generating facilities, including coal handling sites;

(h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except 4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (a) to (g) and (i) to (k) of this subsection are associated with industrial activity;

(i) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one (1.0) mgd or more, or required to have an approved pretreatment program under 401 KAR 5:057. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA;

(j) Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale;

(k) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 except 311, 323, 34 except 3441, 35, 36, 37 except 373, 38, 39, 4221-4225, and which are not otherwise included within categories of paragraphs (b) to (j) of this subsection.

(239) [~~(202)~~] "Submission" means, for purposes of 401 KAR 5:057:

(a) A request by a POTW to the cabinet for approval of a pretreatment program; and

(b) A request by a POTW to the cabinet for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

(240) [~~(203)~~] "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(241) [~~(204)~~] "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing;

lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(242) [~~(205)~~] "SWDA" means the Solid Waste Disposal Act, as amended (42 USC 6901 et seq.).

(243) [~~(206)~~] "Tank battery" means an installation where oil is collected from wellheads and is separated from produced water.

(244) [~~(207)~~] "TDS" means total dissolved solids.

(245) "Thermocline" means the plane in a thermally stratified body of water in which the maximum rate of decrease in temperature occurs with respect to depth.

(246) [~~(208)~~] "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 CFR Part 136.

(247) [~~(209)~~] "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 CFR Part 136.

(248) [~~(210)~~] "Toxic pollutant" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant listed as being toxic in 401 KAR 5:080.

(249) "Toxic substances" means substances which are bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic, or carcinogenic and can cause death, disease, behavioral abnormalities, physiological malfunctions, or physical deformities in any organism or its offspring or interfere with normal propagation.

(250) [~~(211)~~] "Treatment lagoon" or "effluent lagoon" means, as used in 401 KAR 5:029 and as applied to facilities subject to 401 KAR 5:090, a secondary recovery or water-flood impoundment on which on-site construction commenced before May 19, 1980; owned or operated by a person eligible to receive a KPDES permit for a discharge from that impoundment, if used for the purpose of diluting produced water, and if the owner or operator received approval from the cabinet of its request for designation as such on or before September 4, 1986.

(251) [~~(212)~~] "TSS" means total suspended solids.

(252) [~~(213)~~] "Twenty-four (24) hour composite sample" means not less than twelve (12) effluent portions collected at regular intervals over a period of twenty-four (24) hours which are composited in proportion to flow.

(253) [~~(214)~~] "Underground injection" means a well injection.

(254) [~~(215)~~] "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or technology-based effluent limitations because of factors beyond the reasonable control of the industrial user or permittee. An upset shall not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(255) [~~(216)~~] "USC" means United States Code.

(256) "Use protected waters" or "UP" means surface waters classified as being use protected by the cabinet pursuant to 401 KAR 5:026.

(257) [~~(217)~~] "U.S. EPA" means the United States Environmental Protection Agency.

(258) [~~(218)~~] "USGS" means the United States Geological Survey.

(259) [~~(219)~~] "Variance" means any mechanism or provision under the KPDES administrative regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(260) [~~(220)~~] "WAH" means warm water aquatic habitat.

(261) [~~(221)~~] "Warm water aquatic habitat" or "WAH" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(262) [~~(222)~~] "Wastewater system" means a sewage system as defined in KRS 224.01-010.

(263) [~~(223)~~] "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

(264) [~~(224)~~] "Water quality standard" means an administrative regulation promulgated by the cabinet establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use.

(265) [~~(225)~~] "Well" or "water well" means:

(a) For purposes of 401 KAR 5:050 to 5:080, a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; or

(b) For purposes of 401 KAR 5:090, a borehole drilled, or proposed to be drilled for the purpose of producing gas or oil or one through which gas or oil is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas, produced water, or other fluid therein or one into which any water, gas, produced water, or other fluid is being injected.

(266) [~~(226)~~] "Well injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

(267) [~~(227)~~] "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(268) [~~(228)~~] "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(269) [~~(229)~~] "WWTP" means wastewater treatment plant.

(270) [~~(230)~~] "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.

(271) "Zone of initial dilution" means the limited area surrounding or downstream from a discharge location where rapid, first stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

Section 2. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.:

(1) 40 CFR Part 116, "Designation of Hazardous Substances under the Federal Water Pollution Control Act", U.S. Environmental Protection Agency, as of August 25, 1993;

(2) 40 CFR Part 136, "Test Procedures for the Analysis of Pollutants", U.S. Environmental Protection Agency, as of January 31, 1994 [~~September 11, 1992~~]; and

(3) 40 CFR Chapter I, Subchapter N, Parts 401 through 471, "Effluent Guidelines and Standards", U.S. Environmental Protection Agency, as of July 1, 1993.

Section 3. Document Incorporated by Reference. (1) The following document governs the subject matter for biological assessments and is hereby incorporated by reference: "Methods for Assessing Biological Integrity of Surface Waters," Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet, October 1993.

(2) The document listed above is available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: April 14, 1995
FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this administrative regulation is scheduled on May 22, 1995 at 7 p.m. (EDT) in the Auditorium of the Cabinet for Human Resources Building in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by May 17, 1995, of their intent to attend the hearing and be heard. 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 this administrative regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 this administrative regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of the public hearing on May 22, 1995. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before May 17, 1995 between 8 a.m. and 4:30 p.m. (EDT).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation defines the terms used by regulations in 401 KAR Chapter 5. It is being amended to add the terms that are used in the water quality standards regulations, 401 KAR 5:026, 5:029, 5:030, and 5:031, that are also being amended or proposed in this package of regulations. 401 KAR 5:030 is being proposed as a new regulation, and it appears elsewhere in the May Administrative Register of Kentucky. Some terms are just being moved from 401 KAR 5:029; other terms are being added, or their definitions are being changed from what they had been in 401 KAR 5:029. In 401 KAR 5:029, all of the definitions are also being deleted from Section 1. Any impact of these regulations on the entities affected would occur in the specific regulation where the term is actually used. This regulation is being amended to comply with KRS 13A.222(4)(e) and to provide one central location where terms used in Chapter 5 are defined.

(2) Direct and indirect costs or savings on the affected entities: There are no direct or indirect costs or savings on the affected entities due to the amendment of this regulation; any direct or indirect costs or savings would occur in the regulation where the term is used.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received.

2. Second and subsequent years: No public comments were received.

(3) Effects on the promulgating administrative body: There are no effects on this agency from defining these terms; any impact would occur when the terms are used in a particular regulation.

(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: There are no reporting and paperwork requirements imposed by the terms defined in this regulation.

(4) Assessment of anticipated effect on state and local revenues: None. This regulation defines terms used in 401 KAR Chapter 5; it will not impact state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: One alternative method would have been to define all terms in Section 1 of each regulation that is being amended, but that would have required that most terms be duplicated in all the water quality regulations. That would have generated longer regulations, requiring more printing time, paper, and other resources. Also, if a definition changed, each regulation would have to be amended. Therefore to save time and expenses of amending and printing each regulation, the division is amending this regulation to include the terms that are used in 401 KAR 5:026, 5:029, 5:030, and 5:031.

(8) Assessment of expected benefits of the administrative regulation: None

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None; any effect on public health and environmental welfare would occur where the term is used in a regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect on environment and public health if the regulations were not implemented.

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: Not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: Not in conflict.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. Tiering is not applicable to definitions; the individual regulations where the terms are used may be tiered.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation applies to city,

county, or other municipal governments which construct or operate facilities which discharge into waters of the Commonwealth. These local governments will apply these definitions to their facilities, but any impact will occur where the term is actually applied in a particular regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. None; since this regulation merely defines terms, it does not impact the expenditures or revenues of a local government.

Revenues (+/-): None
Expenditures (+/-): None
Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program or use these definitions. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for an antidegradation policy. This regulation is being amended to add definitions relating to the triennial review and the antidegradation policy. There is federal guidance issued for states on how to implement the water quality standards and the antidegradation policy, but there is no federal regulation that mandates these definitions.

2. State compliance standards. 401 KAR 5:001, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. None

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:026. Designation of uses and classification of surface waters.

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS 146.200-146.360, 146.410-146.990, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Part 131, 16 USC 1271 et seq., 1531 et seq., 33 USC 1311, 1313, 1314, 1316

NECESSITY AND FUNCTION: This administrative regulation applies the designated uses and classifications described [found] in 401 KAR 5:030 and 5:031 to the surface waters of the Commonwealth. This administrative regulation also makes all surface waters subject to the general criteria specified in [Section 2 of] 401 KAR 5:031, Section 2. Definitions for terms used in this administrative regulation are found in 401 KAR 5:001 [5:029].

Section 1. Scope of Designation and Classification [to Designated Uses]. (1) Surface waters listed [classified] under this administrative regulation shall be designated for all legitimate uses contained [listed] in KRS 224.70-100(1) except as specified in 401 KAR 5:031, Section 5 or until redesignated [reclassified] in accordance with the procedures of this administrative regulation. Those designated uses are: warm water aquatic habitat, cold water aquatic habitat, primary contact recreation, secondary contact recreation, and domestic water supply. Listed [Classified] waters shall meet all criteria applicable to their designated uses and those criteria listed in [Section 2 of] 401 KAR 5:031, Section 2, unless the cabinet grants an exception pursuant to 401 KAR 5:031, Section 9 or 10 [8].

(2) Surface waters are also listed in four (4) classifications for antidegradation purposes. These four (4) classifications are: outstanding national resource waters, outstanding state resource waters, high quality waters, and use protected waters. Outstanding state resource waters may have unique water quality characteristics which shall be protected [maintained] by additional criteria adopted as administrative regulations by the cabinet pursuant to 401 KAR 5:031, Section 7. Outstanding national resource waters, and high quality waters shall be protected by maintaining water quality pursuant to the antidegradation provisions of 401 KAR 5:030.

Section 2. Redesignation of Surface Waters Uses. [Reclassification.] (1) Surface waters may be redesignated [reclassified] only upon affirmative findings by the cabinet pursuant to Sections 3 and 4 [5 and 6] of this administrative regulation. Before redesignating [reclassifying] any surface water, the cabinet shall provide notice and an opportunity for a public hearing.

(2) In redesignating [reclassifying] any surface water, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream surface waters.

(3) A designated use shall not be removed for a surface water if that use is an existing use, or if the use may be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act, 33 USC 1311(b) and 1316, and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(4) If a surface water is designated for a use that is not an existing use, the cabinet shall redesignate [reclassify] the surface water upon demonstration that the designated use is unattainable because:

(a) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges; or

(c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate the [such] modification in a way that would result in the attainment of the use; or

(e) Physical conditions related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of the aquatic life use; or

(f) Controls more stringent that those required by Sections 301(b) and 306 of the Clean Water Act, 33 USC 1311(b) and 1316, would result in substantial and widespread economic and social impact.

(5) Redesignations shall [Reclassifications will] be consistent with the antidegradation provisions [nondegradation requirements] of 401 KAR 5:029 and 5:030 [, Section 2].

[Section 3. Priority for Implementation. Priorities for reclassifi-

~~cation of the surface waters of the Commonwealth are:~~

~~(1) Surface waters receiving or proposed to receive discharges from a POTW or serving as public water system sources have first priority in the following order:~~

~~(a) Any local unit of government with a pending construction permit application for installation or upgrading of a POTW or public water system treatment plant.~~

~~(b) Any local unit of government in the cabinet's construction grants program administered pursuant to 33 USC 1281 for installation or upgrading of a POTW in an order of priority consistent with its priority project list rank.~~

~~(c) Any local unit of government which requests consideration prior to entering its own construction project, applying for an NPDES or KPDES permit, or applying for participation in the cabinet's construction grants program administered pursuant to 33 USC 1281 for installation or upgrading of a POTW.~~

~~(d) Other local units of government, on a first come, first served basis.~~

~~(2) Surface waters receiving or proposed to receive discharges from any other treatment works shall have second priority in the following order:~~

~~(a) Applicants for new or modified NPDES or KPDES permits for discharges to surface waters which may potentially be classified for cold water aquatic habitat.~~

~~(b) All other surface waters with point source dischargers on a first come, first served basis.~~

~~(3) Reclassifications for all other surface waters which do not have any existing or proposed point source dischargers have third priority.~~

~~(4) These priorities may be varied by order of the cabinet.~~

~~Section 4. Responsibility for Providing Documentation. The following entities are responsible for providing the documentation for the reclassification of the surface waters under this administrative regulation. The required documentation is listed in Section 5 of this administrative regulation.~~

~~(1) The cabinet will provide supporting documentation for the reclassification of surface waters on which are located or proposed to be located facilities which are either:~~

~~(a) POTWs; or~~

~~(b) Outstanding resource waters on publicly owned land; or~~

~~(c) Applicants for new or modified NPDES or KPDES permits for discharges to surface waters which may potentially be classified as outstanding resource waters.~~

~~(2) Any applicant filing for reclassification of surface waters in circumvention of the priority system contained in Section 3 of this administrative regulation shall provide the cabinet with classification documentation. The applicant has the burden of proof that the reclassification is appropriate and necessary.~~

~~(3) The cabinet will provide documentation for all other surface waters which do not have any existing or proposed point source dischargers.~~]

Section 3. [~~5. Required~~] Documentation for Redesignations. (1) Any person may request redesignation of surface water uses by petition to the cabinet. The petitioner shall provide the cabinet with the documentation required in subsection (3) of this section and shall have the burden of proof that the redesignation is appropriate.

(2) The cabinet may propose redesignations of surface water uses. The cabinet shall provide documentation for those surface waters that it proposes for use redesignation.

(3) Documentation [~~which shall be~~] required to support the redesignation [~~reclassification~~] of a surface water of the Commonwealth shall be [~~is as~~] follows:

(a) [~~(1)~~] A United States Geological Survey 7.5 minute topographic map showing those surface waters to be redesignated [~~reclassified~~], with a description consisting of a river mile index with any existing and proposed discharge points;

(b) [~~(2)~~] Existing uses and water quality data for the surface waters for which the redesignation [~~reclassification~~] is proposed. If [~~Where~~] adequate data are unavailable, additional studies may be required by the cabinet;

(c) [~~(3)~~] Descriptions of general land uses (e.g., mining, agricultural, recreation, low, medium, and high density residential, commercial-industrial, etc.) and specific land uses adjacent to the surface waters for which the redesignation [~~reclassification~~] is proposed;

(d) [~~(4)~~] The existing and designated uses of the downstream waters into which the surface water under consideration discharges;

(e) [~~(5)~~] General physical characteristics of the surface water including, but not limited to width, depth, bottom composition, and slope;

(f) [~~(6)~~] The frequency of occasions when there is no natural flow in the surface water and the $7Q_{10}$ and harmonic mean flow values for the surface water and adjacent surface waters;

(g) [~~(7)~~] An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented and livestock and natural wildlife dependence on the surface water shall be assessed. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota shall be documented;

(h) [~~(8)~~] The proposed designated uses for the surface water in question; and

(i) [~~(9)~~] An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation or an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for the [~~such~~] sources.

Section 4. [~~6.~~] Procedures for Redesignation. [~~Reclassification. This section outlines the procedures for evaluating proposed use reclassifications.~~] (1) For each of the surface waters for which a redesignation [~~reclassification~~] is proposed, the cabinet or petitioner [~~applicant~~] shall prepare a fact sheet containing, but not limited to, the following information:

(a) The name and address of the petitioner [~~applicant~~];

(b) The name and sketch or description of the surface water proposed for specified use redesignations [~~reclassifications~~], including the location of existing and proposed dischargers;

(c) The proposed use designations [~~classifications~~];

(d) A brief abstract of the supportive documentation which demonstrates that the redesignation [~~reclassification~~] is appropriate;

(e) The appropriate water quality criteria for the surface water based on the proposed designated use[~~(s)~~];

(f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use[~~(s)~~]; and

(g) A "plain English" summary of the implications of the [~~such~~] designation for the community and other users or potential users of the surface water in question. [;]

[~~(h) The procedure by which the designation will be made.~~]

(2) The cabinet shall document the determination to propose or deny redesignation as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties. [~~Based upon all available information, the staff shall make its recommendation of use classifications of the surface waters in question to the secretary of the cabinet.~~]

(3) The cabinet shall have a list of surface waters and their redesignated uses promulgated as an amendment to this administrative regulation. [~~The secretary shall have a list of surface waters and their classification prepared to be published as an administrative regulation.~~

~~(4) Upon completing the procedure for promulgation of administrative regulations set forth in KRS Chapter 13A, all designated surface~~

~~waters and their use classifications shall be listed in this administrative regulation.~~]

Section 5. Outstanding State Resource Waters. This classification category includes certain unique waters of the Commonwealth. Waters for inclusion:

(1) Automatic inclusion. The following surface waters shall automatically be included in this category:

(a) Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360;

(b) Waters designated under the Federal Wild and Surface Scenic River Act, 16 USC 1271 et seq.;

(c) Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.990, which are contained within a formally dedicated nature preserves or are published in the registry of natural areas and concurred upon by the cabinet; and

(d) Waters that support federally recognized threatened or endangered aquatic species under the Endangered Species Act of 1973, as amended, 16 USC 1531 et seq.

(2) Permissible consideration. Other surface waters may be included in this category if the cabinet determines:

(a) The surface waters flow through or are bounded by state or federal forest land, are of exceptional aesthetic or ecological value, are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

(b) They are a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics or possess two (2) of the following criteria:

1. Support a diverse or unique native aquatic flora or fauna;

2. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat;

3. Provide a unique aquatic environment within a physiographic region.

Section 6. Outstanding National Resource Waters. This classification category includes certain unique waters of the Commonwealth that are of national significance.

(1) An outstanding national resource water shall meet, at a minimum, the requirements for outstanding state resource water classification found in Section 5 of this administrative regulation; and

(2) The water shall be demonstrated to be of national ecological or recreational significance.

Section 7. Procedures for Reclassification to Outstanding State Resource Waters, High Quality Waters, and Outstanding National Resource Waters. (1) The cabinet may propose to reclassify certain waters to outstanding state resource waters, high quality waters, and outstanding national resource waters.

(a) If the cabinet proposes to reclassify these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation for those surface waters it proposes to reclassify.

(2) Any person may request reclassification of a surface water to an outstanding state resource water, high quality water, or outstanding national resource water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to reclassify the particular water as required by subsection (4) of this section;

(b) The petitioner shall have the burden of proof that the reclassification is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed waters qualify for reclassification.

(e) The cabinet shall document the determination to propose or deny reclassification as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be reclassified the cabinet shall publish notice of the reclassification. Any permit issued after the date of publication shall be issued with limitations based on the new reclassification. When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, the cabinet shall have all reclassified waters promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data are required to support a petition for reclassification:

(a) To support a petition for outstanding state resource waters:

1. A United States Geological Survey 7.5 minute topographic map showing those surface waters to be reclassified, with a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface waters for which the reclassification is proposed. If adequate data are unavailable, additional studies may be required by the cabinet;

3. Descriptions of general land uses (e.g., mining, agricultural, recreation, low, medium, and high density residential, commercial-industrial, etc.) and specific land uses adjacent to the surface waters for which the reclassification is proposed;

4. The existing and designated uses of the waters upstream and downstream of the proposed reclassification waters;

5. General physical characteristics of the surface water including, but not limited to width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water, and the $7Q_{10}$ and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota; and

8. A documented rationale as to why the waters qualify for the reclassification.

(b) To support a petition for outstanding national resource waters:

1. The information and data required for outstanding state resource water reclassification; and

2. The rationale used to support the national significance of the water.

(c) To support a petition for high quality waters:

1. A United States Geological Survey 7.5 minute topographic map showing the surface waters to be reclassified, with a description consisting of a river mile index with any existing and proposed discharge points;

2. Descriptions of general land uses, including mining, agricultural, recreational, low-, medium-, and high-density residential, commercial, and industrial, and specific land uses adjacent to the surface waters for which the reclassification is proposed; and

3. The frequency of occasions when there is no natural flow in the surface water, and the $7Q_{10}$ and annual mean flow values for the surface water;

4. Fish collection data and an Index of Biotic Integrity calculation from a waterbody if that high quality water criterion defined in 401 KAR 5:001 is utilized.

Section 8. [~~7.~~] Surface Water Use Designations [~~Classifications~~]. (1) Listed in the tables of Section 10 of this administrative regulation [~~below~~] are the use designations [~~classifications~~] for specific surface waters of the Commonwealth. [~~The county column indicates the county in which the mouth or outlet of the surface water is located.~~] The identifying symbols for use designations [~~classifications~~] are [~~as~~

~~follows~~]:

Surface Water Uses

WAH - Warm Water Aquatic Habitat
CAH - Cold Water Aquatic Habitat
PCR - Primary Contact Recreation
SCR - Secondary Contact Recreation
DWS - Domestic Water Supply (applicable at existing points of public water supply withdrawal)
[~~ORW - Outstanding Resource Water~~]

(2) Surface waters not specifically listed in Section 10 of this administrative regulation [~~this section~~] are designated for the use of warm water aquatic habitat, primary [~~primarily~~] contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this administrative regulation.

(3) Exceptions to specific criteria in 401 KAR 5:031 which apply to particular surface waters are shown in the list [~~tables~~] of surface water use designations [~~classifications~~] in Section 10 of this administrative regulation [~~this section~~]. All other criteria in 401 KAR 5:031 applicable to the listed use designations shall [~~classifications~~] apply to these surface waters.

Section 9. Surface Water Classifications. (1) Surface waters classified for antidegradation purposes are listed in Section 10 of this administrative regulation. The identifying symbols are:

Antidegradation Classifications
UP - Use Protected
HQ - High Quality Water
OSRW - Outstanding State Resource Water
ONRW - Outstanding National Resource Water

(2) Waters not specifically listed in Section 10 of this administrative regulation other than those qualifying under the automatic inclusion provisions for outstanding state resource waters in Section 5 of this administrative regulation are classified as use protected. All existing uses shall be protected and the level of water quality necessary to protect those uses shall be assured. The process to allow discharges to these surface waters and to assure their protection is governed by the Kentucky Pollutant Discharge Elimination System program, 401 KAR 5:050 to 5:080.

Section 10. List of Designations and Classifications for Surface Waters. The following table lists the designated uses and antidegradation classifications for surface waters. The county column indicates the county in which the mouth or outlet of the surface water is located.

LIST OF [~~DESIGNATED~~] SURFACE WATER USE DESIGNATIONS AND ANTIDEGRADATION CLASSIFICATIONS

Stream	Zone	County	Use Designation [~~Classification~~]	Antidegradation Classification [~~Exceptions to Specific Criteria~~]
	BIG SANDY RIVER BASIN			
Big Sandy River	River Mile 26.8 to Ohio River	Boyd	WAH, PCR, SCR	UP
Hood Creek	Source to Wheeler Branch	Lawrence	WAH, PCR, SCR	UP
Levisa Fork of Big Sandy River	Kentucky-Virginia State Line to River Mile 147.5 (Headwaters of Fishtrap Lake)	Pike	WAH, PCR, SCR, DWS	UP
Levisa Fork to Big Sandy River	River Mile 126.6 (Fishtrap Lake Dam) to Big Sandy River	Lawrence	WAH, PCR, SCR, DWS	UP
Russell Fork of Big Sandy River	Kentucky-Virginia State Line (River Mile 16.0) to River Mile 13.3	Pike	CAH, PCR, SCR	UP
Russell Fork of Big Sandy River	[~~Kentucky-Virginia State Line~~ (]River Mile 13.3 [~~15.9~~)] to Levisa Fork	Pike	WAH, PCR, SCR, DWS	UP
Tug Fork of Big Sandy River	Kentucky-Virginia State Line (River Mile 94.0) to Big Sandy River	Lawrence	WAH, PCR, SCR, DWS	UP
Upper Laurel Creek	River Mile 6.1 to River Mile 1.6	Johnson	CAH, PCR, SCR	UP
LAKES AND RESERVOIRS				
Dewey	Entire reservoir	Floyd	WAH, PCR, SCR, DWS	UP
Fishtrap	Entire reservoir	Pike	WAH, PCR, SCR, DWS	UP
Paintsville	Entire reservoir	Johnson	WAH, CAH, PCR, SCR	UP
	LITTLE SANDY RIVER BASIN			

Arabs Fork	Source to confluence with Clay Fork	Carter	WAH, PCR, SCR	HQ*
Big Caney Creek	Source to Grayson Lake	Elliott	CAH, PCR, SCR	HQ*
Big Sinking Creek	Source to River Mile 10.7	Carter	WAH, PCR, SCR	HQ*
Big Sinking Creek	River Mile 10.7 to River Mile 6.0	Carter	WAH, PCR, SCR	UP
Big Sinking Creek	River Mile 6.0 to Little Sandy River	Carter	CAH, PCR, SCR	UP
Laurel Creek	Source to River Mile 7.6	Elliott	CAH, PCR, SCR	HQ*
Laurel Creek	River Mile 7.6 [~~Source~~] to Little Sandy River	Elliott	CAH, PCR, SCR	UP
Little Sandy River	Source to River Mile 71.1 (Headwaters of Grayson Lake)	Elliott	WAH, PCR, SCR, DWS	UP
Little Sandy River	River Mile 50.0 (Grayson Lake Dam) to Ohio River	Greenup	WAH, PCR, SCR, DWS	UP
LAKES AND RESERVOIRS				
Grayson	Entire Reservoir	Carter	WAH, PCR, SCR	UP
Greenbo	Entire Reservoir	Greenup	WAH, CAH, PCR,SCR, DWS	UP
		TYGARTS CREEK BASIN		
Buffalo Creek	Source to Tygarts Creek	Carter	WAH, PCR, SCR	UP
Little White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR	UP
Tygarts Creek	Source to Ohio River	Greenup	WAH, PCR, SCR, DWS	UP
White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR	UP
		LICKING RIVER BASIN		
Bucket Branch	Source to confluence with North Fork of Licking River	Morgan	WAH, PCR, SCR	HQ*
Burning Fork	Basin	Magoffin	WAH, PCR, SCR	UP
Craney Creek	Source to North Fork of Licking River	Rowan/Morgan	CAH, PCR, SCR	UP
Devils Fork	Source to confluence with North Fork of Licking River	Morgan	WAH, PCR, SCR	HQ*
Fleming Creek	Source to Licking River	Nicholas	WAH, PCR, SCR	UP
[~~Licking River~~	~~River Mile 169.6 to Ohio River~~	~~Kenton/ Campbell~~	~~WAH, PCR, SCR, DWS~~	
~~Licking River~~	~~River Mile 176.8 (Cave Run Lake Dam) to River Mile 169.6 (U.S. Highway 60 Bridge)~~]	~~Bath/Rowan~~	~~CAH, PCR, SCR, DWS~~	
Licking River	Source to River Mile 218.2 (Headwaters of Cave Run Lake)	Morgan	WAH, PCR, SCR, DWS	UP
Licking River	River Mile 176.8 (Cave Run Lake Dam) to River Mile 169.6 (U.S. Hwy. 60 Bridge)	Bath/Rowan DWS	CAH, PCR, SCR,	UP

Licking River	River Mile 169.6 to River Mile 165.0	Bath/Rowan	WAH, PCR, SCR	UP
Licking River	River Mile 165.0 to River Mile 154.5	Bath/Rowan	WAH, PCR, SCR	OSRW,HQ
Licking River	River Mile 154.5 to River Mile 115.0	Nicholas/ Bourbon	WAH, PCR, SCR	UP
Licking River	River Mile 115.0 to River Mile 18.9	Kenton/ Campbell	WAH, PCR, SCR, DWS	OSRW,UP
Licking River	River Mile 18.9 to Ohio River	Kenton/ Campbell	WAH, PCR, SCR, DWS	UP
Minor Creek	River Mile 2.8 to Craney Creek	Rowan	CAH, PCR, SCR	UP
North Fork of Licking River	Source to River Mile 13.0	Morgan	WAH, PCR, SCR	HQ*
North Fork of Licking River	River Mile 13.0 [~~Source~~] to Licking River	Pendleton/ Bracken	WAH, PCR, SCR, DWS	UP
Slabcamp Creek	Basin	Rowan	CAH, PRC, SCR	UP
Slate Creek	Source to Licking River	Bath	WAH, PCR, SCR, DWS	UP
South Fork of Licking River	River Mile 65.1 to Licking River	Pendleton	WAH, PCR, SCR, DWS	UP
LAKES AND RESERVOIRS				
Cave Run	Entire Reservoir	Rowan/Bath	WAH, PCR, SCR	UP
		KENTUCKY RIVER BASIN		
Bailey Run	Basin	Anderson	WAH, PCR, SCR	UP
Buck Lick Branch	Basin	Lee	WAH, PCR, SCR	UP
Cedar Brook	Basin	Anderson	WAH, PCR, SCR	UP
Chimney Top Creek	Basin	Wolfe	CAH, PCR, SCR	UP
Clarks Run	Source to Herrington Lake	Boyle	WAH, PCR, SCR	UP
Clear Creek	Source to River Mile 4.1	Woodford	WAH, PCR, SCR	HQ*
Clemons Fork	Source to Buckhorn Creek	Breathitt	WAH, PCR, SCR	HQ*
Coles Fork	Source to Buckhorn Creek	Breathitt	WAH, PCR, SCR	HQ*
Dix River	Source to River Mile 33.1 (Headwaters of Herrington Lake)	Boyle/Garrard	WAH, PCR, SCR	UP
Dix River	River Mile 2.9 (Herrington Lake Dam) to Kentucky River	Garrard/Mercer	CAH, PCR, SCR	UP
[~~Dix River~~	~~Source to River Mile 33.1 (Headwaters of Herrington Lake)~~]	~~Boyle/Garrard~~	~~WAH, PCR, SCR~~	
Dog Fork	River Mile 1.0 to Swift Camp Creek	Wolfe	CAH, PCR, SCR	UP
East Fork of Indian Creek	Source to Indian Creek	Menifee	CAH, PCR, SCR	UP
Gladie Creek	Basin	Menifee	CAH, PCR, SCR	UP

Hanging Fork Creek	Source to Dix River	Boyle/Lincoln	WAH, PCR, SCR	UP
Indian Creek	River Mile 5.2 to River Mile 1.2	Menifee	CAH, PCR, SCR	UP
Kentucky River	River Mile 254.8 to Ohio River	Carroll	WAH, PCR, SCR, DWS	UP
Middle Fork of Kentucky River	Source to River Mile 76.6 (Headwaters of Buckhorn Lake)	Leslie	WAH, PCR, SCR	UP
Middle Fork of Kentucky River	River Mile 43.2 (Buckhorn Lake Dam) to North Fork of Kentucky River	Lee	WAH, PCR, SCR	UP
Middle Fork of Red River	Source to River Mile 10.6	Powell	CAH, PCR, SCR	UP
North Fork of Kentucky River	Source to Kentucky River	Lee	WAH, PCR, SCR, DWS	UP
Parched Corn Creek	Source to Red River	Wolfe	CAH, PCR, SCR	UP
Red River	Source to River Mile 68.6	Menifee/Wolfe	WAH, PCR, SCR	UP
Red River	River Mile 68.6 to River Mile 49.2 [~~59.5~~]	Menifee/Wolfe	WAH, PCR, SCR[~~, ORW~~]	ONRW
Red River	River Mile 49.2 [~~59.5~~] to Kentucky River	Clark/Estill	WAH, PCR, SCR, DWS	UP
Right Fork of Buffalo Creek	Source to Buffalo Creek	Owsley	WAH, PCR, SCR	HQ*
Ross Creek	Source to Kentucky River	Lee	WAH, PCR, SCR	UP
Silver Creek	Source to Kentucky River	Madison	WAH, PCR, SCR	UP
South Fork Elkhorn of Creek	Source to North Fork of Elkhorn Creek	Franklin	WAH, PCR, SCR	UP
South Fork of Kentucky River	Source to Kentucky River	Lee	WAH, PCR, SCR, DWS	UP
South Fork of Station Camp Creek	Source to River Mile 5.3	Jackson	WAH, PCR, SCR	HQ*
Station Camp Creek	River Mile 22.3 to River Mile 19.0	Estill	WAH, PCR, SCR	HQ*
Sturgeon Creek	Source to River Mile 4.0	Lee	WAH, PCR, SCR	HQ*
Swift Camp Creek	Source to Red River	Wolfe	CAH, PCR, SCR	UP
Town Branch	Source to South Fork of Elkhorn Creek	Fayette	WAH, PCR, SCR	UP
War Fork of Station Camp Creek	Source to River Mile 8.5	Jackson	WAH, PCR, SCR	UP
War Fork of Station Camp Creek	River Mile 8.5 to River Mile 2.0	Jackson	CAH, PCR, SCR	UP
War Fork of Station Camp Creek	River Mile 2.0 to Station Camp Creek	Jackson	WAH, PCR, SCR	UP
LAKES AND RESERVOIRS				
Bert Combs	Entire Reservoir	Clay	WAH, CAH, PCR, SCR, DWS	UP

Buckhorn	Entire Reservoir	Perry	WAH, PCR, SCR, DWS	UP
Carr Fork	Entire Reservoir	Knott/Perry	WAH, PCR, SCR	UP
Fishpond	Entire Reservoir	Letcher	WAH, CAH, PCR, SCR	UP
Herrington	Entire Reservoir	Garrard/Mercer	WAH, PCR, SCR, DWS	UP
Mill Creek	Entire Reservoir	Wolfe	WAH, CAH, PCR, SCR, DWS	UP
	SALT RIVER BASIN			
Beech Fork of Salt River	Source to Salt River	Hardin/Bullitt	WAH, PCR, SCR	UP
Chenoweth Run	Source to Floyds Fork (River Mile 24.3)	Jefferson	WAH, PCR, SCR	UP
Currys Fork	Confluence of South and North Forks to Floyds Fork	Oldham	WAH, PCR, SCR	UP
Floyds Fork	Source to Salt River	Bullitt	WAH, PCR, SCR	UP
Mill Creek	Source to Salt River	Bullitt	WAH, PCR, SCR	UP
North Fork of Currys Fork	Source to South Fork of Currys Fork	Oldham	WAH, PCR, SCR	UP
Rolling Fork of Salt River	Source to Salt River	Bullitt	WAH, PCR, SCR, DWS	UP
Salt Lick Creek	Source to River Mile 5.3	Marion	WAH, PCR, SCR	HQ*
Salt River	Source to River Mile 74.8 (Headwaters of Taylorsville Lake)	Anderson	WAH, PCR, SCR, DWS	UP
Salt River	River Mile 60.1 (Taylorsville Lake Dam) to Ohio River	Hardin/ Jefferson	WAH, PCR, SCR, DWS	UP
~~[Beech Fork Salt River~~	~~Source to Salt River~~	~~Hardin/Bullitt~~	~~WAH, PCR, SCR~~	
~~Rolling Fork Salt River~~	~~Source to Salt River~~	~~Bullitt~~	~~WAH, PCR, SCR, DWS]~~	
Unnamed tributary to Mill Creek	Source to Mill Creek at River Mile 11.8	Bullitt	WAH, PCR, SCR	UP
Wilson Creek	Source to River Mile 12.2	Bullitt	WAH, PCR, SCR	HQ*
LAKES AND RESERVOIRS				
Taylorsville	Entire Reservoir	Spencer	WAH, PCR, SCR	UP
	GREEN RIVER BASIN			
Barren River	Source to River Mile 118.5 (Headwaters of Barren River Lake)	Allen	WAH, PCR, SCR	UP
Barren River	River Mile 79.1 (Barren River Lake Dam) to River Mile 15.0	Warren	WAH, PCR, SCR, DWS	UP
Barren River	River Mile 15.0 to Green River	Butler/Warren	WAH, PCR, SCR[~~, ORW~~]	OSRW, UP
Beaverdam Creek	Source to River Mile 7.6 [~~Green River~~]	Edmonson	CAH, PCR, SCR	HQ*
Beaverdam Creek	River Mile 7.6 to Green River	Edmonson	CAH, PCR, SCR	UP

Big Pitman Creek	Source to Green River	Green	WAH, PCR, SCR	UP
Black Lick Creek	Source to Clear Fork	Logan	WAH, PCR, SCR, DWS	UP
Buck Horn Creek	Source to Little Pitman Creek	Taylor	WAH, PCR, SCR	UP
Buffalo Creek	Source to Green River (in Mammoth Cave National Park)	Edmonson	CAH, PCR, SCR	UP
Cypress Creek	Source to Pond River	McLean	WAH, PCR, SCR	UP
Drakes Creek	Confluence of West Fork and Middle Fork to Barren River	Warren	WAH, PCR, SCR	UP
Gasper River	Source to [~~Barren~~] River Mile 32.3	Logan [~~Warren~~]	WAH, PCR, SCR	HQ*
Gasper River	River Mile 32.3 to Barren River	Warren	WAH, PCR, SCR	UP
Goose Creek	Source to River Mile 5.6	Casey	WAH, PCR, SCR	HQ*
Green River	Source to River Mile 340.1 (Headwaters of Green River Lake)	Adair	WAH, PCR, SCR, DWS	UP
Green River	River Mile 305.6 (Green River Lake Dam) to River Mile 291.0 [~~225.9~~]	Green [~~Hart~~]	WAH, PCR, SCR[~~, DWS~~]	OSRW,UP
Green River	River Mile 291.0 to River Mile 230.0	Hart	WAH, PCR, SCR, DWS	UP
Green River	River Mile 230.0 to River Mile 207.8	Hart	WAH, PCR, SCR, DWS	OSRW, UP
Green River	River Mile 207.8 [~~225.9~~] to River Mile 181.7	Edmonson	WAH, PCR, SCR[~~, ORW~~]	OSRW,HQ
Green River	River Mile 181.7 to River Mile 168.0	Butler/Warren	WAH, PCR, SCR, DWS	UP
Green River	River Mile 168.0 to River Mile 148.0	Butler	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Green River	River Mile 148.0 to Ohio River	Henderson	WAH, PCR, SCR, DWS	UP
Lick Creek	Source to West Fork of Drakes Creek	Simpson	CAH, PCR, SCR	UP
Little Pitman Creek	Source to Big Pitman Creek	Green	WAH, PCR, SCR	UP
Lynn Camp Creek	Source to Green River	Hart	CAH, PCR, SCR	UP
Middle Pitman Creek	Source to Big Pitman Creek	Green	WAH, PCR, SCR	UP
Underground River System	Within Mammoth Cave National Park Boundary	Edmonson/Hart /Barren	CAH, PCR, SCR[~~, ORW~~]	ONRW
Turnhole Spring	Basin outside Mammoth Cave National Park Boundary	Edmonson/ Barren	CAH, PCR, SCR[~~, ORW~~]	OSRW, UP
Echo River	Basin outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR[~~, ORW~~]	OSRW, UP
Pike Spring	Basin outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR[~~, ORW~~]	OSRW, UP
Mile 205.7 Spring	Basin outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR[~~, ORW~~]	OSRW, UP
McCoy Spring	Basin	Hart	CAH, PCR, SCR[~~, ORW~~]	OSRW, UP

Suds Spring	Basin	Hart/Barren	CAH, PCR, SCR[~~, ORW~~]	OSRW, UP
Mud River	Source to Green River	Butler/Muhlenburg	WAH, PCR, SCR	UP
Nolin River	Source to River Mile 47.0 [~~64.3~~] (Headwaters of Nolin Lake)	Hart/Grayson	WAH, PCR, SCR	UP
Nolin River	River Mile 7.6 (Nolin Lake Dam) to Green River	Edmonson	CAH, PCR, SCR	UP
Rough River	Source to River Mile 133.8 (Headwaters of Rough River Lake)	Hardin	WAH, PCR, SCR, DWS	UP
Rough River	River Mile 89.3 (Rough River Lake Dam) to River Mile 72.4	Ohio/Grayson	CAH, PCR, SCR, DWS	UP
Rough River	River Mile 72.4 to Green River	McLean/Ohio	WAH, PCR, SCR, DWS	UP
Roundstone Creek	Source to Hwy 1140 (River Mile 3.5)	Hart	CAH, PCR, SCR	UP
Russell Creek	Source to River Mile 60.5	Adair	WAH, PCR, SCR	HQ*
Sharp's Branch	Source to West Fork of Drakes Creek	Simpson	WAH, PCR, SCR	UP
Trammel Fork	River Mile 30.15 (Kentucky/Tennessee State Line) [~~Source~~] to [~~Hwy 31E (~~]River Mile 23.6 (Hwy 31E)	Allen, Warren	CAH, PCR, SCR	HQ*
Trammel Fork	River Mile 23.6 to River Mile 19.4	Allen	WAH, PCR, SCR	HQ*
Trammel Fork	River Mile 19.4 [~~23.6~~] to Drakes Creek	Warren	WAH, PCR, SCR	UP
West Fork of Drakes Creek	Source to Confluence with Middle Fork of Drakes Creek	Warren	WAH, PCR, SCR, DWS	UP
Wiggington Creek	Source to Gasper River	Logan	WAH, PCR, SCR	UP
LAKES AND RESERVOIRS				
Barren River	Entire Reservoir	Barren/Allen	WAH, PCR, SCR, DWS	UP
Green River	Entire Reservoir	Taylor	WAH, PCR, SCR, DWS	UP
Nolin	Entire Reservoir	Edmonson	WAH, PCR, SCR, DWS	UP
Rough River	Entire Reservoir	Breckinridge/Grayson	WAH, PCR, SCR, DWS	UP
LOWER CUMBERLAND RIVER BASIN				
Casey Creek	Source to Little River	Trigg	CAH, PCR, SCR	UP
Cumberland River	River Mile 30.8 (Lake Barkley Dam) to Ohio River	Livingston	WAH, PCR, SCR, DWS	UP
Skinframe Creek	Source to Livingston Creek	Lyon	CAH, PCR, SCR	UP
Sulphur Spring Creek	Source to Red River	Simpson	CAH, PCR, SCR	UP
Whipporwill Creek	Source to Red River	Logan	WAH, PCR, SCR	OSRW,HQ*
[~~Cumberland River~~	~~River Mile 30.8 (Lake Barkley Dam) to Ohio River~~]	~~Livingston~~	~~WAH, PCR, SCR, DWS~~	

LAKES AND RESERVOIRS				
Barkley	Entire Reservoir from [to] Kentucky/ Tennessee State Line (River Mile 74.7)	Lyon/ Livingston	WAH, PCR, SCR, DWS	UP
Blood River	River Mile 15.65 (Kentucky/ Tennessee State Line) to River Mile 15.1	Calloway	WAH, PCR, SCR	HQ*
Panther Creek	Source to River Mile 1.2	Calloway	WAH, PCR, SCR	HQ*
Soldier Creek	River Mile 5.3 to River Mile 2.6	Marshall	WAH, PCR, SCR	HQ*
Tennessee River	River Mile 22.4 (Kentucky Lake Dam) to River Mile 12.0	Livingston/ McCracken	WAH, PCR, SCR	OSRW, UP
	TENNESSEE RIVER BASIN			
Tennessee River	River Mile 12.0 to Ohio River [River Mile 0.0]	Livingston/ McCracken	WAH, PCR, SCR, DWS	UP
[Tennessee River	River Mile 22.4 (Kentucky Lake Dam) to River Mile 12.0	Livingston/ McCracken]	WAH, PCR, SCR, ORW	
LAKES AND RESERVOIRS				
Kentucky	Entire Reservoir from [to] Kentucky/ Tennessee State Line (River Mile 62.4)	Livingston/ Marshall	WAH, PCR, SCR, DWS	UP
	TRADEWATER RIVER BASIN			
Crab Orchard Creek/ Vaughn Ditch	Source to Tradewater River	Webster	WAH, PCR, SCR	UP
Montgomery Creek	Source to Tradewater River	Caldwell	WAH, PCR, SCR	UP
Sandlick Creek	Source to River Mile 3.5	Christian	WAH, PCR, SCR	HQ*
Tradewater River	Source to River Mile 126.0 [Ohio River]	Christian [Crittenden/Union]	WAH, PCR, SCR	HQ*
Tradewater River	River Mile 126.0 to Ohio River	Crittenden/ Union	WAH, PCR, SCR	UP
	OHIO RIVER BASIN (Main Stem and Minor Tributaries)			
Doe Run Creek	Source to [KY] Hwy 1628 (River Mile 5.15)	Meade	CAH, PCR, SCR	UP
Ohio River	Big Sandy River (River Mile 317.1 to River Mile 940.7)	McCracken	WAH, PCR, SCR, DWS	UP
Ohio River	River Mile 940.7 to River Mile 943.3	McCracken	WAH, PCR, SCR, DWS[, ORW]	OSRW,UP
Ohio River	River Mile 943.3 to River Mile 966.3	McCracken/ Ballard	WAH, PCR, SCR, DWS	UP
Ohio River	River Mile 966.3 to River Mile 969.5	Ballard	WAH, PCR, SCR, DWS[, ORW]	OSRW,UP
Ohio River	River Mile 969.5 to Mississippi River	Ballard	WAH, PCR, SCR, DWS	UP
Ohio River	River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR[, ORW]	OSRW,UP
Paddy's Run	Source to Ohio River	Jefferson	PCR, SCR**	UP

~~[Section 2(1)(d) and 2(2) of 401 KAR 5:031 do not apply.]~~

Sinking Creek	Source to Hwy 259 (River Mile 4.0)	Breckinridge	CAH, PCR, SCR	UP
White Oak Creek	River Mile 1.08 to Ohio River	Greenup	SCR**	UP
Yellowbank Creek	Source to River Mile 4.4	Breckinridge	WAH, PCR, SCR	HQ*
LAKES AND RESERVOIRS				
Metropolis	Entire Lake	McCracken	WAH, PCR, SCR[~~-ORW~~]	OSRW,HQ
Swan	Entire Lake	Ballard	WAH, PCR, SCR[~~-ORW~~]	OSRW,HQ
Bayou de Chien	Source to River Mile 17.0	Hickman	WAH, PCR, SCR	OSRW,UP
Cane Creek of Bayou de Chien	Basin	Graves	WAH, PCR, SCR	OSRW,UP
Jackson Creek	Basin	Graves	WAH, PCR, SCR	OSRW,UP
Sand Creek	Basin	Graves	WAH, PCR, SCR	OSRW,UP
	MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)			
Mississippi River	Confluence with Ohio River to Kentucky/Tennessee State Line	Fulton	WAH, PCR, SCR	UP
Murphy's Pond	Entire Pond and Preserve Area	Hickman	WAH, PCR, SCR[~~, ORW~~]	OSRW,HQ
Adam's Branch	Basin	Whitley	WAH, PCR, SCR	OSRW,UP
	UPPER CUMBERLAND RIVER BASIN			
Archers Creek	Basin	Whitley	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Bad Branch	Basin	Letcher	CAH, PCR, SCR[~~, ORW~~]	OSRW,HQ*
Bark Camp Creek	Basin	Whitley	CAH, PCR, SCR	HQ*
Beaver Creek	Basin	McCreary	CAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Beaver Creek	Source to Lake Cumberland	Wayne	WAH, PCR, SCR	UP
Beck's Creek	Basin	Whitley	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Big Branch	Basin above River Mile 0.8	McCreary	WAH, PCR, SCR	OSRW,UP
Big Lick Branch	Basin	Pulaski	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Big South Fork of Cumberland River	River Mile 55.2 to River Mile 45.0	McCreary	WAH, PCR, SCR[~~, ORW~~]	ONRW
Blacksnake Branch	Basin	Bell	WAH, PCR, SCR	OSRW,UP
Breeden's Creek	Basin	Harlan	CAH, PCR, SCR	OSRW,UP
Brice's Creek	Basin	Knox	WAH, PCR, SCR	OSRW,UP
Brownies Creek	Basin to River Mile 10.0 [~~8.7~~]	Harlan	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Buck Creek	River Mile 62.6 to River Mile 53.3	Pulaski	WAH, PCR, SCR	HQ*
Buck Creek	River Mile 53.3 to River Mile 28.9 [~~10.5~~]	Pulaski	WAH, PCR, SCR[~~, ORW~~]	OSRW,HQ*
Buck Creek	River Mile 28.9 to River Mile 10.5	Pulaski	WAH, PCR, SCR	OSRW,UP

Buck Creek	Basin	Whitley	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Bucks Branch	Basin	Whitley	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Buffalo Creek	Basin to Kentucky/Tennessee State Line (River Mile 3.2)	Whitley	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Bunches Creek	Basin	Whitley	CAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Campbell Branch	Basin	Whitley	WAH, PCR, SCR	OSRW,UP
Cane Creek	Basin to River Mile 7.0	Laurel	CAH, PCR, SCR	HQ*
Cane Creek	Basin from River Mile 7.0 to Rockcastle River	Laurel	CAH, PCR, SCR	UP
Caney Creek	Basin	Bell	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Cannon Creek	Basin above Cannon Creek Lake	Bell	WAH, PCR, SCR	OSRW,UP
Clover Bottom Creek	River Mile 1.4 to Horselick Creek	Jackson	CAH, PCR, SCR	UP
Cogur Fork	Basin	McCreary	CAH, PCR, SCR	UP
Coles Branch	+Basin	Knox	WAH, PCR, SCR	OSRW,UP
Colliers Creek	Basin	Letcher	WAH, PCR, SCR	OSRW,UP
Criscillis Branch	Basin	Whitley	WAH, PCR, SCR	OSRW,UP
Cumberland River	River Mile 694.2 to River Mile 574.6	Whitley	WAH, PCR, SCR, DWS	UP
Cumberland River	River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)	McCreary/ Whitley	WAH, PCR, SCR[~~, ORW~~]	OSRW,HQ
Cumberland River	River Mile 460.9 (Lake Cumberland Dam) to Kentucky/Tennessee State Line (River Mile 401.05 [~~Lake Cumberland Dam (River mile [460.9) to Highway 90 bridge (River Mile 426.5)~~	Monroe [~~Cumberland~~]	CAH, PCR, SCR, DWS	UP
~~Cumberland River~~	~~River Mile 426.5 to Kentucky/ Tennessee State Line (River mile 401.05)~~]	~~Monroe~~	~~WAH, PCR, SCR, DWS~~	
Davis Branch	Basin	Bell	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Difficulty Creek	Basin	McCreary	CAH, PCR, SCR	UP
Dog Slaughter Creek	Basin to Cumberland River (excluding South Fork of Dog Slaughter Creek	Whitley	CAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Eagle Creek	Basin	McCreary	WAH, PCR, SCR[~~, ORW~~]	OSRW,HQ*
Four Mile Creek	Basin above River Mile 2.5	Bell	WAH, PCR, SCR	OSRW,UP
Four Mile Run	Basin above River Mile 1.0	Bell	WAH, PCR, SCR	OSRW,UP
Fugitt Creek	Basin	Harlan	CAH, PCR, SCR	UP
Hale Fork	Basin	Knox	WAH, PCR, SCR	OSRW,UP
Hawk Creek	River Mile 4.1 to River Mile 1.1	Laurel	CAH, PCR, SCR	UP
Hinkle Branch	Basin	Knox	WAH, PCR, SCR	OSRW,UP

Honeycut Branch	Basin	Knox	WAH, PCR, SCR	OSRW,UP
Horse Lick Creek	Source to River Mile 12.3	Jackson	WAH, PCR, SCR	HQ*
Horse Lick Creek	River Mile 12.3 to Middle Fork of Rockcastle [~~River Mile 0.0~~]	Jackson/ Rockcastle	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Hunting Shirt Branch	Basin above River Mile 1.0	Knox	WAH, PCR, SCR	OSRW,UP
Indian Creek	Source to Barren Fork	McCreary	CAH, PCR, SCR	UP
Jennys Branch	Basin	McCreary	WAH, PCR, SCR	OSRW,UP
Kelly Branch	Basin	Harlan	CAH, PCR, SCR	UP
Kennedy Creek	River Mile 1.0 to Little South Fork of Cumberland [~~River Mile 0.0~~]	Wayne	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Laurel Creek	River Mile 9.0 to River Mile 3.4	McCreary	CAH, PCR, SCR	OSRW,UP
Laurel Fork of Clear Fork	Basin above River Mile 16.0	Bell	WAH, PCR, SCR	OSRW,UP
Laurel Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR	OSRW,UP
Laurel Fork	Source to Middle Fork of Rockcastle River	Jackson	WAH, PCR, SCR	OSRW,UP
Lick Fork	Basin	Bell	WAH, PCR, SCR	OSRW,UP
Little Clear Creek	Basin from Confluence with Fuson Branch	Bell	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Little Poplar Creek	Basin above and including East Ridge Branch	Knox	WAH, PCR, SCR	OSRW,UP
Little South Fork of Cumberland River	River Mile 35.6 to River Mile 4.1	Wayne	WAH, PCR, SCR[~~, ORW~~]	OSRW,HQ
Little Yellow Creek	River Mile 3.2 (Fern Lake Dam) to Yellow Creek [~~Fern Lake Dam to River Mile 0.0~~]	Bell	WAH, PCR, SCR[~~, ORW~~]	UP
Long Branch	Basin	Bell	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Looney Creek	Basin above River Mile 5.3	Harlan	CAH, PCR, SCR	UP
Marrowbone Creek	Basin	Cumberland	WAH, PCR, SCR	OSRW,UP
Marsh Creek	Basin above River Mile 24.0	McCreary	WAH, PCR, SCR	OSRW,HQ*
Marsh Creek	River Mile 24.0 to River Mile 12.6	McCreary	WAH, PCR, SCR	HQ*
Martin's Fork	Basin above River Mile 31.3	Harlan	CAH, PCR, SCR	UP
Martin's Fork	River Mile 31.3 to [~~Basin above~~] River Mile 27.4	Harlan	CAH, PCR, SCR[~~, ORW~~]	OSRW,HQ
Meadow Fork	Basin	Letcher	WAH, PCR, SCR	OSRW,UP
Middle Fork of Rock-castle River	River Mile 61.1 to River Mile 53.3	Jackson	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Mill Branch	Basin	Knox	WAH, PCR, SCR	OSRW,UP
Mill Creek	Basin	Bell	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP

Mill Creek	Basin	McCreary	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Moore's Creek	Basin	Knox	WAH, PCR, SCR	OSRW,UP
Mud Creek	Basin above River Mile 6.5	Whitley	WAH, PCR, SCR	OSRW,UP
Mud Lick	Basin	Knox	WAH, PCR, SCR	OSRW,UP
Ned Branch	Basin	Laurel	WAH, PCR, SCR	OSRW,UP
Patterson Creek	Basin above River Mile 7.4	Whitley	WAH, PCR, SCR	OSRW,UP
Poor Fork of Cumberland River	Basin above River Mile 742.5[~~7~~]	Letcher	CAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Poor Fork of Cumberland River	Basin from River Mile 742.5[~~7~~] to Jefferson National Forest Boundary (River Mile 720.55)	Letcher	CAH, PCR, SCR	UP
Poor Fork of Cumberland River	River Mile 720.55 to Clover Fork of Cumberland River	Harlan	WAH, PCR, SCR, DWS	UP
Razor Fork	Basin above River Mile 0.8	Harlan	CAH, PCR, SCR	UP
Richland Creek	Basin above River Mile 15.7	Knox	WAH, PCR, SCR	OSRW,UP
Roaring Fork	Basin	Knox	WAH, PCR, SCR	OSRW,UP
Rock Creek	Tennessee/Kentucky State Line (River Mile 21.9) to White Oak Creek	McCreary	CAH, PCR, SCR[~~, ORW~~]	OSRW,HQ
Rock Creek	Basin from confluence with Jellico Creek	McCreary	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Rockcastle River	River Mile 53.3 to River Mile 24.4 [~~8.5~~]	Laurel/ Pulaski	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Rockcastle River	River Mile 24.4 to River Mile 8.5	Laurel/ Pulaski	WAH, PCR, SCR	OSRW,HQ
Ross Branch	Basin	Whitley	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Roundstone Creek	Source to River Mile 13.5	Rockcastle	WAH, PCR, SCR	UP
Roundstone Creek	River Mile 13.5 to River Mile 4.7	Rockcastle	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Roundstone Creek	River Mile 4.7 to Rockcastle River	Rockcastle	WAH, PCR, SCR, DWS	UP
Ryans Creek	Basin	Whitley	WAH, PCR, SCR	OSRW,UP
Sanders Creek	Basin	Whitley	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Shillalah Creek	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR	UP
Sinking Creek	Source to Rockcastle River	Laurel	WAH, PCR, SCR	OSRW,UP
Shut-in Branch	Basin	McCreary	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Sims Fork	Basin	Bell	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Smith Creek	Basin	Letcher	WAH, PCR, SCR	OSRW,UP
South Fork of Dog Slaughter Creek	Basin to Dog Slaughter Creek	Whitley	WAH, PCR, SCR	OSRW,HQ*

Stevenson Branch	Basin	Bell	WAH, PCR, SCR	OSRW,UP
Straight Creek	Basin above River Mile 17.9[~~11.3~~]	Harlan	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Sugar Run	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR	UP
Trace Branch	Basin	Knox	WAH, PCR, SCR	OSRW,UP
Trammel Fork	Basin	McCreary	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
Troublesome Creek	Basin	McCreary	CAH, PCR, SCR	UP
Turkey Creek	Basin above River Mile 2.1	Knox	WAH, PCR, SCR	OSRW,UP
Watts Creek	Basin to Camp Blanton Lake	Harlan	WAH, PCR, SCR	OSRW,UP
White Oak Creek	Basin above River Mile 1.2 (includes Little White Oak Creek)	Laurel	CAH, PCR, SCR	UP
Wood Creek	River Mile 4.0 (Wood Creek Lake Dam) to Hazel Patch Creek	Laurel	CAH, PCR, SCR	UP
Yellow Creek	Source to Cumberland River	Bell	WAH, PCR, SCR	UP
Youngs Creek	Basin	Whitley	WAH, PCR, SCR[~~, ORW~~]	OSRW,UP
LAKES AND RESERVOIRS				
Beulah (=Tyner)	Entire Reservoir	Jackson	WAH, CAH, PCR, SCR, DWS	UP
Cannon Creek	Entire Reservoir	Bell	WAH, CAH, PCR, SCR, DWS	UP
Cumberland	Entire Reservoir	Pulaski	WAH, PCR, SCR, DWS	UP
Dale Hollow	Entire portion of Reservoir within Kentucky	Clinton/ Cumberland	WAH, PCR, SCR	UP
Laurel River	Entire Reservoir	Laurel/Whitley	WAH, CAH, PCR, SCR, DWS	UP
Martins Fork	Entire Reservoir	Harlan	WAH, PCR, SCR	UP
Wood Creek	Entire Reservoir	Laurel	WAH, CAH, PCR, SCR, DWS	UP

*Waterbodies in the cabinet's reference reach network.
**401 KAR 5:031, Section 2(1)(d) and (2) do not apply.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: April 14, 1995
FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this administrative regulation is scheduled on May 22, 1995 at 7 p.m. (EDT) in the Auditorium of the Cabinet for Human Resources Building in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by May 17, 1995, of their intent to attend the hearing and be heard. 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 this administrative regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 this administrative regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of the public hearing on May 22, 1995. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before May 17, 1995 between 8 a.m. and 4:30 p.m. (EDT).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation applies designated uses and classifications to the surface waters of the Commonwealth. It is being amended to add antidegradation classifications to all listed streams. 3 surface waters are classified as outstanding national resource waters, 105 as outstanding state resource waters, 50 as high quality waters, and the remainder are

classified as use protected. The amendments to this regulation will affect new or expanded point source discharges to outstanding national resource waters, outstanding state resource waters, and high quality waters. Approximately 83 residences, businesses, municipalities, schools, and federal and state government agencies are currently discharging into waters proposed for reclassification. These dischargers will not be affected unless they increase their pollutant loadings. This regulation will affect new or expanded mining operations in watersheds of outstanding national resource waters and high quality waters. An unknown number of existing mines in watersheds of outstanding state resource waters will be affected. This regulation also applies to persons served by domestic water supplies, agricultural water users, recreational enthusiasts, and the tourism industry.

(2) Direct and indirect costs or savings on the affected entities: The stricter permit limits imposed on new or expanded point source dischargers into high quality waters could result in additional treatment outlays, training costs, and operational changes. New or expanded dischargers that cannot meet the high quality water permit limits may incur costs of alternatives and pollution prevention analyses. Entities have the option of bearing the assessment costs of determining if a stream is high quality. The Division of Water will normally make this determination through its assessment program. Direct and indirect savings would be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

(a) Effect on the 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: Note: Comments received were not specific to this regulation but referred to all 5 regulations: 401 KAR 5:001, 5:026, 5:029, 5:030, and 5:031. 401 KAR 5:030 is proposed as a new regulation and is printed elsewhere in the May Administrative Register of Kentucky. Comments received from the public referred to a study by Stephen M. Meyer, Professor in Political Science, Massachusetts Institute of Technology, entitled "Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypothesis", October 5, 1992. This study compared the relative strengths of environmental programs in the 50 U.S. states with economic performance measured in terms of gross state product and economic growth, total employment, construction employment, manufacturing labor, and overall labor productivity. The study found that "...average employment growth among the environmentally strong states was about 45% better than that of the environmentally weak states." It concluded that "...states with stronger environmental policies consistently out-performed the weaker environmental states on all the economic measures." Further, "...states with stronger environmental policies did not experience weaker gains in economic growth between the 1970s and 1980s. Here again, it was the states with strong environmental policies that showed the greater inter-decade improvement in economic performance." Another comment received referred to a Kentucky survey, "Priorities Assessment Study", Center of Developmental Change and Survey Research Center, University of Kentucky, 1984. 2 findings from the survey related to cost of living and employment are: "Consistent with the emphasis on safe drinking water was the response to the item asking about support for a tax increase for water quality improvement. Of the 440 responding, 65.9 percent indicated support for such a tax increase, and this majority held across all demographic factors analyzed. Another indication of public concern about water quality in the state was the response to the survey question relating economic development and increased pollution in streams. Of the 440 responding, 91.8 percent would not support allowing more pollution in streams in an effort to increase economic development and employment. Again, this majority held across all demographic factors."

(b) Effect on the 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 received.

(c) Effect on the compliance, reporting, and paperwork requirements, to the extent available from the public comments received, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No comments received.

2. Second and subsequent years: No comments received.

(3) Effects on the promulgating administrative body: 4 classifications of waters for antidegradation purposes are being proposed - outstanding national resource waters, outstanding state resource waters, high quality waters, and use protected waters. The Division of Water will perform field assessments of waters with high quality potential and will determine all classifications based on its assessments or on petitions submitted by the public.

(a) Direct and indirect costs or savings:

1. First year: The division will incur part of the costs of determining classifications. These costs depend on the number of waters to be considered and the number that require field assessments. These are not new costs since existing staff will be reassigned to conduct the assessments.

2. Continuing costs or savings: Same as (3)(a)1.

3. Additional factors increasing or decreasing costs: The additional number of surface water classification categories may generate more petitions to classify waters. Reviewing a large number of petitions will increase costs.

(b) Reporting and paperwork requirements: This regulation will not significantly affect the cabinet's routine reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: Some localities will be affected because of the presence of high quality waters, causing tax-generating businesses to locate elsewhere. On the other hand, protection of outstanding national resource waters, outstanding state resource waters, and high quality waters may have a positive influence on revenues derived from water-based tourism.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No comments received.

(b) Kentucky: Comments received: "The (MIT) analysis...clearly and forcefully dispels the myth that improvements in environmental quality are 'bad for business.'" "I would like to see the local and visiting users of the region enjoy clean water. Tourism is a low impact, high revenue industry...." "...implementation of the antidegradation program in an unreasonable manner could severely hamper the state's economic development efforts and the efforts of municipalities to expand waste water treatment systems to accommodate future growth." "A degraded environment steals from our children and our neighbors by burdening them with the cost of remediation and the long-term effects of pollution." "Lower environmental standards do not necessarily enhance a state's economic development and may, in fact, impair such growth." "Strong environmental regulations have been positively associated with strong economic competitiveness." A high quality designation would "clearly and significantly impair this industry's ability to responsibly mine coal as is presently done."

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amended regulation implements Kentucky's antidegradation policy by classifying surface waters. Implementation of an antidegradation policy is required by the Clean Water Act and 40 CFR 131.12. Therefore, no other alternatives were considered.

Cold Water Aquatic Habitats: No alternatives were evaluated for the cold water aquatic habitat use designation. The Commonwealth,

through the cabinet and the Kentucky Department of Fish and Wildlife Resources, is committed to maintaining the viability of Kentucky's cold water fishery resource. Based on the affirmative survey responses of Kentucky sport anglers (1991 Kentucky Angler Survey, Kentucky Department of Fish and Wildlife Resource (KDFWR)), the KDFWR has undertaken a program to establish wild trout and "two-story" trout fisheries in lakes and streams where a suitable cold water habitat is available. Since Kentucky's stocking program represents a significant expenditure of public funds and generates considerable revenue for the state, local units of government, and the private sector, it is incumbent on the cabinet to safeguard this investment by maintaining water quality suitable for cold water aquatic species. In addition, KRS 224.70-100 requires the cabinet to protect waters for all legitimate uses, including cold water aquatic habitat.

Outstanding State Resource Waters: Surface waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, are automatically designated as outstanding state resource waters by 401 KAR 5:031. Under the present regulation no alternative exists to not listing streams supporting species listed under the Endangered Species Act as outstanding state resource waters. Surface waters supporting one or more of the following species are designated as outstanding state resource waters:

Cyprogenia stegaria - Fanshell mussel
Epioblasma obliquata obliquata - Purple cat's paw pearly mussel
Epioblasma torulosa rangiana - Northern riffleshell mussel
Obovaria retusa - Ring pink mussel
Notropis sp.,cf.procne - Palezone shiner
Pleurobema clava - Clubshell mussel
Scaphirhynchus albus - Pallid sturgeon
Phoxinus cumberlandensis - Cumberland blackside dace
Potamilus capax - Fat pocketbook mussel
Plethobasus cooperianus - Orange-footed pearly mussel
Lampsilis abrupta orbiculata - Pink mucket pearly mussel
Pleurobema plenum - Rough pigtoe mussel
Villosa trabalis - Cumberland bean pearly mussel
Pegias fabula - Little winged pearly mussel
Palaemonias ganteri - Kentucky cave shrimp
Etheostoma chienense - Relict darter

Surface Waters Designated for Warm Water Aquatic Habitat, Primary and Secondary Contact Recreation, and Domestic Water Supply: A use attainability analysis was conducted on each of the surface waters listed prior to this designation. The purpose of use attainability analyses is to characterize current water quality and to ascertain whether or not uses are currently being met, or given the application of waste treatment controls, could be attained in the future. It is the opinion of the cabinet that the prescribed uses for the listed surface waters are currently being met. Therefore, no other alternatives to these use designations appear to be feasible, warranted, or available under KRS 224.70-100.

Reclassification of White Oak Creek: The cabinet has been petitioned by AK Steel Company in Ashland for the reclassification of the lower 1.08 miles of White Oak Creek from warm water aquatic habitat, primary contact recreation, secondary contact recreation to secondary contact recreation only. The petition followed the requirements outlined in 401 KAR 5:026 and the cabinet is now formally acting on this petition. Upon review, the cabinet has determined that the petition has merit and that the use of warm water aquatic habitat is not appropriate due to the following reasons:

(1) Warm water aquatic habitat and primary contact recreation are not existing uses;

(2) The interruption of White Oak Creek's natural connection with the Ohio River due to a break in elevation caused by a storm control device (a hydrologic modification) constructed prior to 1971, prevented the warm water aquatic habitat use attainment from that date; and

(3) The human-caused condition of culverting 0.79 miles of White Oak Creek prevented the attainment of the primary contact recreation and warm water aquatic habitat use.

The alternative to reclassification is to retain the removed uses. This would result in the expenditure of millions of dollars for the treatment of effluent by AK Steel. This is an unnecessary requirement and was rejected. Secondary contact use will be retained for White Oak Creek because wading is possible, although the cabinet does not encourage the public to utilize the stream for this purpose because of safety related concerns and because the stream is on private property. All designated uses will be protected in the downstream waters of the Ohio River.

Reclassification of Little Clear Creek and Little Yellow Creek: Little Clear Creek and Little Yellow Creek were previously designated as outstanding (state) resource waters. Based on recent ichthyological stream surveys, the Kentucky Department of Fish and Wildlife Resources and the Kentucky Division of Water recommend deletion of the ORW classification. The federally endangered species Phoxinus cumberlandensis (Cumberland blackside dace) has been extirpated in Little Clear Creek because of destruction of prime breeding habitat and the introduction of a predator species, Lepomis auritus (redear sunfish). Little Yellow Creek was originally listed from a historical record which could not be verified. The cabinet has no scientific evidence that the blackside dace ever occurred in this creek.

Reclassification of Licking River (River Mile 165.0 to 154.5): The cabinet has been petitioned by the Kentucky State Nature Preserves Commission to classify a 10.5 mile segment at Moores Ferry of the Licking River in Bath and Rowan counties as an outstanding state resource water. According to the commission, this segment "is one of the most biologically diverse short segments of river in Kentucky. Because it has retained qualities lost elsewhere in the Blue Grass and Kentucky, Moores Ferry possesses exceptional ecological value..." Of the 104 taxa of freshwater mussels found in Kentucky, 30 taxa have been identified at Moores Ferry. 31 species of fish have been documented at the site, and 9 species of national or state significance are known to occur. The petition meets the requirements of 401 KAR 5:026, and the cabinet supports the recommendation to classify the Licking River segment from River Mile 154.5 to River Mile 165.0 to outstanding state resource water.

Reclassification of Red River, Big South Fork of Cumberland River, and the Underground River System within Mammoth Cave National Park as Outstanding National Resource Waters: The cabinet is reclassifying 3 river segments as outstanding national resource waters. All of the segments meet the requirements set forth in 401 KAR 5:026, Sections 6 and 7. 2 segments of the Red River in Menifee and Wolfe have been designated under the Federal Wild and Scenic Rivers Act: 1 as wild (River Miles 68.6 to 59.5) and 1 as recreational (River Miles 59.5 to 49.2). The segment designated as wild under the Federal Wild and Scenic River Act is also a state wild river and an outstanding state resource water. Because of the recent federal designation, the cabinet is reclassifying the entire segment from River Miles 68.6 to 49.2 as an outstanding national resource water. A portion of the Big South Fork located within the Big South Fork National River and Recreation Area in McCreary County is being reclassified from an outstanding (state) resource water to an outstanding national resource water. This segment extends from River Mile 55.2 to River Mile 45.0. The cabinet has determined that this section qualifies as an outstanding national resource water based on its location and its status as a National River, 1 of 11 in the country. The cabinet proposes through this regulation to reclassify the underground river system within Mammoth Cave National Park from outstanding (state) resource water to outstanding national resource water. This river system has exceptional national significance because of its location within a national park boundary, its rare and unique aquatic life, and its status as being within an International Biosphere Preserve. The alternative was to not list these waters as outstanding national resource waters. Since they meet the new criteria for outstanding national resource water classification, the cabinet chose to reclassify them. A specially convened Water Quality Standards

Review Panel of various interest groups had suggested that the cabinet list some waters as outstanding national resource waters, which added support to the proposed listing.

(8) Assessment of expected benefits of the administrative regulation: This regulation establishes 2 new classifications: outstanding national resource waters and high quality waters. It renames outstanding resource waters to outstanding state resource waters and adds a use protected classification, even though the latter was implied for most waters previously. By classifying certain streams as high quality, this regulation will lessen the degree of degradation of waters whose quality exceeds the minimum use criteria for warm water aquatic habitat and primary and secondary contact recreation. By classifying certain streams as outstanding national resource waters, this regulation will maintain existing water quality. Both of these classifications will provide better protection of water quality than the current use protected classifications. This will help sustain and enhance existing levels of aquatic recreation, fishing, and water-based tourism.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation reduces the degree of degradation of high quality waters and maintains the existing quality of outstanding national resource waters. Waters that are not degraded are obviously beneficial to public health. Drinking water will not require additional treatment, and fish consumption will remain safe. Aquatic recreation, such as swimming, wading, skiing, and boating, depends on the maintenance of clean, safe water. Nondegraded waters protect rare aquatic species and support a rich biodiversity of plants, fish, and macroinvertebrates.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be a detrimental effect on the environment if this regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this regulation would allow the degradation of those waters identified as outstanding national resource waters and high quality waters. Aquatic organisms sensitive to pollution may be impacted.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations, or government policies are in conflict, overlap, or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: State water quality standards are required by federal law to be reviewed for possible changes at least every 3 years. The current review resulted in several changes which were presented to a Water Quality Standards Review Panel in a series of public meetings beginning in December 1992. The Review Panel was composed of representatives of Kentucky Department of Fish and Wildlife Resources, Kentucky Farm Bureau Federation, Kentucky League of Women Voters, Utility Information Exchange of Kentucky, Kentucky Chamber of Commerce, Kentucky Coal Association, Kentucky Resources Council, Kentucky Conservation Committee, Purchase Area Environmental Forum, Lexington-Fayette Urban County Government, Louisville Metropolitan Sewer District, Sierra Club, Trout Unlimited, Westvaco, Toyota, AK Steel, Union Underwear, Associated Industries of Kentucky, Cumberland Trust, Kentucky League of Cities, and Western Kentucky Coal Association. It is suggested that all the regulatory impact analyses prepared for 401 KAR 5:001, 5:029, 5:030, and 5:031 be read to obtain an overview of the water quality standards regulations and their impacts. 401 KAR 5:030 is printed elsewhere in the May Administrative Register of Kentucky.

(12) TIERING: Is tiering applied? Tiering was not applied. The regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, process, or treatment employed. However, stream segments are identified depending on their quality and different standards apply to them.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation may affect the waste water treatment operations of local government if they will have new or expanded discharges into high quality waters, outstanding state resource waters, or outstanding national resource waters.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to local governments' waste water treatment service.

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. Waste water treatment costs may increase for those local governments that will have new or expanded discharges into high quality waters or outstanding state resource waters. On the other hand, local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads.

Revenues (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every 3 years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for redesignating uses and implementing an antidegradation policy.

2. State compliance standards. 401 KAR 5:001, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. None

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:029. General provisions.

RELATES TO: KRS Chapter 224[~~, 40 CFR Part 136~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Parts 131, 136, 33 USC 1312, 1313, 1314

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop

and conduct a comprehensive program for the manage-ment of water resources and to provide for the prevention, abatement, and control of all water pollution. This administrative regulation provides the general provisions under which the water quality regulations: this administrative regulation, and 401 KAR 5:001, 5:026, 5:030, and 5:031, will operate to protect the surface waters of the Common-wealth, and thus protect water resources. These general provisions contain the Common-wealth's surface water antidegradation policy, provide for withdrawals of waters not meeting water quality standards, and address sample collection and analytical methodology, mixing zones, discharges to publicly owned lakes and reservoirs, and variances for coal remining operations. ~~[This administrative regulation contains a definition and abbreviation section applica-ble to 401 KAR 5:026, this administrative regulation, and 401 KAR 5:031. A nondeg-radation section and a section pertaining to withdrawal of waters not meeting water quality standards are included. A sample collection and analytical methodology section is included to ensure reproducible analytical results. A provision relating to allowable conditions in mixing zones is also included. A procedure for issuing a variance from criteria for pH, iron and manganese is included for coal remining operations.]~~

Section 1. Antidegradation Policy. ~~[Definitions and Abbrevia-tions. (1) The following definitions describe terms used in 401 KAR 5:026, this administrative regulation, and 401 KAR 5:031. Terms not defined below shall have the meanings given to them in KRS 224.01-010 or, if not so defined, the meanings attributed by common use.~~

~~(a) "Acute chronic ratio" means the ratio of the acute toxicity (expressed as an LC_{50} of an effluent or a toxic substance to its chronic toxicity (expressed as a NOEL). It is used as a factor to estimate chronic toxicity from acute toxicity data.~~

~~(b) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed for a brief period of time without causing unacceptable harmful effects.~~

~~(c) "Acute toxicity" means lethality or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests, due to a short term exposure (ninety six (96) hours or less) to a specific toxic substance or mixture of toxic substances.~~

~~(d) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect (LC_{50}) by the end of the acute exposure period.~~

~~(e) "Chronic criteria" means the highest instream concentra-tion of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful effect.~~

~~(f) "Chronic toxicity" means lethality, reduced growth or reproduc-tion or other harmful effect sustained by either indige-nous aquatic organisms or representative indicator organisms used in toxicity tests due to long term exposures (relative to the life span of the organisms or a significant portion of their life span) to toxic substances or mixtures of toxic substances.~~

~~(g) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes no observed unacceptable harmful effect (NOEL) on the test organisms by the end of the chronic expo-sure period.~~

~~(h) "Cold water aquatic habitat" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year round basis.~~

~~(i) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorina-tion.~~

~~(j) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.~~

~~(k) "Division" means the Division of Water.~~

~~(l) "Domestic water supply (DWS)" means surface waters that with conventional treatment will be suitable for: human consumption through a public water system as defined in 401 KAR 6:015, Section 1; culinary purposes; or for use in any food or beverage processing industry; and, meets state and federal regulations under the Safe Drinking Water Act, 42 USC 300f 300j, as amended.~~

~~(m) "Effluent ditch" means that portion of a treatment system which is a discrete, person made conveyance, either totally owned, leased or under valid easement by the discharger, which transports a discharge to waters of the Commonwealth.~~

~~(n) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion (the region of the thermocline) of a thermally stratified lake or reservoir.~~

~~(o) "Eutrophication" means the enrichment of surface waters of the state by the discharge or addition of nutrients.~~

~~(p) "Existing uses" means those legitimate uses being attained in or on a surface water of the Commonwealth on or after November 28, 1975, irrespective of its use classification.~~

~~(q) "Fecal coliform" means the portion of the coliform group of bacteria which are present in the intestinal tract or the feces of warm blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty four (24) hours at forty four and five tenths (44.5) degrees plus or minus two tenths (0.2) degrees C.~~

~~(r) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.~~

~~(s) "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir that extends from the metalimnion to the bottom.~~

~~(t) "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles and amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from any given surface water.~~

~~(u) "Intermittent water" means a stream that flows only at certain times of the year as when it receives water from springs or precipita-tion in its immediate watershed.~~

~~(v) "LC_{50}" means that concentration of a toxic substance or mixture of toxic substances which is lethal (or immobilizing, if appropriate) to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.~~

~~(w) "LC_x" means that concentration of a toxic substance or mixture of toxic substances which is lethal (or immobilizing, if appropriate) to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.~~

~~(x) "Maintain" means to preserve or keep in present condi-tion by not allowing adverse permanent or long term changes to water quality or to populations of aquatic organisms or their habitat.~~

~~(y) "Milligrams per liter (mg/l)" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water assuming unit density.~~

~~(z) "Mixing zone" means a domain of a water body contigu-ous to a treated or untreated wastewater discharge of quality characteris-tics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.~~

~~(aa) "Natural temperature" means the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.~~

~~(bb) "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.~~

~~(cc) "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar~~

body of water.

(dd) "No observed effect level (NOEL)" means the highest concentration of an effluent or a toxic substance that causes no observed harmful effects on either indigenous aquatic organisms or representative indicator organisms used in toxicity tests.

(ee) "Nonpoint" means any source of pollutants not defined by point source as used in this administrative regulation.

(ff) "Outstanding resource waters" means surface waters designated by the cabinet pursuant to 401 KAR 5:031, Section 7.

(gg) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(hh) "Productive aquatic communities" means an assem blage of indigenous aquatic life capable of reproduction and growth.

(ii) "Propagation" means the continuance of species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of species by artificial culture and stocking.

(jj) "Standard or water quality standard" means an administrative regulation promulgated by the cabinet establishing the use to be made of a surface water and the water quality criteria necessary to maintain and protect that use.

(kk) "Surface waters" means those waters having well defin ed banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(ll) "Thermocline" means the plane in a body of water in which the maximum rate of decrease in temperature occurs with respect to depth.

(mm) "Toxic substances" means substances which are bioaccumulative, synergistic, antagonistic, teratogenic, mutagen ic or carcinogenic and cause death, disease, behavioral abnor malities, physiological malfunctions or physical deformities in any organism or its offspring or interfere with normal propagation.

(nn) "Warm water aquatic habitat (WAH)" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(oo) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a preva lence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(2) Abbreviations:

(a) °C means degree(s) Celsius;

(b) EPA - See U. S. EPA;

(c) °F means degree(s) Fahrenheit;

(d) KPDES means Kentucky Pollutant Discharge Elimination System;

(e) mg/l means milligrams per liter (same as ppm);

(f) NPDES means National Pollutant Discharge Elimination System;

(g) pCi/l means picocuries per liter;

(h) ppb means part(s) per billion;

(i) ppm means part(s) per million (assuming unit density, same as mg/l);

(j) ug/l means micrograms per liter (same as ppb assuming unit density);

(k) U.S. EPA means the United States Environmental Protection Agency;

(l) $7Q_{10}$ means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years;

(m) POTW means public owned treatment works.

(3) Definitions for coal remining operations:

(a) "Coal remining operation" means a surface coal mining operation which begins after the effective date of this administrative regulation at a site on which a coal mining operation was conducted before August 3, 1977. "Coal remining operation" also means an existing surface coal mining operation which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before August 3, 1977.

(b) "Preexisting discharge" means any discharge at the time of applying for a KPDES permit under this administrative regulation.

(c) "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

Section 2. Nondegradation.] (1) It is the purpose of 401 KAR 5:026 to 5:031 [these administrative regulations] to safeguard the surface waters of the Commonwealth for their designated uses, to prevent the creation of any new pollution of these waters, [;] and to abate any existing pollution.

(2) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be main-tained and protected.

(3) In all high quality waters [Where the quality of surface waters exceeds that necessary to support propagation of fish, shellfish, wildlife and recreation in and on the water,] that quality shall be maintained and protected unless the cabinet finds, pursuant to 401 KAR 5:030, [after full satisfaction of the inter governmental coordination and public participation provisions of the cabinet's continuing planning process,] that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing [such] degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully. Further, the cabinet shall [will] assure that there shall be achieved the highest statutory and regulatory requirements for waste treatment by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of all cost effective and reasonable best management practices.

[(3) The implementation of this section shall conform to 40 CFR 131.12 to the extent allowed by KRS 224.70-100.]

(4) Water quality shall be maintained and protected in those waters classified [designated] as outstanding national resource waters according to procedures specified in [Section 7(2) of] 401 KAR 5:030, Section 1.

(5) Water quality shall be maintained and protected in those waters classified as outstanding state resource waters which support federally threatened or endangered aquatic species according to the procedures specified in 401 KAR 5:031, Section 7.

(6) If [In those cases where] potential water quality impair-ment associated with a thermal discharge is involved, a success-ful demonstration conducted under Section 316 of the Clean Water Act, 33 USC 1326, shall be in compliance with all portions of this section.

(7) The implementation of this section shall conform to 40 CFR 131.12 to the extent allowed by KRS 224.70-100.

Section 2. [3.] Withdrawal of Contaminated Water. [It is recognized that] Surface waters will, on occasion, not meet the [standards and] criteria established in 401 KAR 5:031. Withdraw-al and subsequent discharge of these waters without alteration of the physical[,] or chemical characteristics into the same or similar surface water shall [will] not be considered a violation of water quality standards. The cabinet shall [will] determine [effluent criteria and] KPDES permit limitations in these situa-tions based on the quality of the raw and

receiving waters. The cabinet retains the right to require modification under the provisions of 401 KAR 5:035, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080.

Section 3. [4.] Sample Collection and Analytical Methodolo-gy. All methods of preservation and analysis used to determine conformity or nonconformity with water quality standards shall be governed by 40 CFR Part 136, as amended, when applicable. Sample collection and other methods not found in the above reference may be used where appropriate if approved by the cabinet.

Section 4. [5.] Mixing Zones. The following [guidelines and] conditions shall govern [are applicable to] all mixing zones. [:]

(1) The cabinet may [will] assign, on a case-by-case basis, definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall include, but may not be limited to, the linear distances from the point of discharge, surface area involvement, and volume of receiving water, and shall take into account other nearby mixing zones. Mixing zones shall [will] not be allowed until applicable limits are assigned by the cabinet in accordance with this section.

(2) Concentrations of toxic substances which exceed the acute criteria for protection of aquatic life [set forth] in 401 KAR 5:031 shall not exist at any point within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned on a case-by-case basis pursuant to subsection (3) of this section [at the discretion of the cabinet]. Chronic criteria for the protection of aquatic life and criteria for the protection of human health from the consumption of fish tissue shall be met at the edge of the assigned mixing zone.

(3) The following requirements shall govern zones of initial dilution:

(a) The cabinet may require an applicant to provide a technical evaluation and justification for a zone of initial dilution.

(b) Concentrations of toxic substances shall not exceed the acute criteria for the protection of aquatic life at the edge of the assigned zone of initial dilution, however, numeric acute criteria may be exceeded within this zone if the frequency and duration of exposure of aquatic organisms are not sufficient to cause acute toxicity.

(c) New zones of initial dilution shall not be allowed in high quality waters and publicly owned lakes and reservoirs. [Chronic criteria for the protection of aquatic life and criteria for the protection of human health from the consumption of fish tissue shall be met at the edge of the assigned mixing zone.]

(4) New zones of initial dilution shall be available only to submerged multiport outfall structures and shall be limited in size to the most restrictive of the following:

(a) The acute criteria shall be met within ten (10) percent of the distance from the edge of the outfall structure to the edge of the regulatory mixing zone in any spatial direction;

(b) The acute criteria shall be met within a distance of fifty (50) times the square root of the cross-sectional area of any discharge port, in any spatial direction;

(c) The acute criteria shall be met in any horizontal direction within a distance of five (5) times the natural water depth which prevails under mixing zone design conditions, and exists prior to the installation of a discharge outlet; or

(d) The acute criteria shall be met within a distance of ten (10) feet from the discharge port in any spatial direction. This requirement may be used by the cabinet in establishing the size of the mixing zone.

(5) [(3)] The location of a mixing zone shall not interfere with fish spawning or nursery areas, fish migration routes, public water supply intakes, or bathing areas, nor preclude the free passage of fish or other aquatic life.

(6) [(4)] Whenever possible the mixing zone, from the point of discharge in any spatial direction, shall not exceed one-third (1/3) of the width of the receiving stream, and [in no case] shall not exceed one-half (1/2) of the cross-sectional area.

(7) [(5)] In publicly owned lakes and reservoirs the mixing zone, from the point of discharge in any spatial direction, shall not exceed one-tenth (1/10) of the width of the lake at that point and shall be kept to a minimum within this restricted area. [other surface impoundments, the volume of a mixing zone shall not affect in excess of ten (10) percent of the volume of that portion of the receiving waters available for mixing.]

(8) [(6)] A mixing zone shall be limited to an area or volume which will not adversely affect [alter] the designated [legitimate] uses of the receiving water, nor be so large as to adversely affect an established community of aquatic organisms.

(9) For [(7) In the case of] thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act shall constitute compliance with all provisions of this section.

Section 5. Discharges to Publicly Owned Lakes and Reservoirs. (1) New and expanded domestic and nondomestic wastewater discharges to publicly owned lakes and reservoirs, including POTWs receiving industrial wastewaters under an approved pretreatment program, but excluding stormwater discharges, shall be prohibited unless it can be demonstrated by an applicant to the satisfaction of the cabinet that no other cost effective and technically feasible alternative is available. If domestic wastewater facilities are permitted to discharge, they shall provide the treatment for oxygen-demanding substances and nutrients deemed necessary by the cabinet to prevent use impairment by eutrophication. For those new domestic waste-water discharges greater than 10,000 gallons per day, permit conditions shall be treatment for oxygen demanding substances resulting in effluent quality of no greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand, two (2) mg/l ammonia-nitrogen, and removal of phosphorus to a level of one (1) mg/l or less, as determined by the cabinet from adequate information provided by the discharger.

(2) New or expanded discharges within five (5) miles of a drinking water intake shall be prohibited unless a variance is obtained from the cabinet pursuant to 401 KAR 5:200.

(3) New discharges shall be to the hypolimnion in the area that facilitates the greatest plume dispersion. For those shallow publicly owned lakes, reservoirs, and embayments without a hypolimnion, the cabinet shall determine the most suitable discharge location.

Section 6. Water Quality-based Variance for Coal Remining Operations. (1) Applicability. An applicant for a Kentucky pollutant discharge elimination system (KPDES) permit to discharge pollutants from or affected by a coal remining opera-tion may request a variance from the water quality criteria for pH, iron and manganese set forth in 401 [405] KAR 5:031.

(2) Application requirements.

(a) The applicant shall comply with all KPDES permit application requirements, as set forth in 401 [405] KAR 5:060.

(b) The applicant shall submit documentation from the Department for Surface Mining Reclamation and Enforcement (DSMRE) that the proposed coal remining operation will be located on a remined area, and shall certify that the proposed coal remining operation will be located on a remined area.

(c) The applicant shall also:

1. Describe the hydrologic balance for the proposed coal remining operation, including:

a. Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events, and modeled baseline pollution loads using the monitoring program; and

b. Monitoring for pH, alkalinity, acidity, total iron, total manganese, sulfates, total suspended solids, and any other water quality parameters requested by the cabinet [director];

2. Submit the application for a permit from DSMRE;

3. Submit, if not submitted in the application for a permit from DSMRE:

a. Plans, cross-sections, and schematic drawings describing the techniques for reducing the discharge of acid-forming materials, iron and manganese;

b. A description and an explanation of the range of abate-ment levels that probably can be achieved, costs, and each step proposed to reduce the discharge of acid-forming materials, iron and manganese;

c. A description of the spoil handling practices necessary to reduce the discharge of acid-forming materials, iron and manganese;

d. A detailed topographic map of the proposed coal remining operation, including the locations of the preexisting and pro-posed discharges; and

4. Continue the water quality and quantity monitoring program described in subparagraph 1 of this paragraph, and submit the results to the cabinet [~~director~~] on a periodic basis until the cabinet [~~director~~] makes a final permit decision. The cabinet will evaluate the KPDES monitoring program and the DSMRE monitoring program for each applicant to avoid duplica-tion and inconsistencies.

(d) The applicant may submit the information described in the document entitled "Coal Remining-Best Professional Judgment Analysis: Preexisting Pollutional Discharge Data Input Module, Baseline Statistical Calculation Module, Water Treat-ment Cost Calculation Module, Surface Mine Materials Handling and Cost Simulator, User Manual" and accompanying software published by the Pennsylvania Department of Environmental Resources, Mining Engineering Section; Pennsylvania State University and Kohlmann Ruggiero Engineers, P.C. (1988).

(e) An applicant with an existing surface coal mining operation seeking a permit revision from DSMRE pursuant to 405 KAR 8:010, Section 20 shall also demonstrate to the satisfaction of the cabinet [~~director~~] that:

1. The applicant discovered discharges within the proposed coal remining area after the applicant's DSMRE permit was issued; and

2. The applicant has not caused or contributed to the discharges.

(3) Treatment requirements. If the cabinet [~~director~~] issues a KPDES permit to discharge pollutants from or affected by a coal remining operation containing the variance described in subsection (1) of this section, the water quality-based effluent limitations for pH, iron and manganese will be established on a case-by- case basis. Compliance with those effluent limitations constitutes compliance with those water quality criteria for pH, iron and manganese set forth in 401 KAR 5:031. The cabinet [~~director~~] may employ the document entitled "Coal Remining-Best Professional Judgment Analysis: Preexisting Pollutional Discharge Data Input Module, Baseline Statistical Calculation Module, Water Treatment Cost Calculation Module, Surface Mine Materials Handling and Cost Simulator, User Manual" and accompanying software published by the Pennsylvania Depart-ment of Environmental Resources, Mining Engineering Section; Pennsylvania State University and Kohlmann Ruggiero Engineers, P.C. (1988).

(4) Prohibitions. In addition to the prohibitions contained in 401 KAR 5:055[~~, Section 2,~~] the following prohibitions apply to this section:

(a) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued unless the coal remining operation has applied for a permit from the Department for Surface Mining Reclamation and Enforcement, as set forth in 405 KAR Chapters 7 through 24, inclusive. The effective date of the KPDES permit shall be no sooner than the effective date of the permit issued by the Department for Surface Mining Reclamation and Enforcement.

(b) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued for a surface coal mining operation which is not a coal remining operation located on a remined area.

(c) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued which would allow the discharges of acid-forming materials, iron or manganese to exceed the levels being discharged from the remined area before the coal remining operation begins.

(d) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued if the applicant fails to demonstrate to the satisfaction of the cabinet [~~director~~] that the coal remining operation will result in the potential for improved water quality from the remining operation over that existing prior to the remining operation, and that the information provided in the applica-tion is adequate for the cabinet [~~director~~] to make an informed final permit decision.

(e) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued with effluent limita-tions less stringent than applicable technology-based effluent limitations, as set forth in 401 KAR 5:065 or [~~, Section 4(2), 401 KAR~~] 5:080[~~, Section 1(2)(a)2 or (e)~~].

(f) In addition to the prohibitions of paragraphs (a) through (e) of this subsection, no KPDES permit containing the water quality based variance of subsection (1) of this section shall be issued for an existing surface coal mining operation unless:

1. The applicant receives a permit revision from DSMRE in accordance with 405 KAR 8:010, Section 20;

2. The applicant discovered discharges within the proposed coal remining area after the applicant's DSMRE permit was issued; and

3. The applicant has not caused or contributed to the discharges since August 3, 1977.

Section 7. Document Adopted Without Change. 40 CFR Part 136, "Test Procedures for the Analysis of Pollutants", U.S. Environmental Protection Agency as of January 31, 1994, is hereby adopted without change. Copies are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: April 14, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled on May 22, 1995 at 7 p.m. (EDT) in the Auditorium of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by May 17, 1995, of their intent to attend the hearing and be heard. 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. Persons testifying at the hearing are requested to provide the cabinet with a written copy of their testimony, if available. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of the public hearing on May 22, 1995. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before May 17, 1995 between 8 a.m. and 4:30 p.m. (EDT).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation provides general provisions under which water quality regulations operate to protect the surface waters of the Commonwealth. It is being amended to change mixing zone requirements and address discharges to publicly owned lakes and reservoirs. Approximately 96 municipalities, campgrounds, subdivisions, businesses, marinas, residences, and government agencies have permitted discharges into publicly owned lakes. New or expanded wastewater discharges to publicly owned lakes and reservoirs are prohibited unless no alternative exists and water quality will not be adversely impacted. New or expanded discharges into publicly owned lakes and reservoirs within 5 miles of a drinking water intake are prohibited unless a variance is obtained. The type and number of entities that might apply for zones of initial dilution are unknown. New zones of initial dilution are prohibited in high quality waters and publicly owned lakes and reservoirs. New zones of initial dilution are more strictly defined for permitted dischargers.

(2) Direct and indirect costs or savings on the affected entities: Stricter mixing zone and zone of initial dilution requirements may create additional costs to affected entities.

(a) Effect on the 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: Comments received are given in the regulatory impact analysis for 401 KAR 5:026.

(b) Effect on the 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 received.

(c) Effect on the compliance, reporting, and paperwork requirements, to the extent available from the public comments received, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No comments received.

2. Second and subsequent years: No comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant additional costs are anticipated.

1. First year: No significant costs are anticipated.

2. Continuing costs or savings: No significant costs are anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Limiting new and expanded discharges to lakes, prohibiting new zones of initial dilution, and requiring more stringent limits in high quality waters could cause businesses to site in another locality, resulting in local loss of jobs and revenue. On the other hand, maintaining existing water quality may have a positive influence on revenues derived from water-based tourism.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the general fund and federal funds, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No comments received.

(b) Kentucky: Comments received are given in the regulatory impact analysis for 401 KAR 5:026.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet has determined that new zones of initial dilution should be prohibited in high quality waters and publicly owned lakes and reservoirs. Prohibiting zones of initial dilution affords these waters a higher level of protection. New or expanded discharges are prohibited into publicly owned lakes and reservoirs because of waste accumulation and the difficulty of predicting long term assimilative capacity.

(8) Assessment of expected benefits of the administrative regulation: The quality of publicly owned lakes and reservoirs will be protected, consequently aquatic biodiversity and water-based recreational values will be maintained.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation prohibits new zones of initial dilution in high quality waters and publicly owned lakes and reservoirs and limits new or expanded discharges to publicly owned lakes and reservoirs. It ensures protection of publicly owned lakes and reservoirs for recreation, fishing, drinking water, and biological communities inhabiting the lakes by limiting, and wherever possible prohibiting, the discharge of waste waters into these waters.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be a detrimental effect on the environment if this regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Allowing new discharges into publicly owned lakes and reservoirs would gradually degrade these waters and result in higher rates of eutrophication. Drinking water treatment may have to be upgraded for some systems. Water-based recreation may be affected, and aquatic organisms sensitive to pollution may be impacted.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations or government policies are in conflict, overlap, or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: See also the regulatory impact analyses prepared for 401 KAR 5:001, 5:026, 5:030, and 5:031 to obtain an overview of the water quality standards regulations and their impacts. 401 KAR 5:030 is printed elsewhere in the May Administrative Register of Kentucky.

(12) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied. The regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, processes, or treatment employed. There are discharge restrictions, however, on certain waters.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges into publicly owned lakes or reservoirs.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to local governments' waste water treatment service.

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. Waste water treatment costs may increase for those local governments that will have new or expanded discharges into high quality waters or outstanding state resource waters. On the other hand, local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads.

Revenues (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states and permit the adoption of certain general policies such as mixing zones. The U.S. Environmental Protection Agency does provide guidance to the states, but individual decisions concerning the states water quality programs are left to the states.

2. State compliance standards. 401 KAR 5:001, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. None

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:031. Surface water standards.

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 33 USC 1313, 1314, 1341

NECESSITY AND FUNCTION: This administrative regulation sets forth water quality standards which consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These standards are minimum requirements [~~criteria~~] which apply to all surface waters in order to maintain and protect them for designated uses. [~~Criteria for nutrients are recognized and included.~~] These water quality standards are established to protect public health and welfare, protect and enhance the quality of water, and fulfill federal and state requirements for the establishment of water quality standards. These water quality standards are subject to periodic review and revision in accordance with federal and state laws. Definitions for terms used in this administrative regulation are found in 401 KAR 5:001 [~~029~~]. [~~On May 31, 1990 the Interim Joint Committee on Agriculture and Natural Resources determined that this administrative regulation did not comply with KRS Chapter 13A. This administrative regulation is being amended to remove the portions that the Interim Joint Committee found deficient, so that the letter of attachment may be removed.~~]

Section 1. Nutrient Limits. (1) In publicly owned lakes and reservoirs, [~~surface impoundments~~] and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges shall [~~will~~] be limited as appropriate by the cabinet.

(2) The affected surface waters shall [~~will~~] be identified [~~designated~~] as nutrient limited.

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria are applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 5:029, Section 6 [~~5~~]. Surface waters shall not be aesthetically or otherwise degraded by substances that:

(a) Settle to form objectionable deposits;

(b) Float as debris, scum, oil, or other matter to form a nuisance;

(c) Produce objectionable color, odor, taste, or turbidity;

(d) Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish and other aquatic life;

(e) Produce undesirable aquatic life or result in the dominance of nuisance species;

(f) Cause fish flesh tainting (the concentration of all phenolic compounds which cause fish flesh tainting shall not exceed five (5) µg/l as an instream value);

(g) Cause the following changes in radionuclides:

1. The gross total alpha particle activity (including radium-226 but excluding radon and uranium) to exceed fifteen (15) pCi/l;

2. Combined radium-226 and radium-228 to exceed five (5) pCi/l (specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l);

3. The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;

4. The concentration of tritium to exceed 20,000 pCi/l;

5. The concentration of total Strontium-90 to exceed eight (8) pCi/l.

(2) The following criteria are applicable to all surface water outside designated mixing zones except for those points where water is withdrawn for domestic water supply use. They are established for the protection of human health from the consumption of fish tissue, and shall not be exceeded. For those substances associated with a cancer risk, an acceptable risk level of no more than one (1) additional cancer case in a population of 1,000,000 people (10^{-6}) shall [~~will~~] be utilized to establish the allowable concentration.

Table 1.
Water Quality Criteria for Protection of
Human Health from the Consumption
of Fish Tissue

Substances not Linked to Cancer	Concentration (µg/l)
Metals[1]	
Antimony	4,300 [~~45,000~~]
[~~Chromium (III)~~	~~670,000~~]
Mercury	0.146
Nickel	4,600
Thallium	6.3 [~~48~~]
Organics	
Acrolein	780
Anthracene	110,000
Chlorobenzene	21,000
1,2,4,5-tetrachlorobenzene	48

Pentachlorobenzene	85
[1,1,1-trichloroethane	1,030,000]
bis(2-chloroisopropyl) ether	170,000 [4,360]
Cyanide	220,000
1,2-dichlorobenzene	17,000
[Dichlorobenzenes	2,600]
1,3-dichlorobenzene	2,600
1,4-dichlorobenzene	2,600
[Dichloropropenes	14,100]
1,3-dichloropropylene	1,700
alpha-Endosulfan	2 [159]
beta-Endosulfan	2
Endosulfan sulfate	2
Endrin	0.81
Endrin aldehyde	0.81
Ethylbenzene	29,000
Fluoranthene	370 [54]
Fluorene	14,000
Hexachlorocyclopentadiene	17,000
[Isophorone	520,000]
2,4-dichlorophenol	790
2,4-dinitro-o-cresol(2-methyl-4,6-dinitrophenol)	765
2,4-dinitrophenol	14,000 [14,300]
Phenol	4,600,000
Di-n-butyl [Dibutyl] phthalate	12,000 [154,000]
Diethyl phthalate	120,000 [800,000]
[i-2-ethylhexyl phthalate	50,000]
Dimethyl phthalate	2,900,000
Pyrene	11,000
Methyl bromide	4,000
Nitrobenzene	1,900
Toluene	200,000 [424,000]

Substances Linked to Cancer

[Metals[1]]

[Beryllium	0.117]

Organics

Acrylonitrile	0.65
Aldrin	0.00014 [.000079]
Benzene	71
Benzidine	0.00054 [.00053]
Benzo(a)anthracene	0.031
Benzo(a)pyrene	0.031
Benzo(b)fluoranthene	0.031
Benzo(k)fluoranthene	0.031
Bromoform	360
Carbon tetrachloride	4.4 [6.94]
Chlordane	0.00059 [.00048]
Chlorodibromomethane	34
Dichlorobromomethane	22
Hexachlorobenzene	0.00077 [.00074]
1,2-dichloroethane	99 [243]
1,1,2-trichloroethane	41.8
1,1,2,2,-tetrachloroethane	10.7
Hexachloroethane	8.9 [8.74]
2,4,6-trichlorophenol	6.5 [3.6]
Pentachlorophenol	8.2
bis(2-chloroethyl) ether	1.40 [1.36]
bis(2-ethylhexyl) phthalate	5.9
Chloroform	470
Chrysene	0.031
4,4'DDT	0.00059 [0.000024]
4,4'-DDE	0.00059
4,4'-DDD	0.00084
Dibenzo(a,h)anthracene	0.031
3,3'-dichlorobenzidine	0.077 [0.02]
1,1-dichloroethylene	3.2 [1.85]
Dieldrin	0.00014 [0.000076]
2,4-dinitrotoluene	9.1
Dioxin (2,3,7,8-TCDD)	0.00000012
1,2-diphenylhydrazine	0.54 [0.56]
[Halomethanes	15.7]
Heptachlor	0.00021 [0.00029]
Heptachlor epoxide	0.00011
Hexachlorobutadiene	50.0
alpha Hexachlorocyclohexane (B[H]CH)	0.013 [0.031]
beta B[H]CH	0.046 [0.0547]
gamma B[H]CH (lindane)	0.063 [0.0625]
[Technical HCH	0.0414]
Indeno(1,2,3-cd)pyrene	0.031
Isophorone	600
Methylene chloride	1,600
N-nitrosodiethylamine	1.24
N-nitrosodimethylamine	8.1 [16.0]
N-nitrosodibutylamine	0.587
N-nitrosodiphenylamine	16.0 [16.1]
N-nitrosopyrrolidine	91.9
Polychlorinated Biphenyls (PCBs)	0.000045 [0.000079]
[Polynuclear Aromatic Hydrocarbons (PAHs)	0.0311]
Tetrachloroethylene	8.85
Toxaphene	0.00075 [0.00073]
Trichlorethylene	80.7
Vinyl Chloride	525

[1]Total recoverable form measured in an unfiltered sample

Section 3. Use Designations [Classifications] and Associated Criteria. (1) Surface waters may be designated as having one (1) or more [of the following] legitimate uses and associated [use] criteria protective of those uses. Those uses are listed in 401 KAR 5:026. [The classifications in Sections 4, 5, 6, and 7 of this administrative regulation include the most common usage of surface waters within the Commonwealth.] Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 5, and 6 of this administrative regulation [and the following use criteria] represent minimum conditions necessary to protect surface waters for the indicated use and to provide for the protection of human health from fish consumption [or a combination of fish and water consumption].

(2) On occasion surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If [When] this condition occurs during periods when stream flows are below the flow which is used by the cabinet to establish effluent limitation [limits] for wastewater treatment facilities, a discharger shall not be considered a contributor to in-stream violations of water quality standards, if [provided that] treatment in compliance with permit requirements is maintained.

(3) Governing flows for water quality-based permits. The following stream flows shall [are to] be utilized when deriving KPDES permit limitations for the protection of surface waters for the listed uses and purposes.

(a) Aquatic life protection - $7Q_{10}$.

(b) Water-based recreation protection - $7Q_{10}$.

(c) Domestic water supply protection - harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances, determined at points of withdrawal.

(d) Human health protection from fish consumption only - harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances.

(e) Protection of aesthetics and for changes in radionuclides - $7Q_{10}$.

Section 4. Aquatic Life. (1) The biological integrity of surface waters designated for aquatic life use shall be maintained. The cabinet may require biological assessments of surface waters to ensure that biological integrity is maintained or restored. Acceptable methods for biological assessments are incorporated by reference in Section 11 of this administrative regulation. Activities subject to Section 401 of the Clean Water Act (33 USC 1341) including, but not limited to, dredging, filling, channel changes, bank stabilization, gravel or rock removal, and bridge construction at stream crossings that may adversely affect productive aquatic communities are prohibited unless certified as approved or waived by the cabinet.

(2) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as $CaCO_3$ shall not be reduced by more than twenty-five (25) percent. Where natural alkalinity is below twenty (20) mg/l $CaCO_3$, no reduction below the natural level is allowed. Alkalinity shall not be reduced or increased to a degree which may adversely affect the aquatic community.

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine and zero-tenths (9.0) and shall not fluctuate more than one and zero-tenths (1.0) unit over a period of twenty-four (24) hours.

(c) Flow shall not be altered to a degree which will adversely affect the aquatic community.

(d) Temperature shall not exceed thirty-one and seven- tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may [will] determine allowable surface water temperatures on a site-specific basis utilizing available data which shall be based on the effects of temperature on the aquatic biota which utilize specific surface waters of the Commonwealth and which may be affected by person-induced temperature changes. Effects on downstream uses shall [will] also be considered in determining site-specific temperatures. As a guideline, the water temperature for all surface waters shall comply with the limitations [limits] shown in the following table:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made.

(e) Dissolved oxygen.

1. Dissolved oxygen shall be maintained at a minimum concentration of five and zero-tenths (5.0) mg/l daily average; at no time shall the instantaneous minimum be less than four and zero-tenths (4.0) mg/l.

2. The dissolved oxygen concentration shall be measured at middepth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.

(f) Solids.

1. Total dissolved solids. Total dissolved solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

2. Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

3. Settleable solids. The addition of settleable solids that may [adversely] alter the stream bottom so as to adversely affect productive aquatic communities is prohibited.

(g) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/1, pH and temperature, by means of the following equation:

$$Y = 1.2 \text{ (Total ammonia-N)}/(1 + 10^{[pk_a - pH][pK_a - pH]})$$

$$pk_a = 0.0902 + (2730/(273.2 + T_c))$$

Where:

T_c = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/l).

(h) Toxics.

1. The allowable in-stream concentration of toxic substances or whole effluents containing toxic substances which are noncumulative or nonpersistent (half-life of less than ninety-six (96) hours) if not specified elsewhere in this section, shall not exceed the twenty-five (25) percent inhibition concentration (IC_{25}) [no observed effect level (NOEL)] or one-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC_{50}) of [a] representative indigenous or indicator aquatic organisms [(s)] or exceed a chronic toxicity unit of one and zero-hundredths (1.00), whichever is more appropriate.

2. The allowable in-stream concentration of toxic substances or whole effluents containing toxic substances which are bioaccumulative or persistent, including pesticides, when not specified elsewhere in this section, shall not exceed the IC_{25} [NOEL] or 0.01 of the ninety-six (96) hour median lethal concentration (LC_{50}) of [a] representative indigenous or indicator aquatic organisms [(s)] or exceed a chronic toxicity unit of one and zero-hundredths (1.00), whichever is more appropriate.

3. In the absence of acute criteria for substances listed in Table 2 or for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents which are acutely toxic, the allowable concentration shall not exceed the LC_1 or one-third (1/3) LC_{50} concentration derived from bioassay tests on [a] representative indigenous or indicator aquatic organisms [(s)] or exceed three-tenths (0.3) acute toxicity units, whichever is more appropriate.

4. If [Where] specific application factors have been determined for a toxic substance or whole effluent such as an acute to [/] chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon approval by the cabinet.

5. Allowable in-stream concentrations for specific substances (acute and chronic criteria) are listed in Table 2. These concentrations are based on protecting aquatic life from acute and chronic toxicity,

and shall not be exceeded.

Table 2
Warm water Aquatic Habitat Criteria[1]

Metals

Substance	Acute Criteria	Chronic Criteria
Arsenic		50 µg/l
Arsenic (III)	360 µg/l	190 µg/l
Beryllium		11 µg/l soft water[2] 1100 µg/l hard water[2]
Cadmium (µg/l)	$e^{(1.128(\ln Hard^*)-3.828)}$	$e^{(0.7852(\ln Hard)-3.490)}$
Chromium (III) (µg/l)	$e^{(0.8190(\ln Hard)+3.688)}$	$e^{(0.8190(\ln Hard)+1.561)}$
Chromium (VI)	16 µg/l	11 µg/l
Copper (µg/l)	$e^{(.9422(\ln Hard)-1.464)}$	$e^{(.8545(\ln Hard)-1.465)}$
Iron	4.0 mg/l	1.0 mg/l[3]
Lead (µg/l)	$e^{(1.273(\ln Hard)-1.460}$	$e^{(1.273(\ln Hard)-4.705)}$
Mercury	2.4 µg/l	0.012 µg/l
Nickel (µg/l)	$e^{(0.8460(\ln Hard)+3.3612)}$	$e^{(0.8460(\ln Hard)+1.1645)}$
Selenium	20 µg/l	5 µg/l
Silver (µg/l)	$e^{(1.72(\ln Hard)-6.52)}$	
Zinc (µg/l	$e^{(0.8473(\ln Hard)+0.8604)}$	$e^{(0.8473(\ln Hard)+0.7614)}$

Organics

Aldrin	3.0 µg/l	
Chlordane	2.4 µg/l	0.0043 µg/l
Chloropyrifos	0.083 µg/l	0.041 µg/l
4,4'-DDT	1.1 µg/l	0.001 µg/l
Dieldrin	2.5 µg/l	0.0019 µg/l
alpha-Endosulfan	0.22 µg/l	0.056 µg/l
beta-Endosulfan	0.22 µg/l	0.056 µg/l
Endrin	0.18 µg/l	0.0023 µg/l
Heptachlor	0.52 µg/l	0.0038 µg/l
Heptachlor epoxide	0.52 µg/l	0.0038 µg/l
Lindane	2.0 µg/l	0.080 µg/l
Parathion	0.065 µg/l	0.013 µg/l
Pentachloro-phenol (µg/l)	$e^{(1.005(pH) - 4.830)}$	$e^{(1.005(pH) - 5.290)}$
Phthalate esters		3 µg/l
Polychlorinated Biphenyls (PCBs)		0.0014 µg/l
Toxaphene	0.73 µg/l	0.0002 µg/l

Others

Chloride	1200 mg/l	600 mg/l
Chlorine, total residual	19 µg/l	10 µg/l
Cyanide, free	22 µg/l	5.2 µg/l
Hydrogen sulfide (undissociated)		2 µg/l

[1]Metal criteria, for purposes of this administrative regulation, are total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated to the satisfaction of the cabinet that a more appropriate analytical technique is available which provides a measurement of that portion of the metal present which causes toxicity to aquatic life.

[2]Soft water has an equivalent concentration of calcium carbonate ($CaCO_3$) of zero to seventy-five (75) mg/l, and hard water has an equivalent concentration of calcium carbonate ($CaCO_3$) of over seventy-five (75) mg/l.

[3]The chronic criterion for iron shall not exceed three and five-tenths (3.5) mg/l when it is established that there will be no adverse affect [~~damage~~] to aquatic life.

*Hard = Hardness as mg/l $CaCO_3$.

(3) [~~(2)~~] Cold water aquatic habitat. The following parameters and their associated criteria are for the protection of productive cold water aquatic communities and streams which support trout populations (whether self-sustaining or reproducing) on a year-round basis. All of the criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six (6) mg/l as a daily average and five (5) mg/l as an instantaneous minimum shall be maintained at all times.

2. In publicly owned lakes and reservoirs [~~impoundments~~] which support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality.

(b) Temperature. Water temperature shall not be increased through human [~~man's~~] activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable in-stream concentrations for specific substances, to be applicable at the point of withdrawal, for use for domestic water supply from surface water sources, are specified in Table 3 and shall not be exceeded.

Table 3
Domestic Water Supply Source Criteria

Substances Not Linked to Cancer	Concentration
Metals[1]	
Antimony	0.014 [~~0.146~~] mg/l
Barium	1 mg/l
Cadmium	0.010 mg/l
Chromium	0.05 mg/l
[~~Chromium (III)~~	~~33 mg/l~~]
Copper	1 mg/l
Lead	0.05 mg/l
Manganese	0.05 mg/l
Mercury	0.144 µg/l
Nickel	610 µg/l
Selenium	0.01 mg/l
[~~Silver~~	~~0.05 mg/l~~]
Thallium	0.0017 [~~0.013~~] mg/l
Organics	
Acrolein	0.320 mg/l
Anthracene	9.6 mg/l
Monochlorobenzene (Chlorobenzene)	0.680 [~~0.488~~] mg/l
1-2-4-5-tetrachlorobenzene	0.038 mg/l
Pentachlorobenzene	0.074 mg/l
[~~1,1,1 trichloroethane~~	~~18.4 mg/l~~]
2,4,5-trichlorophenol	2.6 mg/l
Bis(2-chloroisopropyl) ether	1.4 [~~0.0347~~] mg/l
1,2-dichlorobenzene	2.7 mg/l
1,3-dichlorobenzene	0.400 mg/l
1,4-dichlorobenzene	0.400 mg/l
[~~Dichlorobenzenes~~	~~0.400 mg/l~~]
2,4-dichlorophenol	0.093 [~~3.090~~] mg/l
[~~Dichloropropenes~~	~~0.087 mg/l~~]
1,3-dichloropropylene	0.010 mg/l
alpha-Endosulfan	0.00093 [~~0.074~~] mg/l
beta-Endosulfan	0.00093 mg/l

Endosulfan sulfate	0.00093 mg/l
Endrin	0.00076 [~~0.001~~] mg/l
Endrin aldehyde	0.00076 mg/l
Ethylbenzene	3.1 mg/l
Fluoranthene	0.300 [~~0.042~~] mg/l
Fluorene	1.3 mg/l
Hexachlorocyclopentadiene	0.240 [~~0.206~~] mg/l
[~~Isophorone~~	~~5.2 mg/l~~]
Methylbromide	0.048 mg/l
Nitrobenzene	0.017 [~~19.8~~] mg/l
2-4-dinitro-o-cresol (2-methyl-4,6-dinitrophenol	0.0134 mg/l
2,4-dichlorophenol	0.093 mg/l
2-4-dinitrophenol	0.070 mg/l
[~~Pentachlorophenol~~	~~1.0 mg/l~~]
Phenol	21 [~~3.5~~] mg/l
Di-n-butyl[~~Dibutyl~~] phthalate	2.7 [~~34~~] mg/l
Diethyl phthalate	23 [~~350~~] mg/l
[~~Di 2 ethylhexyl phthalate~~	~~15 mg/l~~]
Dimethyl phthalate	313 mg/l
Pyrene	0.960 mg/l
Toluene	6.8 [~~14.3~~] mg/l

Others

Chloride	250 mg/l
Color	75 Platinum Cobalt Color Units
Cyanide (free)	0.200 mg/l
Fecal Coliform	2000/100 ml Geometric mean)
Fluoride	1.0 mg/l
Methylene Blue Active Substances	0.5 mg/l
Nitrate (NO_3-N)	10 mg/l
Sulfate	250 mg/l
Total Dissolved Solids	500 [~~750~~] mg/l

Substances Linked to Cancer

[~~Metals (µg/l)~~

~~Beryllium~~	~~0.0068~~]

Organics (µg/l)

Acrylonitrile	0.058
Aldrin	0.00013 [~~0.000074~~]
Asbestos (fibers/liter)	7,000,000 [~~30,000~~]
Benzene	1.2
Benzidine	0.00012
Benzo(a)anthracene	0.0028
Benzo(a)pyrene	0.0028
Benzo(b)fluoranthene	0.0028
Benzo(k)fluoranthene	0.0028
Bromoform	4.3
Carbon tetrachloride	0.25 [~~0.40~~]
Chlordane	0.00057 [~~0.00046~~]
Chlorodibromomethane	0.41
Dichlorobromomethane	0.27
Hexachlorobenzene	0.00075 [~~0.00072~~]
1,2-dichloroethane	0.38 [~~0.94~~]
1,1,2-trichloroethane	0.60
1,1,2,2,-tetrachloroethane	0.17
Hexachloroethane	1.9
2,4,6-trichlorophenol	2.1 [~~1.2~~]
Pentachlorophenol	0.28
bis(2-chloroethyl) ether	0.031 [~~0.03~~]
bis(2-ethylhexyl) phthalate	1.8
Chloroform	5.7
Chrysene	0.0028
4,4'-DDT	0.00059 [~~0.000024~~]
4,4'-DDE	0.00059
4,4'-DDD	0.00083
Dibenzo(a,h)anthracene	0.0028
3-3'-dichlorobenzidine	0.04 [~~0.01~~]
1,1-dichloroethylene	0.057 [~~0.033~~]
Dieldrin	0.00014 [~~0.000071~~]
2,4-dinitrotoluene	0.11
1,2-diphenylhydrazine	0.040 [~~0.042~~]
[~~Halomethanes~~	~~0.19~~]
Heptachlor	0.00021 [~~0.00028~~]
Heptachlor epoxide	0.00010
Hexachlorobutadiene	0.44 [~~0.45~~]
alpha Hexachlorocyclohexane (BHC[~~H~~])	0.0039 [~~0.009~~]
beta BHC[~~H~~]	0.014 [~~0.016~~]
gamma BHC[~~H~~] (Lindane)	0.019
Ideno(1,2,3-cd) pyrene	0.0028
Isophrone	8.4
Methylene chloride	4.7
[~~Technical HCH~~	~~0.012~~]
N-nitrosodiethylamine	0.0008
N-nitrosodimethylamine	0.00069 [~~0.0014~~]
N-nitrosodibutylamine	0.0064
N-nitrosodiphenylamine	5.0 [~~4.9~~]
N-nitrosopyrrolidine	0.016
Polychlorinated Biphenyls (PCBs)	0.000044 [~~0.000079~~]
[~~Polynuclear Aromatic Hydrocarbons (PAHs)~~	~~0.0028~~]
Tetrachloroethylene	0.8
Toxaphene	0.00073 [~~0.00071~~]
Trichloroethylene	2.7
Vinyl Chloride	2.0

[1]Total recoverable form measured in an unfiltered sample.

Section 6. Recreational Waters. (1) Primary contact recreation water. [~~Primary contact recreation waters are waters suitable for full body contact recreation during the recreation season of May 1 through October 31.~~] Criteria for primary contact recreation waters are listed below:

(a) Fecal coliform content shall not exceed 200 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during the month; these limits are applicable during the recreation season of May 1 through October 31. Fecal coliform criteria listed in subsection (2)(a) of this section apply during the remainder of the year.

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. [~~Secondary contact recreation waters are waters suitable for partial body contact recreation, with minimal threat to public health due to water quality.~~] The following criteria apply to waters classified for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1000 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 2000 colonies per 100 ml in twenty (20) percent or more of all samples taken during the month.

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

Section 7. Outstanding State Resource Waters Protection. [This classification category includes certain unique waters of the Commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360.

2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 USC 1271 et seq. and high quality waters constituting an outstanding national resource water.

3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas and concurred upon by the cabinet.

4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, 16 USC 1531 et seq.

(b) Permissible consideration. Other surface waters may be included in this category as determined by the cabinet if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. They are a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna.

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat.

c. Provides a unique aquatic environment within a physiographic region.

(2) Outstanding resource waters protection: The classification of certain waters as outstanding resource waters shall fairly and fully reflect those aspects of the waters for which the classification is proposed. The cabinet will determine water quality criteria for these waters as follows:]

(1) [(a)] At a minimum, the criteria of Section 2 of this administrative regulation and the appropriate criteria associated with the stream use designation [classification] assignments in 401 KAR 5:026, shall be [are] applicable to these waters.

(2) If [(b) Where] the values identified for an outstanding state resource water are dependent upon or related to in-stream water quality, the cabinet shall [will] review existing water quality criteria and determine whether additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters which support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated to the satisfaction of the cabinet, that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species which the water supports.

[(c) "Water quality shall be maintained and protected in waters which constitute an outstanding national resource. The cabinet may approve temporary or short term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support this use."]

(3) [(d)] Adoption of more protective criteria in accordance with this section shall [will] be listed with the respective stream segment in 401 KAR 5:026[, and will be promulgated as an administrative regulation pursuant to KRS Chapter 13A.

(3) Determination of classification.

(a) Any person may present a proposal to classify certain waters under this section. Documentation requirements in support of an outstanding resource water proposal shall contain those elements outlined in 401 KAR 5:026, Section 5(1) through (8).

(b) The cabinet will review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding resource waters within the criteria established by this administrative regulation. The cabinet will document the determination to deny or to propose reclassification, and a copy of the decision will be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a reclassification, if appropriate, will be made pursuant to 401 KAR 5:026].

Section 8. Water Quality Criteria for the Main Stem of the Ohio River. The following criteria shall apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded. [:] These waters are subject to all applicable provisions of 401 KAR 5:001, 5:026, [401 KAR] 5:029, 5:030, and this administrative regulation.

(1) Dissolved oxygen. Concentrations shall average at least five and zero-tenths (5.0) mg/l per calendar day and shall not be less than four and zero-tenths (4.0) mg/l at any time except during the April 15-June 15 spawning season when a minimum of five and zero-tenths (5.0) mg/l shall be [provided that a minimum of five and one tenth (5.1) mg/l at any time is] maintained [during the April 15—June 15 spawning season].

(2) Temperature.

(a) Allowable stream temperatures are:

Month/Date	Period Average (oF)	Instantaneous Maximum (oF)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

(b) A successful demonstration conducted for thermal discharge limitations [limits] under Section 316(a) of the Clean Water Act will constitute compliance with these temperature criteria.

[(3) Total dissolved solids: not to exceed 500 mg/l as a monthly average, nor exceed 750 mg/l at any time. Equivalent twenty five (25) degrees Centigrade specific conductants values are 800 and 1200 micromhos/cm respectively.]

(3) [(4)] Maximum allowable in-stream concentrations for specific parameters for the protection of human health are given below. They shall be met outside the mixing zone. Metal concentrations are total recoverable values except hexavalent chromium which is dissolved.

Parameter	Concentration (mg/l)
Arsenic	.05

Barium	1.0
Chloride	250
Fluoride	1.0
Nitrite + Nitrate Nitrogen	0.0
Nitrite-Nitrogen	1.0
Phenolics	.005
Sulfate	250

(4) To provide protection of warm water aquatic life habitats, the following criteria shall be met outside the mixing zone.

Parameter	Chronic Criteria Concentration µg/l	Acute Criteria Concentration µg/l
Cadmium	$e^{(.7852(\ln Hard)-3.490)}$	$e^{(1.128(\ln Hard)-3.828)}$
Chromium (hexavalent)	11	16
Copper	$e^{(.8545(\ln Hard)-1.465)}$	$e^{(.9422(\ln Hard)-1.464)}$
Cyanide (free)	5	22
Lead	$e^{(1.273(\ln Hard)-4.705)}$	$e^{(1.273(\ln Hard)-1.460)}$
Mercury	.012	2.4
Zinc	$e^{(.8473(\ln Hard)+.7614)}$	$e^{(8473(\ln Hard)+.8604)}$

(5) The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.

Section 9. Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 5, 6, [and] 7 and 8 of this administrative regulation upon demonstration by an applicant that maintenance of applicable water quality criteria are not attainable or scientifically valid but the use designation [classification] is still appropriate. This determination will be made on a case-by-case basis with respect to a specific surface water following an analysis for each area.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved either on a seasonal or year- round basis due to natural conditions, or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 5, 6, 7, and 8 of this administrative regulation[, or a demonstration that meeting the criteria would cause substantial and widespread economic and social impact]. Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that are consistent with those outlined in "Water Quality Standards Handbook" (EPA, 1983). In addition, an applicant shall supply the documentation listed in [Section 5 of] 401 KAR 5:026, Section 3.

(3) An exception to criteria listed in Section 2(2) of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it can be demonstrated that natural, ephemeral, intermittent or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(5) All exceptions to water quality criteria shall [will] be subject to review at least every three (3) years.

(6) [Upon completing a review and the procedures for promulgation under administrative rule making, all] Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them [listed] with the respective surface water [stream segment] in [Section 7 of] 401 KAR 5:026.

Section 10. Exceptions to Criteria for Individual Dischargers. (1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger that KPDES permit compliance with existing instream criteria will result in substantial and widespread economic and social impacts.

(2) The demonstration shall include an assessment of alternative pollution control strategies and biological assessments that indicate designated uses are being met.

(3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(4) All exceptions shall be subject to review at least every five (5) years. Upon review, the discharger shall demonstrate to the cabinet that a reasonable effort has been made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) The Kentucky Pollution Discharge Elimination System program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria for individual dischargers.

Section 11. Document Incorporated by Reference. The subject matter of this administrative regulation relating to biological assessments shall be governed by the document, "Methods for Assessing Biological Integrity of Surface Waters," Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet, October 1993, which is hereby incorporated by reference. The document is available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: April 14, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this administrative regulation is scheduled on May 22, 1995 at 7 p.m. (EDT) in the Auditorium of the Cabinet for Human Resources Building in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by May 17, 1995, of their intent to attend the hearing and be heard. 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 this administrative regulation. Persons testifying at the hearing are asked to provide the cabinet with a written copy of their testimony, if available. 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 this administrative regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of the public hearing on May 22, 1995. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before May 17, 1995 between 8 a.m. and 4:30 p.m. (EDT).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation sets forth water quality standards which consist of designated uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. It is being amended to revise limits for chemical substances discharged to surface waters of the Commonwealth and to establish conditions to maintain biological integrity through new narrative criteria. This regulation formally establishes the criteria as published by the U.S. Environmental Protection Agency (EPA) in the National Toxics Rule (Federal Register Vol. 57, No. 246, p. 60848-60921, Oct. 22, 1992). Approximately 93 permitted facilities are currently discharging substances that will have additional or more stringent criteria, and approximately 29 facilities are discharging substances that will have fewer or less stringent criteria. Permitted facilities will be not be affected until they apply for reissuance of their KPDES permits. The regulation will also affect any new, previously unpermitted waste water dischargers. 72 municipalities with approved pretreatment programs set local limits for their industrial dischargers. These dischargers may be affected by this regulation. An unknown number of entities engaged in activities subject to Section 401 of the Clean Water Act will be affected. Activities such as dredging, filling, bank stabilization, gravel removal, and bridge construction must obtain water quality certifications from the cabinet if the activity requires a federal 404 permit from the U.S. Army Corps of Engineers.

(2) Direct and indirect costs or savings on the affected entities: The revised water quality criteria will be implemented at the time of permit reissuance at existing facilities and new discharges and expanded facilities must comply with the revisions. Additional costs may be incurred where criteria are more stringent or new criteria are established. Savings may accrue where criteria have been relaxed or existing criteria are deleted.

(a) Effect on the 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 specific comments were received for this regulation; see the regulatory impact analysis for 401 KAR 5:026.

(b) Effect on the 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 received.

(c) Effect on the compliance, reporting, and paperwork requirements including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: No comments received.

2. Second and subsequent years: No comments received.

(3) Effects on the promulgating administrative body: This regulation does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement.

(a) Direct and indirect costs or savings:

1. First year: No major costs are anticipated. The cabinet in implementing the requirements of this regulation will internalize associated costs within normal budget appropriations.

2. Continuing costs or savings: Same as (3)(a)1 above.

3. Additional factors increasing or decreasing costs: None determined.

(b) Reporting and paperwork requirements: This regulation will not affect routine reporting and paperwork requirements, however, the KPDES program will have an unknown number of requests for exceptions to water quality criteria to review and make public.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will not be affected in the short term. For the long term this regulation should sustain revenues derived from water-based activities, such as sport fishing, commercial fishing, boating, and skiing.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the general fund and federal funds, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No comments received.

(b) Kentucky: Requirements for biological assessments are listed activities requiring 401 certification would either render the uniform and consistent enforcement of this requirement impossible or would "effectively bankrupt and destroy Kentucky's agricultural resources and communities."

(7) Assessment of alternative methods; reasons why alternatives were rejected: Biological Assessments: U.S. EPA is urging states during the 1991-93 triennium to adopt narrative biological criteria as part of state water quality standards to comply with sections 101, 303, and 304 of the Clean Water Act and EPA's Water Quality Standards. See also the Federal Mandate Analysis Comparison for this regulatory impact analysis.

25% Inhibition Concentration (IC_{25}): Chronic biomonitoring statistics currently used to determine the no observed effect level (NOEL) can cause a permittee to not meet its criteria limits under certain conditions. The 25% inhibition concentration is an improvement over NOEL for the following reasons: 1) IC_{25} averages out the variance for each dilution and the variability between concentrations so that laboratories using good techniques are favored; 2) IC_{25} is not as dependent on the dilution series selected by the laboratory; 3) IC_{25} is simple to use since only one statistical test is calculated for all data; and 4) IC_{25} is a point estimate, so that averaging over time is possible.

Activities Affecting Productive Aquatic Communities: Activities such as dredging, filling, channel changes, bank stabilization, gravel or rock removal and stream crossing must be issued water quality certifications, pursuant to the Clean Water Act, sections 401 (Certification) and 404 (Permits for Dredged or Fill Material). These activities are further limited under 401 KAR 5:031, Section 2 (Minimum Criteria Applicable to all Surface Waters). The alternative was to not include this provision. Since it adds clarity and definition to activities that are already subject to regulation, it was in the interest of all affected parties to include this revision.

(8) Assessment of expected benefits of the administrative regulation: This regulation protects human health by revising numerical criteria for water consumption, fish consumption, and domestic water supply sources. This regulation also protects aquatic life by revising numerical criteria for warm water aquatic habitat use. A healthy aquatic ecosystem will sustain quality recreation, fishing, and water-based tourism.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The purpose of this regulation is to protect public health and environmental welfare. Surface drinking water supplies will be protected, and fish consumption will remain safe. Aquatic recreation, such as swimming, wading, skiing, and boating, will also remain safe. Warm water aquatic habitat criteria will safeguard aquatic life and support a biodiversity of plants, fish, and macroinvertebrates.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be a detrimental effect on the environment and public health if this regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: The revised water quality criteria in this regulation are based on the National Toxics Rule, which addresses toxicity levels for aquatic and human life. If this regulation is not implemented less protective concentrations of chemicals might be discharged into surface waters.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No

statutes, administrative regulations or government policies are in conflict, overlap, or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: See the regulatory impact analyses prepared for 401 KAR 5:001, 5:026, 5:029, and 5:030 to obtain an overview of the water quality standards regulations and their impacts. 401 KAR 5:030 is printed elsewhere in the May Administrative Register of Kentucky.

(12) TIERING: Is tiering applied? Tiering was not applied. This regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, process, or treatment employed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect the waste water treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to local governments' waste water treatment service.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This regulation sets forth protective criteria for instream uses and classifications designated by the cabinet (see 401 KAR 5:026). Local governments will be required to discharge effluents which assure attainment of the receiving surface water's designated uses. The costs or savings of this regulation would ordinarily be passed through to users. However, a local government that owns a public waste water treatment system could elect to absorb some or all of the costs or savings.

Revenues (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every 3 years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.

2. State compliance standards. 401 KAR 5:001, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. None

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. These administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised April 13, 1995 [~~December 14, 1994~~], are incorporated by reference and shall be referred to as Blackburn Correctional Complex and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays 8 a.m. to 4:30 p.m.

BCC 01-05-01	Duty Officer and Acting Warden
BCC 01-07-01	Extraordinary Occurrence Reports
BCC 01-09-01	Legal Assistance for Staff
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-15-01	Internal Affairs Office
BCC 01-16-01	Tours of Blackburn Correctional Complex
BCC 01-19-01	Inmate Access to BCC Staff
BCC 02-01-01	Inmate Canteen [~~(Amended 12/14/94)~~]
BCC 02-02-01	Fiscal Responsibility
BCC 02-02-02	Fiscal Management: Accounting Procedures [~~(Amended 12/14/94)~~]
BCC 02-02-03	Fiscal Management: Checks
BCC 02-02-04	Fiscal Management: Budget
BCC 02-02-05	Fiscal Management: Insurance
BCC 02-02-06	Fiscal Management: Audits
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract
BCC 02-05-01	Property Inventory
BCC 02-06-01	Purchasing
BCC 02-07-01	Inmate Personal Accounts
BCC 04-02-01	Firearms Training
BCC 04-03-01	Educational Assistance Program
BCC 05-01-01	Inmate Participation in Authorized Research
BCC 06-01-01	Storage of Expunged Records
BCC 06-02-01	Records - Release of Information
BCC 06-02-02	Offender Records
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board
BCC 08-02-01	Natural Disaster Plan (Tornado) (Amended 4/13/95)
BCC 08-03-01	Emergency Preparedness Plan Manual (Amended 4/13/95)
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties (Amended 4/13/95)
BCC 08-04-02	Immediate Release of Inmates from Locked Areas
BCC 08-05-01	Duties of Fire Safety Officer (Amended 4/13/95)
BCC 08-06-01	Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials

BCC 08-07-01 Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers
BCC 09-01-01 Inclement Weather/Emergency Condition Operation
BCC 09-02-01 Restricted Areas
BCC 09-02-02 Inmate Pass System to Restricted Areas
BCC 09-02-03 Regulation of Inmate Movement
BCC 09-02-04 Radio Escorted Yard Movement During Daylight Savings Time (November 1 - April 30)
BCC 09-03-01 Inmate Identification
BCC 09-04-02 Complex Entry & Exit
BCC 09-05-01 Key Control
BCC 09-06-02 Transportation to Courts
BCC 09-07-01 Drug Abuse and Intoxicants Testing
BCC 09-08-02 Use of Restraints
BCC 09-09-01 Population Counts and Count Documentation
BCC 09-10-03 Development of Institutional Post Orders
BCC 09-10-04 Governmental Services, Study Release Officer Post Orders
BCC 09-10-05 Unit A-1 Post Orders
BCC 09-10-06 Recreation Post Orders: Observation
BCC 09-10-07 Entrance Gate Post Orders
BCC 09-10-08 Visiting Area Post Orders
BCC 09-10-09 Security Staff General Orders
BCC 09-10-10 Dining Room Officer Post Orders
BCC 09-12-01 Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment
BCC 09-13-01 Perimeter Patrol
BCC 09-14-01 Prohibiting Inmate Authority Over Other Inmates
BCC 09-15-01 Search Policy/Disposition of Contraband
BCC 09-16-01 Security Activity Logs
BCC 09-17-01 Institutional Supervisor Inspections
BCC 09-18-01 Use of State Vehicles and Staff Owned Vehicles
BCC 09-19-01 Duties and Responsibilities of the Institutional Captain
BCC 09-19-02 Duties and Responsibilities of the Shift Supervisor
BCC 09-20-01 Inmate Death
BCC 09-21-01 Tool Control
BCC 09-22-01 Emergency Communication System
BCC 10-01-01 Special Management Inmates
BCC 10-01-02 Short-Term Administrative Segregation Holding Area
BCC 11-01-01 Menu and Special Diets (Amended 4/13/95)
BCC 11-02-01 Food Service: Inspection, Health Protection and Sanitation (Amended 4/13/95)
BCC 11-03-01 Food Service: Meals
BCC 11-04-01 Dining Room Guidelines (Amended 4/13/95)
BCC 11-05-01 Food Service Security: Knife & Other Sharp Instrument and [/] Utensil Control (Amended 4/13/95)
BCC 11-06-01 Purchasing, Storage and Farm Products (Amended 4/13/95)
BCC 11-07-01 Food Service Operations Manual
BCC 12-02-01 Personal Hygiene Items
BCC 12-02-02 Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities
BCC 12-05-01 Barber Shop Services
BCC 12-06-01 BCC Housekeeping Plan
BCC 13-01-01 Sick Call and Pill Call
BCC 13-02-01 Administration and Authority for Health Services
BCC 13-03-01 Provisions of Health Care Delivery
BCC 13-04-01 Licensure and Training Standards
BCC 13-05-01 Medical Alert System
BCC 13-06-01 Health Care Practices
BCC 13-07-01 Emergency Medical Care Plan
BCC 13-07-02 Emergency and Specialized Health Services
BCC 13-07-03 Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent
BCC 13-08-01 Inmate Health Screening and Evaluation
BCC 13-09-01 Prohibition on Medical Experimentation
BCC 13-10-01 Dental Services
BCC 13-11-01 Suicide Prevention and Intervention Program
BCC 13-12-01 Use of Pharmaceutical Products
BCC 13-12-02 Parenteral Administration of Medications and Use of Psychotropic Drugs
BCC 13-13-01 Inmate Health Education
BCC 13-14-01 Management of Serious and Infectious Diseases
BCC 13-15-01 Informed Consent
BCC 13-16-01 Health Records
BCC 13-17-01 Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 13-19-01 Physicians Referrals/Continuity of Care
BCC 13-20-01 Chronic and Convalescent Care
BCC 13-22-01 Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers
BCC 13-23-01 First Aid Kits
BCC 14-01-01 Office of Public Advocacy Attorney Visits (Amended 4/13/95)
BCC 14-02-01 Law Library
BCC 14-04-01 Inmate Rights and Responsibilities
[~~BCC 14-05-01 Inmate Claims (Deleted 4/13/95)~~]
BCC 14-06-01 Legal and Support Services for [~~Indigent~~] Inmates (Amended 4/13/95)
BCC 15-02-02 Room Assignment
BCC 15-03-01 Rules and Regulations for Dormitories
[~~BCC 15-04-01 Restoration of Forfeited Good Time (Deleted 4/13/95)~~]
BCC 15-05-01 Extra Duty Assignments
BCC 16-01-01 Inmate Furloughs [~~(Amended 12/14/94)~~]
BCC 16-02-01 Inmate Visiting (Amended 4/13/95)
BCC 16-03-02 Outgoing Inmate Packages
BCC 16-03-03 Inmate Correspondence
BCC 17-02-01 Authorized Inmate Personal Property (Amended 5/12/94)
BCC 17-03-01 Processing of New Inmates From Local Jails
BCC 18-01-01 Classification: Institutional Classification and Reclassification
BCC 18-02-01 Racial Balance in Living Areas
BCC 19-01-01 Inmate Work Programs
BCC 19-02-01 Classification of Inmates to Governmental Service Program
BCC 19-03-01 Correctional Industries
BCC 20-01-01 Academic and Vocational School
BCC 20-02-01 College Programs
BCC 20-04-01 Educational Program Evaluation
BCC 20-05-01 Educational Program Planning
BCC 20-06-01 Academic and Vocational Curriculum
BCC 21-01-01 Library Services
BCC 22-01-01 Arts and Crafts/Production and Sale of Items [~~(Amended 12/14/94)~~]
BCC 22-02-01 Privileged Trips [~~(Amended 12/14/94)~~]
BCC 22-03-01 Recreational Employees [~~(Amended 12/14/94)~~]
BCC 22-04-01 Recreation and Inmate Activities [~~(Amended 12/14/94)~~]
BCC 22-04-02 Inmate Clubs and Organizations [~~(Amended 12/14/94)~~]
BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs [~~(Amended 12/14/94)~~]
BCC 22-04-04 Recreation Program Availability [~~(Amended 12/14/94)~~]
BCC 22-04-05 Supervision of Leisure-time Craft Club Activities and Materials [~~(Amended 12/14/94)~~]
BCC 22-06-01 Music Club [~~(Amended 12/14/94)~~]
BCC 22-08-01 Unit Recreation Program [~~(Amended 12/14/94)~~]
BCC 22-09-01 Use of Inmates in Recreation Programs [~~(Amended 12/14/94)~~]
BCC 23-01-01 Religious Services

BCC 24-01-01 Duties and Responsibilities of Classification and Treatment Officers
BCC 24-02-01 Duties and Responsibilities of the Unit Director and Assistant to the Unit Director
BCC 24-03-01 Social Services
BCC 25-01-01 Inmate Check Out Procedure
BCC 25-02-02 Temporary Release and Community Center Release
BCC 25-05-01 Supplemental Preparole Progress Reports
BCC 26-01-01 Citizen Involvement and Volunteer Service Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: April 13, 1995
FILED WITH LRC: April 13, 1995 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 23, 1995, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Susan Alley, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Betty Ann Walker
(1) Type and number of entities affected: 92 employees of the correctional institutions, 403 inmates, and all visitors to state correctional institutions.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: None
2. Second and subsequent years: None
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Policy revisions.
(4) Assessment of anticipated effect on state and local revenues: None
(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.
(6) Economic impact, including effects of economic activities arising from administrative regulation, on:
(a) Geographical area in which administrative regulation will be implemented: None
(b) Kentucky: None
(7) Assessment of alternative methods; reasons why alternatives were rejected: None
(8) Assessment of expected benefits:
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
(b) State whether a detrimental effect on environment and public health would result if not implemented: None
(c) If detrimental effect would result, explain detrimental effect: N/A
(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed 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 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised April 13, 1995 [~~January 12, 1995~~] are incorporated by reference and shall be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

BCFC 01-02-01 Organization and Assignment of Responsibility
BCFC 01-05-01 Monitoring of Operations, Policies and Procedures
BCFC 01-08-01 Public Information and News Media Access
BCFC 01-11-01 Institutional Duty Officer
BCFC 01-13-01 Annual Planning Document
[~~BCFC 02-01-02 Fiscal Management: Accounting Procedures (Deleted 4/13/95)~~
~~BCFC 02-01-03 Fiscal Management: Agency Funds (Deleted 4/13/95)~~
~~BCFC 02-01-04 Fiscal Management: Insurance (Deleted 4/13/95)~~
~~BCFC 02-01-05 Fiscal Management: Budget (Deleted 4/13/95)~~
~~BCFC 02-01-06 Fiscal Management: Audit (Deleted 4/13/95)~~]
BCFC 02-02-01 Inmate Accounts (Amended 4/13/95)
[~~BCFC 02-02-02 Inmate Control of Personal Funds (Deleted 4/13/95)~~
~~BCFC 02-02-03 Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays (Deleted 4/13/95~~]
BCFC 02-03-01 Purchase Orders (Amended 4/13/95)
BCFC 02-04-01 Processing of Invoices (Amended 4/13/95)
BCFC 02-05-01 BCFC Materials Receiving Procedure (Amended 4/13/95)
BCFC 02-06-01 Property Inventory (Amended 4/13/95)
BCFC 02-06-02 Materials Receiving and Control (Added 4/13/95)
BCFC 02-07-01 Imprest Cash Fund (Added 4/13/95)
BCFC 02-08-01 Prisoners Fund (Added 4/13/95)
BCFC 04-01-01 Employee Training and Development
BCFC 05-01-01 Information System
BCFC 06-01-01 Offender Records
BCFC 06-02-01 Storage of Expunged Records
BCFC 06-03-01 Court Trips

BCFC 06-03-02	Receipt of Order of Appearance
BCFC 07-04-01	Smoking Control
BCFC 07-05-01	Permit Required Confined Space
BCFC 07-06-01	Control of Hazardous Energy (Lockout or Tagout)
BCFC 08-02-01	Fire Prevention (Amended 4/13/95)
BCFC 08-03-01	Fire Procedures (Amended 4/13/95)
BCFC 08-03-02	Fire Extinguishers and Their Use (Amended 4/13/95)
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (Amended 4/13/95)
BCFC 08-09-02	OSHA Hazard Communication Program (Amended 4/13/95)
BCFC 08-10-01	Bell County Forestry Camp Emergency Response Team
BCFC 09-06-01	Search Policy, [/] Disposition of Contraband (Amended 4/13/95)
BCFC 09-14-01	Bell County Forestry Camp - Restricted Area (Amended 4/13/95)
BCFC 10-01-01	Special Management Inmates (Amended 4/13/95)
BCFC 11-01-01	Food Services: General Guidelines
BCFC 11-02-01	Food Service Security
BCFC 11-03-01	Dining Room Guidelines
BCFC 11-04-01	Food Service: Meals
BCFC 11-04-02	Food Service: Menu, Nutrition and Special Diets
BCFC 11-05-02	Health Requirements of Food Handlers
BCFC 11-06-01	Food Service: Inspection and Sanitation
BCFC 11-07-01	Food Service: Purchasing, Storage and Farm Products
BCFC 12-01-01	Sanitation, Living Conditions Standards, and Clothing Issues (Amended 4/13/95)
BCFC 12-01-02	Bed Areas and Bed [,] Assignments (Amended 4/13/95) [/~~Conditions Standards~~]
BCFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 4/13/95)
BCFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule (Amended 4/13/95)
BCFC 12-03-02	Barbershop Services and Equipment Control (Amended 4/13/95)
BCFC 12-04-01	Institutional Inspections (Amended 4/13/95)
BCFC 12-05-01	Fire Safety and Use of Noncombustible Receptacles (Amended 4/13/95)
BCFC 12-06-01	Insect and Vermin [~~Pest~~] Control (Amended 4/13/95)
BCFC 13-01-01	Organization of Health Services [(~~Amended 1/12/95~~)]
BCFC 13-02-01	Sick Call and Physician's Weekly Clinic [(~~Amended 1/12/95~~)]
BCFC 13-03-01	Routine and Emergency Dental Appointments [(~~Amended 1/12/95~~)]
BCFC 13-04-01	Inmate Medical Screenings and Health Evaluations [(~~Amended 1/12/95~~)]
BCFC 13-05-01	Medical Emergencies and Medical or Psychiatric Transfers [(~~Amended 1/12/95~~)]
BCFC 13-06-01	Physician's Referrals [(~~Amended 1/12/95~~)]
BCFC 13-07-01	Health Records [(~~Amended 1/12/95~~)]
BCFC 13-08-01	Routine and Emergency Eye Examinations [(~~Amended 1/12/95~~)]
BCFC 13-09-01	Family Notification: Serious Illness, Injury, Major Surgery or Death [(~~Amended 1/12/95~~)]
BCFC 13-10-01	Health Education: Special Health Care Needs [(~~Amended 1/12/95~~)]
BCFC 13-11-01	Informed Consent [(~~Amended 1/12/95~~)]
BCFC 13-12-01	Psychiatric and Psychological Services [(~~Amended 1/12/95~~)]
BCFC 13-13-01	Chronic and Convalescent Care [(~~Amended 1/12/95~~)]
BCFC 13-14-01	Use of Pharmaceutical Products [(~~Amended 1/12/95~~)]
BCFC 13-15-01	Parenteral Administration of Medications and Use of Psychotropic Drugs [(~~Amended 1/12/95~~)]
BCFC 13-16-01	Elective Services [(~~Amended 1/12/95~~)]
BCFC 13-18-01	Management of Serious and Infectious Diseases [(~~Amended 1/12/95~~)]
BCFC 13-19-01	Bloodborne Pathogens Exposure Control Plan [(~~Amended 1/12/95~~)]
BCFC 14-01-01	Inmate Rights and Responsibilities
BCFC 14-02-01	Legal Services Program
BCFC 14-03-01	Inmate Grievance Procedure
BCFC 15-01-01	Due Process/Disciplinary Procedures
BCFC 16-01-01	Inmate Visiting
BCFC 16-02-01	Telephone Communications
BCFC 16-03-01	Mail Regulations
BCFC 16-03-02	Inmate Packages
BCFC 17-01-01	BCFC Inmate Receiving and Orientation Process
BCFC 17-03-01	Inmate Personal Property
BCFC 17-04-01	BCFC Inmate Property Control
BCFC 17-05-01	Inmate Canteen
BCFC 18-01-01	Institutional Classification Committee
BCFC 19-01-01	Work Assignments [(~~Amended 1/12/95~~)]
BCFC 19-02-01	Government Service Detail [(~~Amended 1/12/95~~)]
BCFC 20-01-01	Academic School
BCFC 20-02-01	Educational Program Planning
BCFC 20-03-01	Academic Curriculum
BCFC 21-01-01	Library Services
BCFC 22-01-01	Recreation and Inmate Activities
BCFC 22-02-01	Inmate Clubs and Organizations
BCFC 22-03-01	Privilege Trips
BCFC 23-01-01	Religious Service
BCFC 24-01-01	Social Services and Counseling Program
BCFC 24-01-02	Casework Services
BCFC 25-01-01	Prerelease Program
BCFC 25-02-01	Community Center Program
BCFC 25-02-02	Inmate Furloughs
BCFC 25-04-01	Inmate Discharge Procedure
BCFC 26-01-01	Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: April 13, 1995

FILED WITH LRC: April 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for May 23, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Susan Alley, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Jack Damron

(1) Type and number of entities affected: 40 employees of the correctional institutions, 200 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed 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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 3:245. School council allocation formula: Kentucky Uniform School Financial Accounting System.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY AND FUNCTION: KRS 160.345(8) mandates that the Kentucky [State] Board of [for Elementary and Secondary] Education adopt a formula by administrative regulation which guides the way in which school district funds shall be allocated to each school council. This administrative regulation is designed for use by local school districts utilizing the Kentucky Uniform Financial Accounting System per 702 KAR 3:120. [702 KAR 3:240 is no longer required because it is being replaced by 702 KAR 3:245.]

Section 1. Definitions. (1) "Categorical programs" means programs under which funding and uses for the funding are specifically set by the funding authority.

(2) "Instructional supplies and [,] materials[, travel, and equipment]" means items that are consumed or worn out in the instructional process to include [the following codes, as set forth in the "Kentucky School Financial Accounting System," which is incorporated by reference in 702 KAR 3:120]:

(a) Library books [- codes: 251.01, 251.04, 252.01, 252.04];

(b) Periodicals and newspapers [- codes: 253.01, 253.04, 254.01];

(c) Library supplies [- codes: 255.01, 255.03, 256.01, 256.03];

(d) Audio visual material and equipment [- codes: 257.01, 257.04, 258.01, 258.04];

(e) Supplementary books [- codes: 263.01, 263.04, 264.01, 264.04];

(f) Reference materials;

(g) Instructional software; and

(h) [(f)] Teaching supplies to include paper products. [- codes: 265.01, 266.01;]

(3) " [(g)] Instructional equipment" means initial or additional furniture, fixtures, and equipment for instruction which may be purchased, leased, or rented. "Instructional equipment" shall not mean computer laboratories, or the initial inventory of a new school plant. [other than computer laboratories - codes: 231, 741.01, 871.01, 1272; and]

(4) " [(h)] Instructional travel" means travel for all personnel and their assistants, including travel in connection with everyday instructional activities and travel to conventions, meetings and workshops. [- code: 267.

"Instructional supplies, materials, travel, and equipment" shall not mean technology related expenditures for computer laboratories, the initial inventory of a new school plant, and any one (1) time expenditures that the district made to address specific school needs.]

(5) [(3)] "District average teacher's salary" means the total of all teacher salaries for 185 days in noncategorical programs in the district divided by the number of teachers in the noncategorical programs in the district.

Section 2. The local school district shall provide to school councils established by January 30 an allocation for the next budget year by March 1 of each year in accordance with this administrative regulation.

Section 3. The local school district shall calculate the funds available for distribution to school councils by excluding the proposed district-wide expenditures for the following areas from the draft district budget:

(1) The 100 Expenditure Series, Administration.

(2) Any instructional service provided to all schools from the district level or for "categorical programs" of the 200 Expenditure Series, Instruction, including exceptional children services and itinerant teachers.

(3) The 300 Expenditure Series, Attendance, except for noncategorical school-based employees and specified supplies.

(4) The 400 Expenditure Series, Health Services, except for noncategorical school-based employees and specified supplies.

(5) The 500 Expenditure Series, Transportation.

(6) The 600 Expenditure Series, Operation of Plant, except for noncategorical school-based employees and specified supplies [personnel assigned to schools].

(7) The 700 Expenditure Series, Maintenance of Plant, except for funds set aside in code 741.01 for replacement of instructional equipment at the school level. Any portion of 741.01 used for instructional service provided on a district level to all schools or paid for by categorical programs may also be excluded.

(8) The 800 Expenditure Series, Fixed Charges, except for fringe benefits for noncategorical personnel assigned to schools.

(9) The 900 Expenditure Series, School Food Services.

(10) The 1100 Expenditure Series, Community Services.

(11) The 1200 Expenditure Series, Capital Outlay, except for the funds [that may be] set aside in an allocation for new instructional equipment. Any portion of [and] code 1272 used for instructional equipment provided on a school level to all schools for categorical programs, furnishing new school buildings, or for Kentucky Education

Technology System (KETS) matching funds may also be excluded. [designated for each school.]

(12) The 1300 Expenditure Series, Debt Service.

(13) The 1400 Expenditure Series, Below the Line.

(14) All payments for extra duty and extended employment in all codes.

Section 4. Allocation for Certified Staff. (1) A board staffing policy or guideline shall be established to determine the number of allocated positions for each school. To determine the allocation to school councils for certified staff, the district shall provide sufficient funds:

(a) To meet class size caps established in KRS 157.360 based on the projected full-time equivalent enrollment for the upcoming school year; and

(b) To meet other classroom teaching and certified staff positions not included in paragraph (a) of this subsection that are generated by the local board certified staffing policy.

(2) Each district shall file a copy of the staffing policy or guidelines with the Division of School-Based Decision Making by July 1, 1995. Any revisions shall be submitted within thirty (30) days of action. [Local boards shall establish a certified staffing policy to determine the allocation of certified staff to local schools.

(2) To determine the allocation to school councils for certified staff, the district shall provide sufficient funds:

(a) To meet class size caps established in KRS 157.360 based on the projected full-time equivalent enrollment for the upcoming school year; and

(b) To meet other classroom teaching and certified staff positions not included in subsection (1)(a) that are generated by the local board certified staffing policy.]

(3) Funds for positions allocated in subsection (1) of this section shall be [allocated] based on the previous year's actual 185 day salary and associated fringe benefits except sick, personal, or emergency leave adjusted by changes in rank, additional year of experience, and changes in the district's salary schedule for each existing staff member.

(4) Funds for new and vacant certified staff positions shall be based on a minimum of ninety-five (95) percent of the district's average 185 day certified salary and associated fringe benefits except sick, personal, or emergency leave adjusted for changes in the district's salary schedule for noncategorical staff paid in the previous year.

(5) If the actual salary of new certified personnel is less than ninety-five (95) percent of the certified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. Notification to councils of adjustments is required only if adjustments represent changes in staffing due to enrollment increases or decreases.

Section 5. Allocation for Classified Staff. (1) A board staffing policy or guidelines shall be established to determine the number of allocated positions for each school. Each district shall file a copy of the staffing policy or guidelines with the Division of School-Based Decision Making by July 1, 1995. Any revisions shall be submitted within thirty (30) days of action. [Local boards shall establish a classified staffing policy to determine the allocation of classified staff to local schools.]

(2) Funds shall be provided for all school based classified positions in noncategorical programs generated by the local board classified staffing policy using the previous year's salary adjusted for any district-wide increase.

(3) Funds shall be allocated for fringe benefit amounts except for sick, personal, or emergency leave for each classified staff member.

(4) Funds for new or vacant positions shall be based on ninety-five (95) percent of the district's average classified salary for that personnel job class and associated fringe benefits except for sick, personal, or emergency leave for noncategorical staff adjusted for any district-wide increase.

(5) If the actual salary of new classified personnel is less than ninety-five (95) percent of the classified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. Notification to councils of adjustments is required only if adjustments represent changes in staffing due to enrollment increases or decreases.

Section 6. Instructional Supplies, Materials, Travel, and Equipment. (1) For instructional supplies, materials, travel, and equipment school councils shall receive a minimum [an] allocation of three and one-half (3 1/2) percent of the statewide guaranteed base funding level for Support Education Excellence in Kentucky (SEEK) based on prior year final average daily attendance. [based on the prior year district average expenditure adjusted by the current year's percent change in Support Education Excellence in Kentucky (SEEK) funding for each pupil based on the projected full-time equivalent enrollment.]

(2) The amount generated in subsection (1) of this section shall be adjusted [utilizing the enrollment data] at the end of the second school month for changes in average daily attendance and projected funding for SEEK. Notification to councils of adjustments shall additionally include September 15 adjustments for which notification was not required.

(3) Allocations under subsections (1) and (2) of this section shall not include funds for operating expenses, including utilities, or for health and safety requirements of schools.

Section 7. Distribution of the Balance. (1) The balance between the amount generated in Sections 4, 5, and 6 of this administrative regulation and the amount available for distribution to school councils from Section 3 of this administrative regulation shall be distributed in one (1) of the following manners:

(a) An amount per prior year final average daily attendance [projected full-time equivalent enrollment];

(b) Based on pupil needs identified by school councils and [as] designated by the local school board. Money provided under this subsection shall be used only for the needs identified by the council and designated by the board; [or]

(c) A combination of subsections (a) and (b) of this section.

(2) An adjustment may be made to allocations under subsection (1) of this section at the end of the school month for changes in average daily attendance and projected funding for SEEK.

(3) [(2)] If Sections 4, 5, and 6 of this administrative regulation generate more funds than are available in Section 3 of this administrative regulation for distribution to school councils, the local board shall make every reasonable effort to make up the deficit.

Section 8. Nothing in this administrative regulation shall prohibit the district from providing funds to school councils in excess of the allocation amounts generated by Sections 4, 5, and 6 of this administrative regulation or other operational and capital outlay items.

Section 9. Each year school councils shall review the budgets for all categorical programs and provide comments to the local board prior to the adoption of the budgets. The district board of education shall develop allocation procedures for professional development funds pursuant to KRS 160.345(8).

Section 10. No school council allocation by the district shall result in a proposed expenditure that would cause the district budget to hold in reserve less than the required amount set by KRS 160.470.

Section 11. Nothing in this administrative regulation shall prohibit districts from passing on to school councils any reduction in state and local revenues.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

Joseph W. Kelly, Chairman
APPROVED BY AGENCY: April 12, 1995
FILED WITH LRC: April 13, 1995 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Kyna Koch, Director
(1) Type and number of entities affected: 176 districts.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: None
2. Second and subsequent years: None
(3) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(4) Assessment of anticipated effect on state and local revenues: None
(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None
(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
(a) Geographical area in which administrative regulation will be implemented: None
(b) Kentucky: None
(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives.
(8) Assessment of expected benefits:
(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
(b) State whether a detrimental effect on environment and public health would result if not implemented: None
(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.
(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
(a) Necessity of proposed regulation, if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(10) Any additional information or comments:
(11) TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Division of Finance
(Proposed Amendment)

702 KAR 7:010. Terms and months.

RELATES TO: KRS [~~156.031,~~] 158.060, 158.070
STATUTORY AUTHORITY: KRS [~~156.031,~~] 156.070, 158.070
NECESSITY AND FUNCTION: [~~KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and~~] KRS 158.060 and 158.070 define and establish the school day, [~~school~~] month, and [~~school~~] term, and direct the Kentucky [~~State~~] Board of [~~for Elementary and Secondary~~] Education to adopt administrative regulations governing the use of school days. This administrative regulation is necessary for efficient management, control and operation of schools and to insure uniformity in the school month and term[~~, month and day~~] in all approved schools of the state.

Section 1. The minimum school term shall be 185 days and include a minimum of 1,110 hours. School districts shall provide a minimum of 175 instructional days including 1,050 instructional hours, each school year. [~~of 185 days with a minimum six (6) actual instructional hour day shall consist of nine (9) twenty (20) day school months and one (1) partial school month of five (5) days.~~]

Section 2. (1)(a) If either a school district, or a school within a school district, during any school year, misses a total of five (5) hours or less on all school days shortened due to an emergency, this time shall not have to be made up and shortened school day report shall not be submitted to the Department of Education for those hours.
(b) Time missed on shortened school days over the five (5) hours provided for in this subsection shall be made up and [~~these hours beyond the five (5)~~] shall be reported to the Department of Education on a shortened school day report. The Shortened School Day Report, dated February, 1995, is incorporated herein by reference. This document may be obtained, inspected, and copied at the Division of Finance, Pupil Attendance Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
(c) Partial days missed due to an emergency, over the five (5) hours may be made up by extending the regular school day [~~upon approval of the Department of Education~~]. Extending the school day to make up hours missed beyond the five (5) hours may start upon notification to the Department of Education, pending approval.
(d) School districts that have included additional time in their

regular instructional day to total more than 1,050 instructional hours in the school year shall be able to count the additional time toward making up partial days missed in excess of the five (5) hours forgiven, upon approval of the Department of Education. [~~Those school districts already going longer than the six (6) hour minimum instructional day shall be allowed to count that extra time toward making up partial days missed over the five (5) hours forgiven but only upon approval of the Department of Education.~~

~~(e) The extended school day to make up hours missed beyond the five (5) hours shall start upon notification to the Department of Education, pending approval.~~]

(e) [~~(f)~~] Extending the school day or counting time beyond the regular [~~six (6) hour minimum~~] instructional day to make up time missed on [~~shortened~~] school days shortened due to emergency shall be allowed only after the time is missed.

(2)(a) [A] Full school days missed shall be made up by putting the [~~these~~] full days back in the school calendar.

(b) [~~School districts shall have a minimum of 175 instructional days each school year except as provided in KRS 158.070 which shortens the minimum term for the 1992-94 biennium to allow for more professional development.~~

~~(c) The only exception shall be in extreme situations as explained in KRS 158.070(3)(a), (b), and (c).~~

~~(d)~~] Disaster days as outlined in KRS 158.070(3)(b) shall be submitted to [~~may be approved by~~] the Commissioner of Education for approval [~~and shall be reported to the State Board for Elementary and Secondary Education at its next regularly scheduled meeting~~].

(c) [~~(e)~~] Only under dire circumstances shall any school district be excused from the required 1,050 hour, 175 day minimum [~~175 day~~] instructional year.

(d) [~~(f) Except as provided in paragraph (b) of this subsection,~~] School districts shall not be considered for local disaster days unless the district has missed more than twenty (20) regular instructional [~~full teaching~~] days system-wide. All school districts shall make up at least the first twenty (20) regular instructional [~~full teaching~~] days missed in a school year by adding these days back into the school calendar.

(e) [~~(g)~~] The Commissioner of Education shall continue considering requests for disaster days from school districts where one (1) school, or [~~only~~] part of the district, is forced to miss school on a particular day due to an emergency [~~on a particular day~~].

Section 3. [~~If a school elects to be out of session, either for a reason not established by statute or by administrative regulation or which may be in excess of the exceptions, those days shall not be counted in the minimum school term.~~

~~Section 4. A report shall not be made until the completion of a twenty (20) day school month except that a report for the tenth school month shall be made at the conclusion of the school term.~~

~~Section 5.~~] (1) Lack of compliance with minimum school term [~~day~~] requirements shall, pursuant to KRS 157.350, result in appropriate proportional reductions in funding under the Support Educational Excellence in Kentucky Program.

(2) The following shall constitute the only board approved activities to be conducted during the [~~minimum six (6) hour~~] instructional school day:

(a) Courses and activities included in the "Program of Studies for Kentucky Schools, Grades K-12":

(b) Enrichment courses approved by the Kentucky Board of [~~State Board for Elementary and Secondary~~] Education;

(c) Experimental courses or programs approved by the Kentucky Board of [~~State Board for Elementary and Secondary~~] Education;

(d) Cocurricular activities, such as club meetings and assemblies, as long as these activities are directly related [~~directly~~] to the instructional program and are scheduled so as to minimize absences from classroom instruction; and

(e) A maximum of five (5) minutes passing time between each class, and travel time required to participate in regular instructional programs off the school campus including vocational schools, day treatment centers and alternative schools.

(3) Each school shall have available a master schedule that delineates instructional time periods and noninstructional time periods. [~~Homeroom in the morning and afternoon for checking attendance. These periods shall not exceed ten (10) minutes per homeroom or twenty (20) minutes daily.~~]

Section 4. [~~6.~~] The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education [~~on regularly scheduled school days~~] except in cases of emergency declared by the local superintendent in accordance with policies of the local board of education.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(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: None

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: 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 occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments: Promulgation of this regulation provides for the equivalent six (6) hour day and eliminates repetition of statutory mandates.

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Division of Finance
(Proposed Amendment)

702 KAR 7:020. Calendar.

RELATES TO: KRS [~~156.031,~~] 158.060, 158.070

STATUTORY AUTHORITY: KRS [~~156.031,~~] 156.070, 156.160, 158.060, 158.070

NECESSITY AND FUNCTION: [~~KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;~~] KRS 158.060 defines the school month and school day and makeup of school days missed and requires a school calendar to be approved by the chief state school officer; and KRS 158.070 defines the school term and holidays and other days to be included or excluded from the calendar. This administrative regulation is necessary for efficient management, control and operation of schools and to assure uniformity in the days all approved schools are in session.

Section 1. On or before May 15 [~~June 15~~] of each year, local boards of education shall, upon recommendation of the local superintendent, adopt a school calendar establishing [~~fixing~~] the opening and closing dates of each school month, designating the dates of school days within each school month and describing the school days on which schools shall be dismissed in accordance with Kentucky Board of Education [~~State Board for Elementary and Secondary Education~~] administrative regulations. [~~This section shall apply to all local boards of education operating experimental or year-round school programs.~~]

Section 2. (1) Each local board of education shall, on or before June 1 [~~July 1~~] of each year, file a copy of the adopted school calendar with the Department of Education for approval [~~as to the compliance with these administrative regulations~~]. No district shall be paid any installment of its Support Educational Excellence in Kentucky allotment until the school calendar for the district has been [~~se~~] approved. In addition to the minimum 1,050 hour, 175 instructional day school term [~~s,~~] school calendars shall build in enough instructional days to equal the average number of full school days missed system-wide in the [~~each~~] district over the preceding [~~immediately preceding past~~] five (5) years. [~~Final approval of a school calendar shall be withheld if, in the judgment of the Department of Education, a school calendar is not reasonable when the proposed starting date, the proposed ending date, and the average number of days missed over the past five (5) years are considered.~~]

(2) If a school district ultimately misses fewer days than the additional instructional days built into its calendar, the make-up days not used [~~then any such excess additional days~~] may be eliminated from the calendar at the end of the school year.

Section 3. A local board of education may amend its school calendar upon recommendation of the local [~~its~~] superintendent within the limitations of Kentucky Board of Education [~~pertinent State Board for Elementary and Secondary Education~~] administrative regulations.

Section 4. All amendments to school calendars shall be submitted [~~on the appropriate form~~] to the Department of Education for approval [~~as to compliance with these administrative regulations~~] no later than April 15 of each year. Any subsequent amendments to school calendars in the same school year shall be submitted to the Department of Education no later than five (5) days after the meeting of the local board of education at which the amendment is approved.

Section 5. [~~The school calendar shall provide for the same number of days of classroom instruction in all schools operated by a local board of education.~~

~~Section 6. The four (4) days on which~~] Schools may be dismissed for holidays as provided for in KRS 158.070 [~~shall be selected from those listed in KRS 2.110, 18A.190, 158.060 and 158.070 subject to the provisions of such sections, except in presidential election years the day of the regular election may be used as one of the allowable holidays. School districts shall be closed on this date as required by KRS 2.190, but districts may exclude the date from their school calendar and not count is as one (1) of their four (4) allowable holidays. Holidays shall be observed either on the statutory dates recognized in KRS 2.110 or, should the date fall on a Saturday or Sunday, on the preceding Friday or following Monday~~]. The four (4) observed holidays may be deleted or crossed out of the proposed local district calendar and reported to the Department of Education as part of the tenth month of the [~~a school~~] district's calendar.

Section 6. [~~7.~~] If local boards of education do not dismiss schools, for permissible holidays and planning activities, the number of days of actual classroom instruction shall be increased accordingly.

[~~Section 8. The chief state school officer shall approve dates which have been selected by the local boards of education for regional or district professional meetings to be excluded from the minimum school calendar pursuant to KRS 158.070(5).~~]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 12, 1995
FILED WITH LRC: April 13, 1995 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch, Director
(1) Type and number of entities affected: 176 school districts.
(2) Direct and indirect costs or saving to those affected: None
(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: None
(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
(a) Geographical area in which administrative regulation will be implemented: None
(b) Kentucky: None
(7) Assessment of alternative methods; reasons why alternatives were rejected: 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 occur, explain detrimental effect: This regulation does not relate to the environment or public health.
(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
(a) Necessity of proposed regulation, if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(10) Any additional information or comments: Promulgation of this regulation will provide for the equivalent six (6) hour day and eliminate repetition of statutory mandates.
(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Division of Finance
(Proposed Amendment)

702 KAR 7:050. Attendance; resident, nonresident.

RELATES TO: KRS 157.320, 157.360, 158.030, 158.240, 159.035, 159.170, 161.200
STATUTORY AUTHORITY: KRS 156.070, 157.320, 158.070
NECESSITY AND FUNCTION: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Educational Excellence in Kentucky Program; KRS 157.360 bases state funding upon average daily attendance; KRS 158.030 defines the minimum age for school attendance; KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities; and KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation[~~s~~] is [~~are~~] necessary to assure uniformity in recording attendance of all pupils in the schools of Kentucky.

Section 1. (1) The daily attendance of pupils in elementary schools shall be determined by checking their attendance a minimum of one (1) time per day and maintaining a student entry and exit log at each school. The daily attendance of pupils in middle and high schools shall be determined by checking their attendance by class period and maintaining a student entry and exit log at each school.

(2) Pupils shall not be counted in attendance unless they are physically present in the school except under the following conditions:

~~[The word "pupil" as the basis for average daily attendance as provided for in Kentucky Revised Statutes and for all other uses in the public school system shall mean all persons who are in attendance at school between the ages of five (5) and twenty-one (21) years. Any pupil who meets requirements of KRS 158.030 for entering school shall be considered five (5) years of age for attendance purposes.~~

~~Section 2. (1) Daily attendance: average daily attendance for educational funding. The daily attendance of pupils shall be determined by checking their attendance at least twice per day. Schools, grades, or homerooms may designate the most appropriate time to check attendance, but recording shall be such that half day or all day attendance is recorded as defined in Section 3 of this administrative regulation. A pupil may be counted in attendance, while not physically present in the classroom if:~~]

(a) The pupil is absent as a participant in a school activity which has been authorized by the local board of education and which is a definite part of the instructional program of the school; or

(b) The pupil is absent as a participant in an activity as provided in either KRS 158.240 or KRS 159.035. Pupils shall not be counted in attendance for determining average daily attendance when they are spectators at school activities.

~~[(2) Daily attendance: recognition purposes. Individual schools, grades, or homerooms shall be permitted to grant attendance awards, based upon a pupil's attendance in school for less than full days. A pupil who is in attendance for at least one (1) instructional period may be deemed present for the day for attendance award and recognition purposes.~~]

(3) Students shall be counted absent although the absence is due to factors beyond their control such as inclement weather or failure of the transportation system to operate.

Section 2. (1) [~~Section 3. (1) Pupils shall not be counted in attendance unless they are physically present in the school. They shall be counted absent although such absence is due to factors beyond their control such as inclement weather or failure of the transportation system to operate.~~

~~(2)~~] Occasional absences shall be reported in increments of one-half (1/2) day. Notwithstanding the provisions of Section 2 of this administrative regulation, a pupil who is absent thirty-five (35) to eighty-four (84) percent of instructional time [~~for at least two (2) consecutive instruction periods~~] in any regularly scheduled day shall be considered, and recorded, absent for one-half (1/2) day. A pupil who is absent for at least eighty-five (85) percent of instructional time [~~for at least five (5) consecutive instructional periods~~] in a regularly scheduled day shall be considered, and recorded, absent for the full day. This section does not apply to students enrolled in an entry level program. [~~In the event a school regularly schedules more than seven (7) periods per day, one half (1/2) or all day absence shall be recorded based upon three (3) and six (6) consecutive instructional periods absence, respectively.~~]

(2) [~~(3)~~] Absences on a regular basis for one (1) or more periods for the majority of the days in a school month shall be reported on a period basis. Districts shall not vary the schedule of students during the school month in order to circumvent the intent of this subsection.

Section 3. [~~4.~~] (1) Pupils enrolled in both a public common school and a nonpublic school under a dual enrollment plan shall be counted in attendance for average daily attendance purposes for the time they are in attendance at the public school under straight shared-time.

(2) A local district may permit straight shared time [~~"Straight shared time" is defined~~] as an arrangement whereby a child [~~regularly or~~] concurrently attends a public common school part-time and a nonpublic school part-time pursuing part of his education under the direction and control of the public common school and the remaining under the direction of the nonpublic school.

Section 4. [~~5.~~] Pupils enrolled in a public common school who attend the public common school fifty (50) percent of the school [~~one-half (1/2)~~] day and who attend the remainder of the school day in a state vocational technical school or an area vocational education center shall be counted in full-time attendance at the public common school.

Section 5. [~~6.~~] If a local district under the provisions of KRS 157.360(6), enrolls [~~handicapped~~] children with disabilities in a private school or agency approved by the Kentucky Board of Education [~~State Board for Elementary and Secondary Education~~] upon the recommendation of the Office of Education for Exceptional Children, the private school or agency shall certify the attendance of these children to the local school district [~~Department of Education~~] at the close of the second school month and at the close of the school year. This attendance shall be counted in a public school designated by the local district.

Section 6. A [~~7. No~~] pupil shall not be allowed to make up absences for the purpose of counting the [~~such~~] make-up activities in computing average daily attendance.

Section 7. [~~8.~~] (1) A copy of the written agreement local boards of education execute for average daily attendance of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the [~~State~~] Department of Education prior to November 1 of each year. Names of nonresident pupils, whose attendance is covered by the agreement, shall be listed on the back of the agreement and kept on file in the office of the local board of education [~~and also on the back of the copy of the agreement filed with the State Department of Education~~].

(2) An attendance report (Growth Factor Report) for the first two (2) school months of the current school year as required by KRS 157.360(8) shall be submitted to the [~~State~~] Department of Education prior to November 1 of each year. The Growth Factor Report shall contain number of days taught, transportation data for months one (1) and two (2) [~~separately~~], and the aggregate attendance and aggregate membership for the first two (2) school months entry level [~~, and the aggregate membership for the two (2) months. Kindergarten~~] data shall be reported for full-time equivalent days. Attendance and Growth Factor Report data shall be reported by school and by grade level. [~~Until such time as the primary school program, as required by KRS 156.160(1a) and KRS 158.030, is fully implemented, all attendance and Growth Factor Report data shall be reported by school and by grade.~~]

(3) Changes may be made in the original nonresident pupil agreement, up to the close of the school year, to include only the nonresident pupils enrolling after the close of the second school month. A copy of the amended agreement shall be on file in the office of the local board of education and a copy of the amendment shall be submitted to the [~~State~~] Department of Education along with the local superintendent's annual [~~statistical~~] report, no later than July 15 [~~June 30~~] of the current school year.

(4) In the event local boards of education fail to enter into a written agreement for nonresident pupils as outlined in subsections (1) and (3) [~~(2)~~] of this section, the local board of education educating the nonresident pupils shall not receive attendance credit for these nonresident pupils.

(5) Directors of pupil personnel in each local district shall certify student membership of each school at the end of the first school month, [~~as reported~~] to the Department of Education on the school data form[~~, of each school as of the end of the first month of school. They shall also certify, on a supplement to the school data form, reported average daily attendance for the first school month~~]. The school data form, as revised August 1994 [~~April 1992~~], is incorporated herein by reference. This [~~Such~~] document may be obtained, inspected and copied at the Division of [~~Technology~~] Integration Services, Department of Education, 15 Fountain Place, Frankfort, Kentucky 40601 [~~16th Floor, Capital Plaza Tower, 8 a.m. to 4:30 p.m.~~], Monday through Friday 8 a.m. to 4:30. [~~The supplement to the school data form shall report average daily attendance by school and by grade.~~]

Section 8. [~~9.~~] The teacher's register of daily attendance or reasonable facsimile [~~recommended by the chief state school officer and approved by the State Board for Elementary and Secondary Education~~] shall be the original source of attendance data for all pupils enrolled in the public elementary and secondary schools of the Commonwealth of Kentucky and shall be maintained in accordance with the instructions which are prepared and distributed by the [~~State~~] Department of Education.

Section 9. The request for records and other information involving the transfer of pupils as required by KRS 159.170 shall be processed by the local superintendent or his designee. The Notice of Transfer Form may be used to comply with this administrative regulation. The Notice of Transfer Form, dated April, 1995, is incorporated herein by reference. This document may be obtained, inspected and copied at the Division of Finance, Pupil Attendance Branch, 15th Floor Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Local boards of education may adopt an alternative form or process to comply with KRS 159.170.

Section 10. (1) The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(2) E1 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(3) E2 - A pupil previously enrolled during the current school year

in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(4) E3 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who was withdrawn as a W6, W7, W10, W13, W14, W16 or W18 during the previous school year;

(5) R1 - A pupil received from another homeroom in the same school;

(6) R2 - A pupil received from another public school in the same public school district;

(7) R3 - A pupil received from a nonpublic school in the same public school district;

(8) R4 - A pupil received from a public school in Kentucky outside this public school district;

(9) R5 - A pupil received from a nonpublic school in Ken-tucky outside this public school district;

(10) R6 - A pupil reentering the school after withdrawal, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(11) R7 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E1, E2 or E3;

(12) W1 - A pupil transferred to another homeroom in the same school. The reentry code to use with W1 shall be R1;

(13) W2 - A pupil transferred to another public school in the same public school district. The reentry code to use with W2 shall be R2;

(14) W3 - A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W3 shall R3;

(15) W4 - A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W4 shall be R4, R5 or R7;

(16) W5 - A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W5 shall be R4, R5 or R7;

(17) W6 - A pupil who is sixteen (16), but not yet eighteen (18) years of age, has completed the required sixty (60) day waiting period and has withdrawn. The reentry code to use with W6 shall be R6;

(18) W7 - A pupil withdrawn due to:

(a) Those communicable medical conditions that pose a threat in school environments (as specified in KRS 211.080, 158.160 and 902 KAR 2:170) accompanied by a doctor's statement certifying the condition; or

(b) Other health related condition for which the student will not be able to participate in regular school attendance or local homebound instructional services, accompanied by a doctor's statement certifying the condition. The reentry code to use with W7 shall be R6;

(19) W8 - A pupil withdrawn due to death;

(20) W9 - A pupil graduated prior to the end of the school term or year;

(21) W10 - A pupil discharged for the balance of the school term or year. The reentry code to use with W10 shall be R6 if withdrawn for the balance of the school term;

(22) W12 - A pupil under the juri:diction of the court. The reentry code to use with W12 shall be R6. For end of year adjustments, for accountability purposes a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(23) W13 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W6, W7, W10, W12, W14 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R6;

(24) W14 - A pupil withdrawn after having given birth to, and in the process of, parenting a child. The reentry code to use with W14 shall be R6;

(25) W16 - A pupil who has moved out of this public school district for which enrollment elsewhere has not been substantiat-ed. For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;

(26) W17 - An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian, and the school;

(27) W18 - A pupil eighteen (18) years of age who has withdrawn. The reentry code to use with W18 shall be R6;

~~[Section 10. If a local board of education elects to follow the provisions of KRS 161.200(2) for keeping and reporting pupil attendance, the board shall submit a written plan to the chief state school officer for approval. A copy of the approved plan shall be on file in each public school.]~~

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4)

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 13 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(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: None

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: 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 occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or govern-ment policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments: Promulgation of this regulation will provide for the equivalent 6 hour day and eliminate repetition of statutory mandates.

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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

806 KAR 9:220. Agent continuing education.

RELATES TO: KRS 304.9-295

STATUTORY AUTHORITY: KRS 304.2-110, 304.9295

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 304.9-295 provides that the Commissioner of Insurance may, by administrative regulation, limit the number of excess continuing education credit hours accumulated during any continuing education biennium. This administrative regulation establishes procedures for approval of agent continuing education programs and obtaining credit for attending continuing education programs.

Section 1. Definitions. [~~For the purposes of this regulation:~~]

(1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance; and

(2) "Provider" means the sponsor of a continuing education program.

Section 2. Continuing Education Program Requirements. (1)(a) A continuing education program shall not qualify for use as continuing education credit unless it is filed with and approved by the commissioner. If the continuing education program is or will be advertised as having been approved by the commissioner, it shall be filed with the commissioner at least sixty (60) days in advance of advertising unless the commissioner, in his sole discretion, waives the sixty (60) day period.

(b) Any material change in a continuing education program previously filed with and approved by the commissioner shall not be implemented until filed with and approved by the commissioner.

(c) All applications for approval of a continuing education program shall be in the form prescribed by the commissioner and shall be accompanied by an initial fee of ten (10) dollars which is deemed earned when paid and is not refundable. After review and assignment of the number of credit hours, the commissioner shall notify the provider of the additional fee of five (5) dollars per credit hour due pursuant to 806 KAR 4:010. A continuing education program is not deemed approved until all fees are paid.

(d) In order to receive approval of the commissioner for continuing education credit pursuant to KRS 304.9-295, a continuing education program shall meet the requirements of this administrative regulation.

(2) Continuing education programs which qualify for approval for continuing education credit are those specified in KRS 304.9-295(4)(a).

(3) In order to obtain approval under subparagraphs 7, 8, and 9 of KRS 304.9-295(4)(a), a continuing education program shall meet the following requirements:

(a) The continuing education program shall contribute directly, at a professional level, to the competence of the agent or solicitor, by dealing with the following subjects:

1. Insurance, annuities and risk management;
2. Insurance laws and administrative regulations;
3. Mathematics, statistics, and probability;
4. Economics;
5. Business law;
6. Finance;
7. Taxes;
8. Business environment, management, or organization; or
9. Areas other than those listed above if the agent or solicitor can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this administrative regulation whether a particular subject qualifies under this paragraph rests within the sole discretion of the commissioner.

(b) However, continuing education programs on the following subjects shall not qualify for continuing education credit:

1. Any course used to prepare for taking an insurance agent or solicitor license examination;
2. Committee service of professional organizations;
3. Computer science courses;
4. Motivational or sales training courses; and
5. Any program not in accordance with this administrative regulation.

(c) Program development and presentation:

1. The continuing education program shall have substantial intellectual or practical content to enhance and improve the knowledge and professional competence of participants;
2. The program shall be developed by persons who are qualified in the subject matter and instructional design;
3. The program content shall be current;
4. Each program shall have a written outline and study materials or texts;
5. Instructors shall meet the requirements of subsection (6) of this section;
6. The number of participants and physical facilities shall be consistent with the teaching method specified; and
7. All programs shall include some means of evaluating quality.

(d) Continuing education programs filed for approval under this subsection shall include information showing that the instructors are qualified, through training or experience, to instruct the continuing education program competently. The commissioner may disapprove or withdraw approval of a continuing education program if an instructor does not meet the qualifications of this paragraph or has committed any of the acts prohibited by KRS 304.9-440.

(5) Correspondence courses shall be subject to the following:

(a) A correspondence course shall require successful completion

of a written examination;

(b) A specific correspondence course shall be used for continuing education credit only once every continuing education biennium;

(c) Agents and solicitors are limited to a maximum of twelve (12) credit hours for correspondence courses per continuing education biennium; and

(d) A correspondence course shall not be approved for continuing education credit of more than twelve (12) hours.

(6) The commissioner may withdraw approval of a continuing education program for any of the following reasons:

(a) The continuing education program teaching methods or program content no longer meet the requirements of KRS 304.9-295 or this administrative regulation or have been materially changed without filing with or approval by the commissioner;

(b) The continuing education program provider has certified to the commissioner that an agent or solicitor has satisfactorily completed the program when, in fact, the agent or solicitor has not done so;

(c) The continuing education program provider fails to certify to the commissioner that an agent or solicitor has satisfactorily completed the program when, in fact, the agent or solicitor has done so; or

(d) There is other good and just cause to withdraw approval of a continuing education program.

(7) Providers shall renew approval of continuing education programs at the end of each continuing education biennium. At least sixty (60) days prior to the end of each continuing education biennium, the commissioner shall mail or deliver to each provider renewal information. Providers shall file renewal information with and pay the renewal fee specified in 806 KAR 4:010 to the commissioner no later than the end of the continuing education biennium.

Section 3. Measurement of Credit. Continuing education programs shall be credited for continuing education purposes in full hours, as the commissioner deems appropriate. In order to have assigned to it one hour of continuing education credit, each hourly period of a continuing education program must include at least fifty (50) minutes of continuous instruction or participation. For the purposes of this section, a one day continuing education program shall be granted eight (8) hours credit if the total elapsed time is approximately eight (8) hours and the program includes at least 400 minutes of classroom instruction or participation.

Section 4. Proof of Completion. (1) Upon completion of a continuing education program, the provider shall certify to the commissioner the names of all agents or solicitors who satisfactorily completed the continuing education program. The certification of completion required by this section shall be in the form prescribed by the commissioner.

(2) The certificate of completion [~~attendance~~] shall be completed in triplicate for each agent or solicitor attending. The original shall be mailed by the provider to the department within thirty (30) days after the continuing education course is completed. The department shall accept only originals. The provider of the continuing education program shall furnish to the agent or solicitor attending the program a copy of the certificate and the agent or solicitor shall retain a copy of the certificate for at least three (3) years. The provider of the continuing education program shall retain a copy of the certificate for at least three (3) years. Providers of continuing education programs, agents, and solicitors, shall make available to the commissioner or his designee copies of certificates upon the request of the commissioner.

(3) Pursuant to KRS 304.9-295(8), every agent is responsible for insuring that his continuing education certificates of completion are timely filed with the department.

Section 5. Carry Forward of Excess Credit Hours. Agents or solicitors may carry forward credit hours in excess of twenty-four (24) hours from a previous continuing education biennium. The number of excess credit hours carried forward pursuant to this section shall be limited to twelve (12).

Section 6. Lists of Approved Continuing Education Programs. The commissioner shall provide, upon written request accompanied by a fee of five (5) dollars pursuant to 806 KAR 4:010, a list of all continuing education programs which the commissioner has approved and the providers of those programs.

Section 7. Cancellation and Reinstatement of Licenses. (1) If the department does not receive proof of the fulfillment of an agent's continuing education requirements on or before July 31 in even numbered years, the commissioner shall cancel the agent's license. The commissioner shall notify a licensee and the licensee's sponsoring agent or insurer of cancellation of license for failure to comply with continuing education requirements. The notice shall be in writing and mailed to the resident address of the licensee on file with the commissioner and if that notice is returned as undeliverable the notice shall be sent to the business address of the licensee on file with the commissioner. Notices to sponsoring agents and insurers shall be mailed to their mailing addresses on file with the commissioner.

(2) Reinstatement of prior license or issuance of a new license shall be granted only after the licensee has satisfied the continuing education requirement for which the licensee is delinquent, caused to be filed the appropriate certificate of completion, filed the required application or appointment for a license, and has paid the required licensing fees.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: March 14, 1995
FILED WITH LRC: March 21, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on May 22, 1995, at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on May 22, 1995, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: Carla H. Montgomery, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032 Ext. 239.

REGULATORY IMPACT ANALYSIS

Contact person: Carla H. Montgomery, Counsel

(1) Type and number of entities affected: Approximately 13,000 licensed insurance agents and solicitors.

(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: Agents are ultimately responsible for the that proof of their continuing education being filed with the department. The regulation clarifies this requirement but does not really increase the paperwork requirements.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The clarifications in the administrative regulation are designed to avoid cancellation of agents' licenses because their agents have not confirmed the filing of continuing education requirements with the department.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The same revenue that is currently enforcing this administrative regulation 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: The amendments clarify the agents' responsibility in providing to the department proof of completed continuing education. Many agents feel that it is solely the duty of the continuing education provider to send proof to the department. This administrative regulation clarifies that the responsibility is the agents as clearly intended by KRS 304.9-295(8). Any alternatives would negate the intent of KRS 304.9-295(8).

(8) Assessment of expected benefits: None

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: (Explain why tiering was or was not used) Continuing education is applied to all licensed insurance agents and solicitors with the exception of those persons listed in KRS 304.9-295(2).

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:058. Integrated resource planning by electric utilities.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3), 278.230(3)

NECESSITY AND FUNCTION: KRS 278.040(3) provides that the commission may adopt reasonable administrative regulations to implement the provisions of KRS Chapter 278. This administrative regulation prescribes rules for regular reporting and commission review of load forecasts and resource plans of the state's electric utilities to meet future demand with an adequate and [~~s for electricity, assure an adequate and~~] reliable supply of electricity at the lowest possible cost for all [~~electric utility~~] customers within their service areas, and satisfy all related state and federal [~~environmental and other~~] laws and regulations.

Section 1. General Provisions. (1) This administrative regulation shall apply to electric utilities under commission jurisdiction except a distribution company with less than $10,000,000 annual revenue or a distribution cooperative organized under KRS Chapter 279.

(2) Each electric utility shall file triennially [~~biennially~~] with the commission an integrated resource plan. The plan shall include [~~both~~] historical and projected demand, resource, and financial data, and other operating performance and system information, and shall discuss the [~~as well as a discussion of~~] facts, assumptions, and conclusions, upon which the plan is based and the actions it proposes. [~~in the plan. Specific filing requirements are stated below.~~]

(3) Each electric utility shall file ten (10) bound copies and one (1) unbound, reproducible copy of its integrated resource plan with the commission.

Section 2. Filing Schedule. [~~General Procedures for Filing and Distributing the Plan.~~] (1) Each electric utility shall file [~~ten (10) copies of~~] its [~~initial~~] integrated resource plan [~~with the commission~~] according to the following [~~filing~~] schedule:

(a) Within thirty (30) days of the effective date of this administrative regulation, the commission may institute a schedule which provides for the filing of integrated resource plans one (1) every six (6) months beginning nine (9) months from the effective date of this administrative regulation. The schedule may provide that at such time as all electric utilities have filed integrated resource plans, the sequence shall repeat. The schedule shall remain in effect until changed by the commission on its own motion or on motion of one (1) or more electric utilities for good cause shown. [~~270 days from the effective date of this administrative regulation, two (2) utilities shall file their integrated resource plans;~~]

(b) [~~300 days from the effective date of this administrative regulation, two (2) additional utilities shall file their integrated resource plans;~~

~~(c) 330 days from the effective date of this administrative regulation, the remaining utilities shall file their integrated resource plans;~~

~~(d)~~] If any [~~of these~~] filing date falls [~~s occur~~] on a weekend [~~day~~] or holiday, the plan shall be submitted on the first business day [~~workday~~] following the scheduled filing date.

[~~(e) Following discussions with each utility and not later than fifteen (15) days from the effective date of this administrative regulation, the commission will establish the order in which each utility will file its integrated resource plan in accordance with the schedule outlined in this subsection.~~

~~(2) Subsequent to its initial filing, each utility shall file ten (10) copies of its integrated resource plan on the second anniversary of its last filing.~~

~~(3) Immediately upon filing of the initial integrated resource plan, each utility shall provide notice to intervenors in its most recently completed general rate case proceeding, that its plan has been filed and is available from the utility upon request.~~]

(2) [~~(4)~~] Immediately upon filing of an[~~y subsequent~~] integrated resource plan, each utility shall provide notice to intervenors in its [~~the~~] last integrated resource plan review proceeding, that its plan has been filed and is available from the utility upon request.

(3) [~~(5)~~] Upon receipt of a utility's integrated resource plan, the commission shall establish a review schedule which may include interrogatories, comments, informal conferences, and staff reports.

Section 3. [~~Exemptions or~~] Waiver[~~s~~]. A utility may file a motion requesting a[~~n exemption from or~~] waiver of [~~requirements of~~] specific

provisions of this administrative regulation. Any [~~Such~~] request shall be made no later than ninety (90) days prior to the date established for filing the integrated resource plan. The commission shall rule on the request within thirty (30) days. The motion shall clearly identify the provision from which the utility [~~is~~] seeks a [~~ing exemption or~~] waiver and provide justification for the requested relief which [~~. The justification~~] shall include an estimate of costs and benefits of compliance with the specific provision. Notice [~~of motion requesting an exemption~~] shall be given in the manner provided in Section 2(2) [~~and (3)~~] of this administrative regulation.

Section 4. Format. (1) The integrated resource plan shall be clearly and concisely organized so that it is evident to the commission that the utility has complied with reporting requirements described in subsequent sections.

(2) Each plan filed shall identify the individuals responsible for its preparation, who [~~of the plan. These individuals~~] shall be available to respond to inquiries during the commission's review of the plan.

[~~(3) Utilities may make joint filings for all or part of the requirements of this administrative regulation. However, the information shall be stated separately for each utility as well as aggregated for joint filing, since the commission will review forecasts and plans for each electric utility individually.~~]

Section 5. Plan Summary. The plan shall contain a summary which discusses the utility's projected [~~outlook for~~] load growth and the resources planned to meet that growth. The summary shall include at a minimum:

(1) Description of the utility, its customers, service territory, current facilities, and planning objectives;

(2) Description of models, methods, data, and key assumptions used to develop [~~in developing~~] the results contained in the plan;

(3) Summary of forecasts of energy and peak demand, and key economic and demographic assumptions or projections underlying these forecasts;

(4) Summary of the utility's planned resource acquisitions including, but not limited to: improvements in operating efficiency of existing facilities, demand-side programs, nonutility sources of generation, new power plants, transmission improvements, bulk power purchases and sales, and interconnections [~~interchanges~~] with other utilities;

(5) Steps to be [~~being~~] taken during the next three (3) [~~two (2)~~] years to implement the plan;

(6) Discussion of key issues or uncertainties that could affect successful implementation of the plan.

Section 6. Significant Changes. All [~~Any~~] integrated resource plans, [~~subsequent to the initial plan,~~] shall have a summary of significant changes since [~~from~~] the [~~last~~] plan most recently filed. This summary shall describe, in narrative and tabular form, changes in load forecasts, resource plans, assumptions, or methodologies from the previous plan. Where appropriate, the utility may also use graphic[~~al~~] displays to illustrate changes.

Section 7. Load Forecasts. The plan shall include historical and forecasted information regarding loads.

(1) The information shall be provided for the total system [~~total~~] and, where available, disaggregated by the following customer classes:

(a) Residential heating;

(b) Residential nonheating;

(c) Total residential (total of paragraphs (a) and (b) of this subsection);

(d) Commercial;

(e) Industrial;

(f) Sales for resale;

(g) Utility use and other.

The utility shall also provide data at any greater level of disaggregation available.

(2) The utility shall provide the following historical information for the base year, which shall be [~~is~~] the most recent calendar year for which actual energy sales and system peak demand data are available, and the four (4) years preceding the base year:

[~~(3) The following historical information shall be provided:~~]

(a) Average annual number of customers by class as defined in subsection (1) of this section;

(b) Recorded and weather-normalized annual energy sales and generation for the system, and sales disaggregated by class as defined in subsection (1) of this section;

(c) Recorded and weather-normalized coincident peak demand in summer and winter for the system;

(d) Total energy sales and coincident peak demand to retail and wholesale customers for which the utility has firm, contractual commitments;

(e) Total energy sales and coincident peak demand to retail and wholesale customers for which service is provided under an interruptible or curtailable contract or tariff or under some other nonfirm basis;

(f) Annual energy losses [~~and estimated losses at time of summer and winter system peak demands~~] for the system;

(g) Identification and description of existing demand-side programs and an estimate of their impact [~~of existing demand-side programs~~] on utility sales and coincident peak demands including, but not limited to, utility or government sponsored conservation and load management programs;

(h) Any other data or exhibits, such as load duration curves or average energy usage per customer, which illustrate historical changes in load or load characteristics.

(3) [~~(4) The utility shall provide load forecast information~~] For each of the fifteen (15) years succeeding the base year, the utility shall provide [~~. For purposes of this section,~~] a base load forecast it considers [~~shall be required. The base forecast is the forecast considered~~] most likely to occur and, [~~.~~] to the extent available, [~~the utility also shall file information for~~] alternate forecasts representing lower and upper [~~boundaries for the~~] ranges of expected future growth of the load on its [~~the utility's~~] system. Forecasts shall not include load impacts of additional, future demand-side programs or [~~and~~] customer generation included as part of planned resource acquisitions [~~reported in Section 8 of this administrative regulation. Contributions of these programs and facilities to satisfy future customer demands for electricity shall be~~] estimated separately and reported in Section 8(4) of this administrative regulation. Forecasts shall include the utility's estimates of existing and continuing demand-side programs as described in subsection (5) of this section.

(4) [~~(5)~~] The following information shall be filed for each forecast:

(a) Annual energy sales and generation for the system and sales disaggregated by class as defined in subsection (1) of this section;

(b) Summer and winter coincident peak demand for the system;

(c) If available for the first two (2) years of the forecast, monthly forecasts of energy sales and generation for the system and disaggregated by class as defined in subsection (1) of this section and system peak demand;

(d) The impact of existing and continuing demand-side programs on both energy sales and system peak demands, including but not limited to, utility and government sponsored conservation and load management programs;

(e) Any other data or exhibits which illustrate projected changes in load or load characteristics.

(5) [~~(6) For a utility which is part of a multistate integrated utility system,~~] The additional following [~~historical~~] data shall be provided for the integrated system, when the utility is part of a multistate integrated utility system, and for the selling company, when the utility purchases fifty (50) percent of its energy from another company:

(a) For the base year and the four (4) years preceding the base year:

1. Recorded and weather normalized annual energy sales and generation; [for the integrated system; and]

2. [(b)] Recorded and weather-normalized coincident peak demand in summer and winter [for the integrated system].

(b) For each of the fifteen (15) years succeeding the base year:

1. Forecasted annual energy sales and generation;

2. Forecasted summer and winter coincident peak demand.

[(7) For a utility which is part of a multistate integrated utility system, the additional following forecast information shall be provided:

(a) Annual energy sales and generation for the integrated system; and

(b) Summer and winter coincident peak demand for the integrated system.

(8) For a utility which purchases fifty (50) percent or more of its energy needs from another company, the additional following historical data shall be provided:

(a) Recorded and weather normalized annual energy sales and generation of the company supplying energy needs; and

(b) Recorded and weather normalized coincident peak demand in summer and winter of the company supplying energy needs.

(9) For a utility which purchases fifty (50) percent or more of its energy needs from another company, the additional following forecast information shall be provided:

(a) Annual energy sales and generation of the utility supplying energy needs; and

(b) Summer and winter coincident peak demand of the utility supplying energy needs.]

(6) [(10)] A utility shall file all updates of load forecasts with the commission when they are adopted by the utility.

(7) [(11)] The plan shall include a complete description and discussion of: [methods, models, data, assumptions and judgments used in preparing load forecasts. Documentation shall be explicit, detailed, and complete. Detailed technical discussions, descriptions, and supporting documentation shall be contained in a technical appendix. The description and discussion shall include, but not be limited to:]

(a) All data sets used in producing the forecasts;

(b) Key assumptions and judgments used in producing forecasts and determining their reasonableness [of forecasts];

(c) The general methodological approach taken to load forecasting (for example, econometric, or structural)[,] and the model design, model specification, and estimation of key model parameters (for example [e.g.], price elasticities of demand or average energy usage per type of appliance);

(d) The utility's treatment and assessment of load forecast uncertainty;

(e) The extent to which the utility's load forecasting methods and models explicitly address and incorporate the following factors:

1. Changes in prices of electricity and prices of competing fuels;

2. Changes in population and economic conditions in the utility's service territory and general region;

3. Development and potential market penetration of new appliances, [and other] equipment, and technologies that use electricity or competing fuels; and

4. Continuation of existing company and government sponsored conservation and load management or other demand-side programs.

(f) Research and development efforts underway or planned to improve performance, efficiency, or capabilities of the utility's load forecasting methods; and

(g) Description of and schedule for efforts underway or planned to develop end-use load and market data for analyzing demand-side resource options including, but not limited to, load research and market research studies, customer appliance saturation studies, and conservation and load management program pilot or demonstration projects.

Technical discussions, descriptions, and supporting documentation shall be contained in a technical appendix.

Section 8. Resource Assessment and Acquisition Plan. (1) The plan shall include the utility's resource assessment and acquisition plan for providing [. This plan shall provide for] an adequate and reliable supply of electricity to meet forecasted electricity requirements at the lowest possible cost. The plan shall consider the potential impacts of selected, key uncertainties and shall include assessment of potentially cost-effective resource options available to the utility.

(2) The utility shall describe and discuss all options considered for inclusion in the [resource assessment and acquisition] plan including, but not limited to:

(a) Improvements to and more efficient utilization of existing utility generation, transmission, and distribution facilities;

(b) Conservation and load management or other demand-side programs not [beyond those] already in place;

(c) Expansion of generating facilities, including assessment of economic opportunities for coordination with other utilities in constructing and operating new units; and

(d) Assessment of nonutility generation, including generating capacity provided by cogeneration, technologies relying on renewable resources, and other nonutility sources.

(3) The following information regarding the utility's existing and planned resources shall be provided. A utility which operates as part of a multistate integrated system shall submit the following information for its operations within Kentucky and for the multistate utility system of which it is a part. A utility which purchases fifty (50) percent or more of its energy needs from another company shall submit the following information for its operations within Kentucky and for the company from which it purchases its energy needs.

(a) A map of existing and planned generating facilities, [and] transmission facilities with a voltage rating of sixty-nine (69) kilovolts or greater, indicating their type and capacity, and [. This map shall also indicate] locations and capacities of all interconnections with other utilities. [In addition,] The utility shall [provide] discuss[ion of] any known, significant [limiting] conditions which restrict transfer capabilities with other utilities.

(b) A list of all existing and planned electric generating facilities which the utility plans to have in service in the base year or during any of the fifteen (15) years of the forecast period, including for each facility: [. The utility shall provide a schedule including the following information for each existing and planned facility:]

1. Plant name;
2. Unit number(s);
3. Existing or proposed location;
4. Status (existing, planned, under construction, etc.);
5. Actual or projected commercial operation date;
6. Type of facility;
7. Net dependable capability, summer and winter;
8. Entitlement if jointly owned or unit purchase;
9. Primary and secondary fuel types, by unit [and as applicable];
10. Fuel storage capacity; [and]
11. Scheduled upgrades, deratings, and retirement dates; [.

(c) For each generating unit planned to be available during the base year or during any of the fifteen (15) years of the forecast period, the utility shall provide the following]

12. Actual and projected cost and operating information for the base year (for existing units) or first full year of operations (for new units) and the basis for projecting the information to each of the fifteen (15) forecast years (for example, cost escalation rates). All cost data shall be expressed in nominal and real base year dollars.

a. [1.] Capacity and availability factors;

b. [2.] Anticipated annual average heat rate;

c. [3.] Costs of fuel(s) per millions of British thermal units (MMBtu);

d. [4.] Estimate of capital costs for planned units (total and per kilowatt of rated capacity);

e. [5.] Variable and fixed operating and maintenance costs;

f. [6.] Capital and operating and maintenance cost escalation

factors;

g. [7.] Projected average variable and total electricity production costs (in cents per kilowatt-hour).

(c) [(d)] Description of [transactions for] purchases, sales, or exchanges of electricity during the base year [which currently exist] or which the utility expects to enter [into with other utilities during the base year or] during any of the fifteen (15) forecast years of the plan.

(d) [(e)] Description of existing and projected amounts of electric energy and generating capacity from cogeneration, self-generation, technologies relying on renewable resources, and other nonutility sources available for purchase by the utility during the base year or during any of the fifteen (15) forecast years of the plan.

(e) For each [(f) Information on] existing and new conservation and load management or other demand-side programs included in the plan[. For each program the utility shall identify]:

1. Targeted classes and [or] end-uses;

2. Expected duration [life] of the program;

3. Projected energy changes by season, and summer and winter peak demand changes;

4. Projected cost [of each program], including any incentive payments and program administrative costs; and

5. Projected cost savings, [of each program] including savings in utility's generation, transmission and distribution costs.

(4) The utility shall describe and discuss its resource assessment and acquisition plan which [. The plan] shall consist of resource options which produce adequate and reliable means to meet annual and seasonal peak demands and total energy requirements identified in [required by] the base load forecast at the lowest possible cost. The utility shall provide the following information for the base year and for each year covered by the forecast:

(a) [The utility shall provide the following information] On total resource capacity available at the winter and summer peak[, for the base year and for each year covered by the base forecast]:

1. Forecast peak load;

2. Capacity from existing resources before consideration of retirements;

3. Capacity from planned utility-owned generating plant capacity additions;

4. Capacity available from firm purchases from other utilities;

5. Capacity available from firm purchases from nonutility sources of generation;

6. Reductions or increases in peak demand from new conservation and load management or other demand-side programs [proposed in the plan];

7. Committed capacity sales to wholesale customers coincident with peak;

8. Planned retirements;

9. Reserve requirements;

10. Capacity excess or deficit;

11. Capacity or reserve margin.

(b) [The utility shall provide the following information] On planned annual generation [for the base year and for each year covered by the forecast]:

1. Total forecast firm energy requirements;

2. Energy from existing and planned utility generating resources disaggregated by primary fuel type;

3. Energy from firm purchases from other utilities;

4. Energy from firm purchases from nonutility sources of generation; and

5. Reductions or increases in energy from new conservation and load management or other demand-side programs [proposed in the plan];

(c) For each of the fifteen (15) years covered by the plan, the utility shall provide estimates of total energy input in primary fuels by fuel type and total generation by primary fuel type required to meet load. Primary fuels shall be organized by standard categories (coal, gas, etc.) and quantified on the basis of physical units (for example, barrels or tons) as well as in MMBtu.

(5) The resource assessment and acquisition plan shall include a description and discussion of [methods, models, data, assumptions and judgments used in preparing the resource assessment and acquisition plan. Detailed technical discussion, descriptions and supporting documentation shall be contained in a technical appendix. Description and discussion shall include, but not be limited to]:

(a) General methodological approach, models, data sets, and information used by the company;

(b) Key assumption and judgments used in the assessment and how uncertainties [y] in those assumptions and judgments were incorporated into analyses;

(c) Criteria (for example, present value of revenue requirements, capital requirements, environmental impacts, flexibility, diversity) used to screen each resource alternative including demand-side programs, and criteria used to select the final mix of resources presented in the acquisition plan;

(d) Criteria used in determining the appropriate level of reliability and the required reserve or capacity margin, and discussion of how these determinations have influenced selection of options; [and]

(e) Existing and projected research efforts and programs which are directed at developing data for future assessments and refinements of analyses;

(f) Actions to be undertaken during the fifteen (15) years covered by the plan to meet the requirements of the Clean Air Act amendments of 1990, and how these actions affect the utility's resource assessment; and

(g) Consideration given by the utility to market forces and competition in the development of the plan.

Technical discussion, descriptions and supporting documentation shall be contained in a technical appendix.

Section 9. Financial Information. The integrated resource plan shall, at a minimum, include and discuss the following financial information:

(1) Present (base year) value of revenue requirements stated in dollar terms;

(2) Discount rate used in present value calculations;

(3) Nominal and real revenue [value] requirements by year; and

(4) Average system rates (revenues per kilowatt hour) by year.

[Section 10. Report from the Statewide Perspective. (1) Upon receipt of all integrated resource plans for each filing year, the commission shall order preparation, either by commission staff or by a consultant, of a report which views the filings from the statewide perspective.

(2) The report shall compile and aggregate key information from the utility specific filings.

(3) The report shall be completed and distributed to all parties of record in each integrated resource planning proceeding within ninety (90) days of the date when all of the integrated resource plans have been filed.]

Section 10. [11.] Notice. Each utility which files an integrated resource plan shall publish, in a form prescribed by the commission, notice of its filing in a [the] newspaper of general [largest] circulation in the utility's service area [each county in which the utility currently provides service or anticipates to provide service during the period covered by the report]. The notice shall be published not more than thirty (30) days after the filing date of the report.

Section 11. [12.] Procedures for Review of the Integrated Resource Plan. (1) Upon receipt of a utility's integrated resource plan, the commission shall develop a procedural schedule which allows for submission of written interrogatories to the utility by staff and intervenors [interested parties], written comments by staff and intervenors, [interested parties] and responses to interrogatories and

comments by the utility.

(2) The commission may convene [a] conferences [~~following interrogatories and comments~~] to discuss the filed plan and all other matters relative to review of the plan.

(3) Based upon its review of a utility's plan and all related information, the commission staff shall issue a report summarizing its review and offering suggestions and recommendations to the utility for subsequent filings.

(4) A utility shall respond to the staff's comments and recommendations in its next integrated resource plan filing.

GEORGE EDWARD OVERBEY, JR., Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: April 6, 1995
FILED WITH LRC: April 12, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, May 26, 1995, at 9 a.m. in Hearing Room 1 of the commission's offices at 730 Schenkel Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Sunday, May 21, 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 attend the public hearing or written comments on the proposed administrative regulation to: Don Mills, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, (502) 564-3940.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don Mills, Executive Director

(1) Type and number of entities affected: The proposed amendments to this regulation affect six of the electric utilities under the jurisdiction of the Public Service Commission (PSC).

(a) Direct and indirect costs or savings to those affected: The proposed amendments will result in cost savings to the utilities. Under the existing regulation, utilities file an integrated resource plan (IRP) every two years. The amendments would require the utilities to file an IRP every three years. Furthermore, the proposed changes to the IRP filing schedule will allow PSC staff to review the plans without the regular assistance of outside consultants. This will result in a substantial cost savings for the utilities and ultimately for their ratepayers. For the review of the 1991 integrated resource plans, consultant fees amounted to approximately $449,000. For the review of the 1993 plans, consultant fees totaled approximately $290,000. These fees will be virtually eliminated under the proposed amendments. As with the original regulation, these amendments could result in significant indirect savings for the utilities, ratepayers, and ultimately the Commonwealth. The purpose of the regulation is to ensure an adequate and reliable supply of electricity at the lowest possible cost for all electric utility customers. The proposed amendments do not alter the original intent of the regulation.

1. First year: There will be no extraordinary costs during the first year of the amended regulation. The utilities have been filing IRPs since 1990 and have developed the models, procedures, and data bases used in preparing the plans. During the first year of the amended regulation only one utility will file an IRP. For that utility the normal costs of preparing the IRP will be incurred. No additional costs will required by these proposed amendments.

2. Continuing costs or savings: Costs associated with preparing and filing IRPs will not change as a result of the proposed amendments. However, as the proposed amendments require triennial IRP filings instead of biennial filings, the overall continuing costs for the utilities will be reduced.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Other than the cost savings described in parts (1)(a)1 and 2 above, no additional factors affecting costs are anticipated. Furthermore, none of the anticipated cost factors associated with this amended regulation are expected to competitively disadvantage the utilities. However, if such competitive effects do occur, the provisions of Section 3 of the regulation allow a utility to request a waiver of certain filing requirements.

(b) Reporting and paperwork requirements: The amended regulation requires a triennial filing of an integrated resource plan by each of the six large electric utilities. The amended filing schedule (from a biennial filing to a triennial filing) will significantly reduce the reporting and paperwork requirements of the regulation. The proposed amendments would add two additional reporting requirements to the regulation. One would require the utilities to discuss the utilities' plans to comply with the Clean Air Act amendments of 1990. The other would require the utilities to discuss the consideration given to competition and market forces in the development of their integrated resource plans. Neither of these two new reporting requirements are expected to add significantly to the paperwork requirements of the regulation.

(2) Effects on the promulgating administrative body: The triennial filings envisioned in the proposed regulation amendments are expected to improve the workload of the PSC staff. With the filings of integrated resource plans being staggered over six month periods, the PSC staff will have an opportunity to thoroughly and completely review one plan before another plan is filed. As a result, the PSC staff will be able to provide more helpful and timely information and assistance to the utilities regarding their long-range resource plans.

(a) Direct and indirect costs or savings: Since the filings made under this amended regulation are processed within the normal business activities of the PSC, there are no expected direct or indirect costs related to this regulation. However, as discussed in section (1)(a) above, the proposed amendments will enable the PSC staff to review the integrated resource plans without the regular assistance of outside consultants, resulting in a significant savings of amounts previously charged to the utilities.

1. First year: There is no fiscal impact on the PSC as discussed in section (2)(a) above.

2. Continuing costs or savings: There is no fiscal impact on the PSC.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: These proposed amendments will reduce the overall reporting and paperwork requirements of the PSC staff. The staff's statewide perspective report, is eliminated under the proposed amendments, resulting in fewer reporting requirements. The two new reporting requirements for utilities under the proposed amendments, as discussed in section (1)(b) above, will not create significant paperwork requirements for the staff.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated fiscal impact on state and local revenue as a result of these regulation amendments. These proposed amendments do not change the original intent or purpose of the integrated resource planning regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: In developing the proposed amendments, the PSC considered alternatives recommended by various parties during the February 23, 1995 public hearing on the PSC's Notice of Intent to amend 807 KAR 5:058. As described fully in the PSC's Statement of Consideration relating to comments made at that hearing, filed with the Legislative Research Commission on April 6, 1995, the PSC amended Sections 8(5) and 10 of the regulation as a result of comments received from various parties. Other recommendations were not accepted for reasons expressed in that Statement of

Consideration. The PSC has determined that the proposed amendments are reasonable and will satisfy the original purpose of the regulation while allowing a more detailed and thorough review of the individual integrated resource plans.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This proposed amended regulation does not conflict with, nor does it overlap or duplicate, any current statute, administrative regulation, or government policy.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: No additional comments.

TIERING: Was tiering applied? Yes. This proposed amended regulation applied to only six of the twenty-nine electric utilities under the jurisdiction of the PSC. Five of these utilities are involved in the generation and transmission of electricity in the Commonwealth. The sixth utility is the Kentucky subsidiary of an Ohio generating electric utility. Furthermore, this regulation prescribes an integrated resource planning process for select electric utilities, and not for the gas, telephone, water, or sewer utilities that also come under the jurisdiction of the PSC.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:015. Supplemental programs for persons who are [~~the~~] aged, blind, or have a disability [~~and disabled~~].

RELATES TO: KRS 205.245, 20 CFR 416.2095, 20 CFR 416.2096

STATUTORY AUTHORITY: KRS 194.050, 205.245, 42 USC 1382e-g

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled[~~, referred to as~~] (AABD), disadvantaged by the implementation of the Supplemental Security Income Program (SSI). KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have a disability [~~and disabled persons~~]. The cabinet shall operate a supplement program for certified personal care homes (PCH) which accept state supplementation recipients and have a thirty-five (35) percent of the residents in the PCH's occupied licensed personal care beds who have a diagnosis of mental illness [~~mentally ill~~] or mental retardation [~~mentally retarded~~] (MI or MR) [~~population in all of the PCH's occupied licensed personal care beds. Personal care services are described in 902 KAR 20:036~~]. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the SSI payment and other income for the current month.

(2) Recipients include former AABD [~~aged, blind or disabled~~] recipients who became ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973.

(3) Mandatory payments shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December, 1973 level.

(4) The mandatory payment is increased only:

(a) When income as recognized in December, 1973, decreases;

(b) The SSI payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In cases of a husband and wife living together, income changes after September, 1974, will result in an increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. (1) Optional state supplementation is available to a person who:

(a) Except as specified in Sections 4, 5, and 6 of this administrative regulation, meets technical requirements and resource limitations of the [~~aged, blind or disabled~~] medically needy program for persons who are aged, blind, or have a disability as contained in 907 KAR 1:011 and 907 KAR 1:004; and

(b) Requires special living arrangements; and

(c) Has insufficient income to meet their need for care.

(2) Special living arrangements include:

(a) Residence in a personal care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) Situations in which a caretaker must be hired to provide care other than room and board.

(3) Each person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) If a Social Security number has not been issued, apply for a Social Security number.

(4) If potential eligibility exists for SSI, application for SSI shall be mandatory.

Section 3. Eligibility for Caretaker Services. (1) Services by a caretaker shall be made to enable the [~~ill or infirm~~] individual with an illness or infirmity to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Services by a caretaker shall be made at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:

(a) The client is taken daily or periodically to the home of the caretaker; or

(b) The caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult [~~disabled~~] child who has a disability or a minor child; or

3. Adult child of a[~~n aged or disabled~~] parent who is aged, blind or has a disability.

(4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish:

(a) How often the service is provided;

(b) The service prevents institutionalization; and
(c) Payment is made for the service.

Section 4. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:004.

(2) The individual or couple is not eligible if countable resources exceed the limit of:
(a) $2000 for individual; or
(b) $3000 for couple.

Section 5. Income Considerations. (1) Except as noted in subsections (2) through (9) of this section, income and earned income deductions are considered according to policies for the medically needy in 907 KAR 1:004.

(2) The optional supplementation payment is determined by adding:
(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and
(b) Except for payments for medical insurance or medical care and services, payments made to a third party in behalf of an applicant or recipient; and
(c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 6 of this administrative regulation.

(3) Income of the ineligible spouse is:
(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:
1. Himself; and
2. Each minor dependent child.

(4) Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children.

(5) Income of the child shall be considered when conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) shall be conserved for the spouse.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(9) The SSI twenty (20) dollars general exclusion is not an allowable deduction from income.

Section 6. Standard of Need. (1) The standard shall be based on living arrangement as follows:

(a) For an eligibility determination for a resident of a personal care home made on or after January 1, 1995, $792 [~~1994, $780~~];

(b) For an eligibility determination for a resident of a family care home made on or after January 1, 1995, $597 [~~1994, $585~~];

(c) Caretaker.

1. For an eligibility determination for a single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability [~~disabled~~] made on or after January 1, 1995, $491 [~~1994, $479~~];

2. For an eligibility determination for an eligible couple, both aged, blind, or have a disability [~~disabled~~] and one (1) requiring care made on or after January 1, 1995, $715 [~~1994, $697~~];

3. For an eligibility determination for an eligible couple, both aged, blind or have a disability [~~disabled~~] and both requiring care made on or after January 1, 1995, $759 [~~1994, $741~~].

(2) In couple cases, when both are eligible, the couple's income is combined prior to comparison with the standard of need. One-half (1/2) of the deficit is payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance which shall be retained by the client.

Section 7. Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

(a) Admitted to:
1. A hospital;
2. A psychiatric hospital;
3. A nursing facility; and

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives SSI.

(2) If discharged in the month following the last month of continued benefits, the temporary absence continues through the date of discharge.

Section 8. Citizenship requirements. An applicant or recipient shall be:

(1) A citizen of the United States; or

(2) An alien legally admitted to this country for permanent residence; or

(3) An alien who is residing in this country under color of law.

Section 9. Residence Requirements. (1) The applicant or recipient shall be a resident of Kentucky.

(2) Supplemental payments may be made to Kentucky residents residing outside the state if:

(a) The individual has been placed in the other state by this state.

(b) Except with regard to the requirement shown in Section 7 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(c) For out-of-state placements, the licensure shall be in accordance with a similar licensure act of the other state.

(d) If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(e) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;

2. There shall be no suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Social Insurance.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

(a) Is age twenty-one (21) and over;

(b) Is 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.

(5) The applicant or recipient residing in a personal care home is considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) Is judged legally incompetent; or

(c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

(a) Under age twenty-one (21);

(b) Eligible for a supplemental payment based on blindness or disability; and

(c) Residing in the state; or

(d) An individual age twenty-one (21) or over and incapable of indicating intent, is simply residing in the state.

(7) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

(a) Parents; or

(b) If one has been appointed, his legal guardian; or

(c) Parent applying for the supplemental payment on behalf of the individual if:

1. The other parent lives in another state; and

2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

(a) He was living in Kentucky when he became incapable of indicating intent; or

(b) If this cannot be determined, the state of residence shall be Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For an individual subject to a determination of residency according to subsections (7) and (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status.

(10) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

(a) He returns to Kentucky; and

(b) He has a guardian, parent or spouse residing in Kentucky.

Section 10. Persons with Mental Illness or Mental Retardation (MI or MR) [~~Mentally Ill or Mentally Retarded~~] Supplement. Certified PCH may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The PCH shall meet the following criteria to qualify for a supplementation payment:

(1) The PCH shall be licensed in accordance with KRS 216B.010 to 216B.131; and

(2) The PCH shall care for residents who have:

(a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

(b) A primary or secondary diagnosis of mental illness excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's; or

(c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The PCH shall care for a thirty-five (35) MI or MR percent population in all of its occupied licensed PCH beds.

(4) The PCH shall not be eligible for payments during the time it has a conditional rating by the Office of Inspector General. Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The PCH shall have a licensed nurse or an individual who has received and successfully completed certified medication technician (CMT) training on duty for at least four (4) hours during the first or second shift each day. The PCH may not decrease staffing hours of the licensed nurse or individual who has successfully completed CMT training in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance (DSI) by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application shall not be required.

(c) The PCH shall provide DSI with its tax identification number and address as part of the application process.

(7) The PCH shall provide DSI with a monthly report.

(a) The report shall list:

1. All residents of the PCH who were residents on the first day of the month; and

2. The residents' Social Security numbers.

(b) In order to maintain confidentiality, the PCH shall annotate the monthly report as follows:

1. A star shall indicate a resident has a MI or MR diagnosis.

2. A check mark shall indicate a resident receives state supplementation.

3. A star and a check mark shall indicate the resident has a [~~is both~~] MI or MR diagnosis and is a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;

2. Payment; and

3. Audit purposes.

(d) The monthly report shall be postmarked to DSI by the fifth working day of the month.

(8) The PCH shall notify DSI if its MI or MR percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 11. Training. (1) The PCH licensed nurse or individual who has successfully completed CMT training shall attend MI or MR basic training workshop provided through the Department for Mental Health and Mental Retardation Services. Other staff may attend the basic training workshop [~~be trained~~] in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) MI or MR basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions with special attention to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, or mental retardation.

(e) Guidance in the area of supervision versus patient rights for the MI or MR population.

(f) Instruction in providing necessary activities to meet the needs of [~~mentally ill or mentally retarded~~] residents who have a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall include the licensed nurse or the individual who has successfully completed CMT training and may

include the owner or operator. These individuals shall be trained in the quarter during which the application is filed.

(4) To assure that a [~~certified~~] staff member who has received basic training is always employed at the facility, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed CMT training and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule.

(b) The PCH shall have on staff a licensed nurse or individual who has successfully completed CMT training who:

1. Has received the MI or MR basic training; or

2. Is enrolled in the next scheduled MI or MR basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for PCH's.

(a) Advanced level training shall be provided through one (1) day workshops.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with residents who have a diagnosis of mental illness or mental retardation.

(d) Attendance of advanced level training workshops shall be optional for MI or MR Supplement participants.

(6) [~~(5)~~] The Department for Mental Health and Mental Retardation Services will provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to DSI of staff who completed the training workshop.

(7) [~~(6)~~] DSI shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a PCH who has applied for the MI or MR program.

Section 12. MI or MR Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the PCH to certify eligibility to participate in the MI or MR supplement:

(a) The PCH's initial MI or MR certification may be separate from the annual survey;

(b) The initial MI or MR certification shall be in effect until the next licensure survey that can be greater than or less than twelve (12) months;

(c) PCH's annual MI or MR recertification may be completed during the annual licensure survey;

(d) DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the PCH to verify staff attended basic training provided by the Department for Mental Health and Mental Retardation Services.

(b) The PCH's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the MI or MR basic training workshop. The PCH shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity that may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed CMT training demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall review the PCH copy of the training certification prior to performing their record review during the MI or MR certification process.

(4) If thirty-five (35) percent MI or MR population is met on the day of the visit, the PCH shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The PCH is responsible for notifying DSI, within ten (10) working days, if the MI or MR population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to DSI monthly identifying certified PCH eligible for MI or MR supplement. This information shall be provided by the fifth working day of each month for the prior month.

(6) The Office of Inspector General, Division of Licensing and Regulation, shall inform DSI monthly of PCH which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 13. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: April 14, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected:

(a) There are 6,150 recipients of state supplementation benefits who will be affected by the increase in the state supplementation standards due to the mandated cost of living adjustment.

(b) There are currently 51 participants of the MI or MR supplement program. The participating personal care homes will not be adversely affected by adding the advanced level training workshops since the training is optional. Staff of personal care homes participating in the MI or MR supplement program who attend the advanced level training workshops will be included in the current maximum of 5 staff per year for the $25 reimbursement.

(c) The amendment to implement appropriate language as required by the Americans with Disabilities Act (ADA) does not change existing policy for the state supplementation program. There is no fiscal impact to recipients or the agency as a result of the wording changes.

(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: The public hearing for the notice of intent, scheduled for March 31, 1995, was cancelled. No public comments were received regarding the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: The public hearing for the notice of intent, scheduled for March 31, 1995, was cancelled. No public comments were received regarding the cost of living and employment.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

(a) For increases in the state supplementation standards:

1. First year following implementation:

(a) The standards for state supplementation recipients increase by $12 for recipients in personal care homes and family care homes.

(b) The standards for state supplementation for recipients of caretaker services increase by: Single individual or individual with spouse - $12; Couple (one or both requiring care) - $18.

2. Second and subsequent years: Same as first year.

(b) For training reimbursements for MI or MR supplement participants:

1. First year following implementation: $25 per staff up to 5 staff per fiscal year per personal care home participating in MI or MR supplement program who attend the advanced level or basic training workshops.

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: $300,000.00, already anticipated in the state budget.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: The public hearing for the notice of intent, scheduled for March 31, 1995, was cancelled. No public comments were received regarding the cost of living and employment.

(b) Kentucky: The public hearing for the notice of intent, scheduled for March 31, 1995, was cancelled. No public comments were received regarding the cost of living and employment.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since State Supplementation pass through provisions are set forth through an agreement with the Department of Health and Human Services.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: Since 1977 the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass through cost of living SSI benefit increases to state supplementation recipients.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through an agreement with the Department of Health and Human Services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095 and 416.2096.

2. State compliance standards. This amended administrative regulation included the 1995 cost of living increases to place Kentucky in compliance with federal SSI guideline.

3. Minimum or uniform standards contained in the federal mandate. Maintain state supplementation payment and pass-along cost of living increases.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:017. Job opportunities and basic skills (JOBS) child care and supportive services.

RELATES TO: KRS 205.200(2), 205.211, 45 CFR 250.0, 250.1, 250.11, 250.12, 250.48, 255.0, 255.2, 255.3, 255.4, 255.5, 255.6

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) requires that the conditions of eligibility to receive AFDC money grants be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the requirements for receiving job opportunities and basic skills (JOBS) child care and supportive services.

Section 1. Definitions. (1) "Approved JOBS activities" means participation in component, precomponent, component preparation, preemployment, transitional extension or self-initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.

(2) "Center-based child care" means full- or part-time:

(a) Type I nonresidential licensed care, day or night, provided for seven (7) or more unrelated children; or

(b) Residential care, day or night, provided for thirteen (13) or more unrelated children.

(3) "Certified child care" means child care which is provided in a private home, day or night, for six (6) or fewer unrelated children and the provider is registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:100.

(4) "Combination programs" means any educational program which includes as its basis literacy, ABE or GED. This program shall also include life skills, skills training or job readiness training.

(5) "Component" means services and activities such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, alternative work experience program, other work experience program or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) Program. Each individual component is described in 904 KAR 2:370.

(6) "Component preparation" means the period in which assess-

ment, testing, development of the employability plan and referrals for removal of barriers takes place.

(7) "Family child care" means:

(a) Child care homes which are mandatorily certified to provide care for four (4) to six (6) unrelated children or voluntarily certified to care for three (3) or fewer unrelated children who are subject to health and safety requirements of 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children. [~~care provided for no more than three (3) unrelated children. These homes are unregulated and exclude group home child care providers that may be voluntary certified.~~]

(8) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(9) "Group home child care" means Type II residential licensed care, day or night, provided for seven (7) to twelve (12) unrelated children. [~~child care homes which are mandatorily certified to provide care for four (4) to six (6) unrelated children or voluntarily certified to care for three (3) or fewer unrelated children. Mandatory and voluntary certified providers are subject to the health and safety requirements of 905 KAR 2:100.~~]

(10) "In-home child care" means care provided to a child in his or her own home.

(11) "Licensed child care providers" means day care facilities which provide care for seven (7) or more unrelated children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:090.

(12) "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.

(13) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(14) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(15) "Recoupment" means recovery of overpayments of child care.

(16) "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:370.

(17) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the AFDC case in which supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The JOBS participant elects to continue the approved component activity in which she is engaged at the time of discontinuance.

(18) "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed.

Section 2. Payment Entitlement. (1) With the exception of payments described in Sections 8 and 12 of this administrative regulation those individuals participating in the JOBS Program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

(c) Other supportive services costs necessary for participation in an approved JOBS activity, as described in Section 12 of this administrative regulation.

(2) JOBS activities are described in 904 KAR 2:370.

Section 3. Child Care Eligibility in JOBS Components. (1) Child care shall be paid for a child meeting the following criteria:

(a) The child is under thirteen (13); or

(b) A dependent child who is physically or mentally incapable of caring for himself, as verified by the written determination of:

1. A physician; or

2. A licensed or certified psychologist; or

(c) A needy dependent child under court supervision; or

(d) Would be a dependent child except for the receipt of benefits under supplemental security income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(2) Child care shall be provided in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment; or

(e) On-the-job training (OJT) participants discontinued from AFDC, until the end of the component placement.

Section 4. Child Care Eligibility in Self-initiated Activities. (1) Child care shall be provided in the same situations as in JOBS components with the following exceptions:

(a) Discontinued OJT participants;

(b) Component preparation; and

(c) Precomponent, for persons waiting to enter self-initiated activities for the first time.

(2) Child care shall be provided only for approved self-initiated activities.

Section 5. Child Care Limitations. (1) Child care payments shall:

(a) Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates for components which do not provide earned income.

(b) Be allowed as a deduction as outlined in administrative regulation 904 KAR 2:016 for any component yielding earned income.

(2) Payments shall not be made to a provider if the provider is:

(a) The parent or stepparent;

(b) The legal guardian;

(c) A member of the AFDC assistance unit which includes the child needing care;

(d) Not meeting applicable standards of state and local law; or

(e) Not allowing parental access.

(3) Local market rates shall be determined by:

(a) The type of provider;

(b) The age of the child;

(c) The special needs of the child. Special needs shall be verified by:

1. Entitlement to disability benefits; or

2. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

(d) The amount of time care is needed; and

(e) The geographical boundaries of the fifteen (15) area development districts.

(4) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.

(5) FT and PT daily maximum payment levels and PT monthly maximum payment levels shall be established for the following groups of dependent children:

(a) "Special needs" includes children in no certain age group;

(b) "Infants" includes children under age one (1);

(c) "Toddlers" includes children from age one (1) up to age three (3);

(d) "Preschool" includes children from age three (3) up to age six (6);

(e) "School age" includes children age six (6) and over.

(6) For needs incurred on or after January 1, 1995 [~~April 1, 1992~~], child care maximum payments shall be made as follows:

WESTERN REGION
URBAN COUNTIES
COUNTY NAMES: MCCRACKEN
PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$12	16	260	13	16	282	12	16	260	12	14	260	12	9	260
Group Home	$13	13	282	12	12	260	11	11	238	11	10	238	11	10	238
Family/In-Home	$10	16	217	11	16	238	11	16	238	11	16	238	11	16	238

WESTERN REGION
RURAL COUNTIES
COUNTY NAMES: BALLARD, CALLOWAY, CARLISLE, FULTON, GRAVES, HICKMAN, MARSHALL
PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$12	16	260	13	16	282	13	16	282	13	14	282	12	9	260
Group Home	$13	13	282	13	13	282	13	13	282	13	13	282	13	13	282
Family/In-Home	$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

WESTERN REGION
URBAN COUNTIES
COUNTY NAMES: CHRISTIAN
PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$12	16	260	13	16	282	12	16	260	12	14	260	11	8	238
Group Home	$13	13	282	12	12	260	11	11	238	10	10	217	10	10	217
Family/In-Home	$10	16	217	11	16	238	11	16	238	11	16	238	11	16	238

WESTERN REGION
RURAL COUNTIES
COUNTY NAMES: CALDWELL, CRITTENDEN, HOPKINS, LIVINGSTON, LYON, MUHLENBURG, TODD, TRIGG
PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$12	16	260	13	16	282	13	16	282	13	14	282	12	8	260
Group Home	$13	13	282	13	13	282	11	13	238	13	13	282	13	13	282
Family/In-Home	$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

WESTERN REGION
URBAN COUNTIES
COUNTY NAMES: DAVIESS, HENDERSON
GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	16	282	13	16	282	13	14	282	13	10	282
Group Home	$13	13	282	12	12	260	12	11	260	12	10	260	12	10	260
Family/In-Home	$11	16	238	11	16	238	11	16	238	11	16	238	11	16	238

WESTERN REGION
RURAL COUNTIES
COUNTY NAMES: HANCOCK, MCLEAN, OHIO, UNION, WEBSTER
GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs	PT	Infants	PT	Toddlers	PT	Pre-School	PT	School-Age	PT

	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	16	282	13	16	282	13	14	282	13	10	282
Group Home	$13	13	282	13	13	282	13	13	282	13	13	282	13	13	282
Family/In-Home	$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

WESTERN REGION
RURAL COUNTIES
COUNTY NAMES: ALLEN, BARREN, BUTLER, EDMONSON, HART, LOGAN, METCALFE, MONROE, SIMPSON, WARREN
BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	16	282	13	16	282	13	14	282	12	8	260
Group Home	$13	13	282	13	13	282	13	13	282	13	13	282	13	13	282
Family/In-Home	$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

WESTERN REGION
RURAL COUNTIES
COUNTY NAMES: BRECKINRIDGE, GRAYSON, HARDIN, LARUE, MARION, MEADE, NELSON, WASHINGTON
LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$12	16	260	13	16	282	13	16	282	13	14	282	12	8	260
Group Home	$13	13	282	13	13	282	13	13	282	13	13	282	13	13	282
Family/In-Home	$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

CENTRAL REGION
URBAN COUNTIES
COUNTY NAMES: BULLITT, JEFFERSON, OLDHAM, SHELBY
KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$15	15	325	15	12	325	15	14	325	14	15	303	12	16	260
Group Home	$14	14	303	14	11	303	14	11	303	13	10	282	11	8	238
Family/In-Home	$15	13	325	13	12	282	13	12	282	12	12	260	10	12	217

CENTRAL REGION
RURAL COUNTIES
COUNTY NAMES: HENRY, SPENCER, TRIMBLE
KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$15	15	325	16	12	347	16	14	347	15	15	325	14	16	303
Group Home	$14	14	303	15	15	325	15	15	325	15	10	325	13	8	282
Family/In-Home	$15	13	325	15	12	325	15	12	325	15	12	325	15	12	325

CENTRAL REGION
URBAN COUNTIES
COUNTY NAMES: BOONE, CAMPBELL, KENTON
NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$16	16	347	16	13	347	14	14	303	14	15	303	13	16	282
Group Home	$15	15	325	15	12	325	13	11	282	13	10	282	12	9	260
Family/In-Home	$15	14	325	14	12	303	12	12	260	12	12	260	11	12	238

CENTRAL REGION
RURAL COUNTIES

COUNTY NAMES: CARROLL, GALLATIN, GRANT, OWEN, PENDLETON
NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$16	16	347	16	13	347	16	14	347	15	15	325	14	16	303
Group Home	$15	15	325	15	15	325	15	15	325	15	10	325	13	9	282
Family/In-Home	$15	14	325	15	12	325	15	12	325	15	12	325	15	12	325

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: BRACKEN, FLEMING, LEWIS, MASON, ROBERTSON
BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	$12	11	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	$10	10	217	11	9	238	11	6	238	15	10	325	12	10	260

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: BATH, MENIFEE, MONTGOMERY, MORGAN, ROWAN
GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	$12	10	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	$10	9	217	11	9	238	11	6	238	15	10	325	12	10	260

EASTERN REGION
URBAN COUNTIES
COUNTY NAMES: BOYD, CARTER, GREENUP
FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$14	16	303	14	12	303	13	12	282	13	12	282	13	14	282
Group Home	$13	13	282	13	12	282	12	10	260	12	10	260	12	10	260
Family/In-Home	$12	12	260	12	9	260	11	8	238	11	10	238	11	10	238

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: ELLIOTT, LAWRENCE
FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$14	16	303	14	12	303	13	12	282	13	12	282	13	14	282
Group Home	$13	13	282	13	12	282	12	10	260	12	10	260	12	10	260
Family/In-Home	$12	12	260	12	9	260	11	8	238	15	10	325	12	10	260

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: FLOYD, JOHNSON, MAGOFFIN, MARTIN, PIKE
BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282

Group Home	$12	11	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-home	$10	10	217	11	9	238	11	7	238	15	10	325	12	10	260

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: BREATHITT, KNOTT, LEE, LESLIE, LETCHER, OWSLEY, PERRY, WOLFE
KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	$12	12	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	$11	11	238	11	9	238	11	8	238	15	10	325	12	10	260

EASTERN REGION
RURAL COUNTIES
COUNTY NAMES: BELL, CLAY, HARLAN, JACKSON, KNOX, LAUREL, ROCKCASTLE, WHITLEY
CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	$12	10	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	$10	9	217	11	9	238	11	6	238	15	10	325	12	10	260

CENTRAL REGION
RURAL COUNTIES
COUNTY NAMES: ADAIR, CASEY, CLINTON, CUMBERLAND, GREEN, MCCREARY, PULASKI, RUSSELL, TAYLOR, WAYNE
LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$14	11	303	16	8	347	16	14	347	15	13	325	14	16	303
Group Home	$14	14	303	15	15	325	15	15	325	15	8	325	13	8	282
Family/In-Home	$15	12	325	15	12	325	15	12	325	15	12	325	15	12	325

CENTRAL REGION
URBAN COUNTIES
COUNTY NAMES: BOURBON, CLARK, FAYETTE, FRANKLIN, JESSAMINE, MADISON, SCOTT, WOODFORD
BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$14	14	303	14	11	303	13	14	282	13	14	282	13	16	282
Group Home	$14	14	303	13	11	282	12	11	260	12	9	260	12	9	260
Family/In-Home	$15	12	325	13	12	282	11	12	238	11	12	238	11	12	238

CENTRAL REGION
RURAL COUNTIES
COUNTY NAMES: ANDERSON, BOYLE, ESTILL, GARRARD, HARRISON, LINCOLN, MERCER, NICHOLAS, POWELL
BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		PT	Infants		PT	Toddlers		PT	Pre-School		PT	School-Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	$14	14	303	16	11	347	16	14	347	15	14	325	14	16	303
Group Home	$14	14	303	15	15	325	15	15	325	15	9	325	13	9	282
Family/In-Home	$15	12	325	15	12	325	12	12	260	15	12	325	15	12	325

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	12	9	12	9	12	9
Group Home	$11	11	11	8	11	8	11	8	11	8
Family/ In Home	$10	10	10	7	10	7	10	7	10	7

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	10	7	10	7	10	7
Group Home	$10	10	10	7	9	6	9	6	9	6
Family/ In Home	$9	9	9	6	8	5	8	5	8	5

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	13	10	13	10	13	10
Group Home	$12	12	12	9	12	9	12	9	12	9
Family/ In Home	$11	11	11	8	11	8	11	8	11	8

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	11	8	11	8	11	8
Group Home	$12	12	12	9	10	7	10	7	10	7
Family/ In Home	$11	11	11	8	9	6	9	6	9	6

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	10	7	10	7	10	7
Group Home	$10	10	10	7	9	6	9	6	9	6
Family/ In Home	$9	9	9	6	8	5	8	5	8	5

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$15	15	15	12	15	12	14	11	12	9
Group Home	$14	14	14	11	14	11	13	10	11	8
Family/ In Home	$13	13	13	10	13	10	12	9	10	7

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$16	16	16	13	14	11	14	11	13	10
Group Home	$15	15	15	12	13	10	13	10	12	9
Family/ In Home	$14	14	14	11	12	9	12	9	11	8

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	11	8	9	6	9	6
Group Home	$11	11	11	8	10	7	8	5	8	5
Family/ In Home	$10	10	10	7	9	6	7	4	7	4

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	9	6	9	6	9	6	9	6
Group Home	$10	10	8	5	8	5	8	5	8	5
Family/ In Home	$9	9	7	4	7	4	7	4	7	4

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$14	14	14	11	13	10	13	10	13	10
Group Home	$13	13	13	10	12	9	12	9	12	9
Family/ In Home	$12	12	12	9	11	8	11	8	11	8

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	12	9	12	9	12	9
Group Home	$11	11	11	8	11	8	11	8	11	8
Family/										

In home	$10	10	10	7	10	7	10	7	10	7

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	13	10	11	8	11	8
Group Home	$12	12	12	9	12	9	10	7	10	7
Family/ In Home	$11	11	11	8	11	8	9	6	9	6

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	11	8	11	8	11	8
Group Home	$10	10	10	7	10	7	10	7	10	7
Family/ In Home	$9	9	9	6	9	6	9	6	9	6

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	10	7	10	7	10	7	10	7
Group Home	$10	10	9	6	9	6	9	6	9	6
Family/ In Home	$9	9	8	5	8	5	8	5	8	5

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$14	14	14	11	13	10	13	10	13	10
Group Home	$13	13	13	10	12	9	12	9	12	9
Family/ In Home	$12	12	12	9	11	8	11	8	11	8]

(7) Child care payments shall be limited as follows:

(a) Six (6) semesters (three (3) years) for a two (2) year postsecondary program;

(b) Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program with an additional semester when:

1. If only one (1) additional semester is needed to complete the degree requirements; and

2. If satisfactory progress is being made;

(c) No restrictions on other education and training activities.

(8) These limits apply to both full-time and part-time enrollment.

(9) In preemployment or precomponent, if necessary to guarantee that the child care arrangement shall not be lost, child care payments shall be provided for a period of:

(a) Up to two (2) weeks prior to the scheduled start of employment or component activity; and

(b) Up to one (1) month during a break in employment or component activity if subsequent employment or component activity is scheduled to begin within that period.

(10) Child care payments shall not be made if:

(a) If only one (1) parent is participating; and

(b) The nonparticipating parent is not incapacitated.

(c) The nonparticipating parent is employed and child care is allowed as a deduction as outlined in administrative regulation 904 KAR 2:016.

(11) When child care expenses are paid from another source the agency shall pay:

(a) Only the difference between the total child care and what the other source is paying; and

(b) Up to the maximum daily payment rate per child per provider.

Section 6. Authorization of Child Care Payment. (1) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(2) Departmental forms required for verification are incorporated by reference in this administrative regulation.

(3) Payments shall be authorized in accordance with 904 KAR 2:050.

Section 7. Restrictions on Authorization of Child Care Payments. Payment shall not be made if:

(1) Verification is not returned by the end of the month following the month in which the cost was incurred;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 8. Transportation Payments in JOBS components. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation;

(3) Component participation, with the exception of OJT while the AFDC case remains active;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from AFDC, until the end of the component placement.

Section 9. Transportation Payments in Self-initiated Activities. (1) Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

(a) Transitional extension;

(b) OJT participants discontinued due to increased earnings or hours of employment;

(c) Component preparation; and

(d) Precomponent, for persons waiting to enter self-initiated activities for the first time.

(2) Reimbursement shall be paid only for approved self-initiated activities.

Section 10. Transportation Payment Amount and Authorization. (1) Transportation shall be provided for individuals participating in approved JOBS activities through:

(a) Arrangement by the state AFDC agency or contractor; and

(b) Direct payments to the individual of three (3) dollars per day after receipt of appropriate verification through departmental forms or through the JOBS Automated System (JAS). Payments shall be made as specified in 904 KAR 2:050. [A standard rate of three (3) dollars per day shall be paid for individuals participating in approved JOBS activities.

(2) Transportation reimbursement shall be made after receipt of appropriate verification through departmental forms or through the JOBS automated system. Payments shall be made as specified in 904 KAR 2:050.]

(2) [(3)] Transportation payments shall be limited in the same

manner as child care payments, as described in Section 5(7) of this administrative regulation.

(3) [~~(4)~~] In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, transportation payments shall be provided for the period of:

(a) Up to two (2) weeks prior to the scheduled start of component activity; and

(b) Up to one (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 11. Restrictions on Authorization of Transportation Payments. Payments shall not be made if:

(1) Appropriate verification is not returned by the end of the month following the month in which the cost was incurred;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 12. Other Supportive Services in JOBS Components. (1) Nonrecurring services shall be provided if necessary for participation in the approved JOBS activities of:

(a) Component preparation;

(b) Component participation, except for expenses included in the work expense standard deduction for participants in OJT while the AFDC case remains active;

(c) Transitional extension; or

(d) OJT participants discontinued from AFDC, until the end of the component placement.

(2) These services shall be approved by the case manager as defined in 904 KAR 2:370.

(3) Items and services that shall be approved are the purchase of:

(a) Remedial health care items or services not covered under the Medicaid Program;

(b) Uniforms required by education or training provider;

(c) Suitable clothing for a job interview;

(d) School supplies other than books;

(e) Fees to obtain a license;

(f) Timepieces that are necessary for training;

(g) The cost to have a photo identification made in order to take a GED test;

(h) The cost of a criminal records check fee if the provider requires verification; or

(i) Driver's education.

Section 13. Other Supportive Services in Approved Self-initiated Activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

(1) Transitional extension;

(2) Discontinued OJT participants; or

(3) Component preparation.

Section 14. Limitations on Other Supportive Services. (1) A cumulative limit of $300 in a twelve (12) month period, beginning with the first day of the month in which the appropriate verification form is issued [~~first supportive service payment is made~~], shall be in effect for any participant in these approved JOBS activities:

(a) Component preparation;

(b) Component-related;

(c) Transitional extension; or

(d) Discontinued OJT participants.

(2) Other supportive services shall be limited in the same manner as child care payments, as described in Section 5(7) of this administrative regulation.

Section 15. Restrictions on Authorization of Supportive Service Payments. Payments shall not be made for the period during which:

(1) Verification is not returned by the service provider;

(2) The participant is sanctioned for noncompliance with JOBS activities, as specified in 904 KAR 2:370; or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS.

Section 16. Child Care Recoupment. The following provisions apply to JOBS child care supportive service overpayments:

(1) Necessary action shall be taken promptly by the department to correct and recoup any overpayments occurring on or after October 1, 1990 in a case:

(a) Of fraud;

(b) Involving a current recipient; and

(c) In which the overpayment would equal or exceed the cost of recovery.

(2) An overpayment shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction in child care payments; or

(c) Reduction of AFDC benefits only upon a voluntary request of the recipient family.

(3) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.

(4) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.

Section 17. Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive services payments in the JOBS program are incorporated effective December 1, 1993. These forms include:

(a) PA-32, revised 1/93;

(b) PA-33, revised 3/94;

(c) PA-33N, revised 3/94;

(d) PA-33.1, revised 6/91;

(e) PA-114, revised 1/93; and

(f) PA-416, revised 1/93.

(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

APPROVED BY AGENCY: April 11, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given 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: Approximately 5,500 JOBS participants receive child care benefits in a month. Those

participants may receive the maximum amount allowed or may receive a lesser amount. The figure of 5,500 was estimated from the number of JOBS participants who received child care in March, April and May of 1994. We do not believe that the revisions in the child care rates or the clarification regarding part-time payments will increase or decrease the number of participants who will receive child care benefits. Approximately 10,088 JOBS participants receive transportation benefits in a month. By changing the method by which transportation payments shall be provided, the number of participants receiving payment should not be affected.

(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 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:

1. First year following implementation: No additional compliance, reporting or paperwork required.

2. Second and subsequent years: See #1.

(3) Effects on the promulgating administrative body: The effect that the new child care rates will have on the cabinet is of a fiscal nature in terms of benefits only. There will be no personnel impact as a result of the revision either in administrative costs or staffing.

(a) Direct and indirect cost or savings: We estimate that the revision to the child care rates will cost the cabinet approximately $36,914 per month to implement. We looked at the month of April 1994 to determine the number of payments made at the maximum amount and converted that total using the new rates to arrive at that figure. This converts to $258,398 for the remaining seven months of the state fiscal year and $442,968 in state fiscal year 1996. The existing budgeted general and federal revenues should be sufficient to cover the additional cost for the child care rate increase. We estimate no fiscal impact as a result of the method in which transportation payments shall be made.

1. First year: $4,057,900 has been budgeted to provide child care as the state portion in state fiscal year 1995. The federal portion budgeted was $11,442,100 for a total of $15.5 million. This budgeted amount should be sufficient to cover the increase in rates for state fiscal year 1995.

2. Continuing cost or savings: $4,259,000 has been budgeted to provide child care as the state portion in state fiscal year 1996. The federal portion budgeted was $12,011,000 for a total of $16,270,000. This budgeted amount should be sufficient to cover the increase in rates for state fiscal year 1996.

3. Additional factors increasing or decreasing costs: Results of later surveys could affect costs depending on whether or not rates increase or decrease.

(b) Reporting and paperwork requirements: None other than what is currently being completed. No new additional requirements.

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

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Title IV-A federal child care 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 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: This change is federally mandated.

(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? No. Eligibility conditions for JOBS child care must be applied on a consistent and equitable basis in accordance with federal regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 255.1

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 state which administer the JOBS Program are required to update maximum child care payments at least biennially.

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

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:035. Right to apply and reapply.

RELATES TO: KRS 205.200(1), 205.245, [~~205.520(3), 42 CFR 435.907, 435.909,~~] 45 CFR 206(a)(1), 42 USC 1973gg-10

STATUTORY AUTHORITY: KRS 13A.120, 116.048, 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer [~~has the responsibility of administering~~] public assistance programs including Aid to Families with Dependent Children (AFDC) and the state [~~, Mandatory and Optional~~] Supplementation Program (SSP) of the aged, blind and persons with disabilities [~~disabled (MS) and (OS), and Medical Assistance (MA)~~]. This administrative regulation sets forth the procedure by which an application for assistance under these programs shall be made. 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 procedures necessary to provide an eligible public assistance participant 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 AFDC or SSP [~~any assistance program administered by the Cabinet for Human Resources~~] through the Department for Social Insurance (DSI).

[~~(2) An individual shall be eligible for MA without a separate application if he receives:~~

~~(a) AFDC;~~

~~(b) MS;~~

~~(c) OS; or~~

~~(d) Supplemental security income through the Social Security Administration.~~

~~(3) An SSI applicant may file an application for MA with the Department for Social Insurance.~~

~~(4) 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.~~

~~(5) Denial of SSI assistance for technical reasons by the Social Security Administration is also considered a denial of MA.~~

~~Section 2. Application Process.~~]

(2) An application shall be considered to have been made:

(a) The date [~~when~~] the individual or his representative has signed, under penalty of perjury:

1. [~~(a)~~] The DSI [~~Department for Social Insurance~~] application form, incorporated by reference in 904 KAR 3:030; and

2. [~~or (b) The Social Security Administration application form for SSI; and~~

~~(c)~~] The application has been received at the DSI [~~appropriate~~] office; or

(b) The date of contact with the agency by a person with a physical or mental disability who needs special accommodation due to the impairment.

(3) If the client is physically unable to come to the office to apply, he may:

(a) Designate an authorized representative to apply for him; or

(b) Request a home visit to complete the application process.

(4) The applicant may be assisted by any individual of his choice in the application process and may be accompanied by this individual in all contacts with the agency.

(5) In accordance with the procedures described in 900 KAR 1:070, interpreter services shall be provided for persons who are:

(a) Deaf; or

(b) Hard of hearing.

(6) Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms specified by 900 KAR 1:070.

(7) The cabinet shall not discriminate against any applicant or participant in any aspect of program administration for reasons of age, race, color, sex, disability, religious creed, national origin or political beliefs.

Section 2. [~~3.~~] Who May Sign an Application. (1) Except for a case based on incapacity, an application for AFDC shall be signed by:

(a) The relative with whom a needy child lives;

(b) The legally appointed committee of the relative; or

(c) A representative authorized in writing to act on behalf of the relative.

(2) An application for AFDC based on incapacity shall be signed by:

(a) Any individual listed in subsection (1) of this section; or

(b) An interested party acting on behalf of the applicant.

[~~(3) An application for MA shall be signed by:~~

~~(a) The individual requesting assistance;~~

~~(b) The relative with whom the child lives; or~~

~~(c) An interested party acting in behalf of the applicant.~~

~~(4) An application for MA for children in foster care or private child caring institutions shall be signed by the representative of:~~

~~(a) The agency to which the child is committed; or~~

~~(b) The institution in which the child is placed.~~]

(3) [~~(5)~~] An application for state supplementation shall be signed by:

(a) The individual who is aged, blind or has a disability [~~disabled individual~~];

(b) An interested party;

(c) His legally appointed committee; or

(d) The representative payee receiving the Supplemental Security Income (SSI) benefit.

Section 3. [~~4.~~] Where Applications are Filed and Processed. (1) The application may be made at any DSI office, and shall be processed in the county of residence.

(2) If the client is applying in a county other than the county of residence and the client is hospitalized:

(a) The DSI office in the county of hospitalization shall take the application and transfer the pending application to the county of residence; and

(b) The DSI office in the county of residence shall process the application using the original application date.

(3) If the client is applying in a county other than the county of residence and the client is not hospitalized:

(a) The DSI office in the receiving county shall:

1. Partially complete the application;

2. Transfer it to the county of residence on the same day the application is taken; and

3. Explain to the client that the application will be processed in the county of residence;

(b) The DSI office in the county of residence shall schedule a face-to-face interview. The application is processed using the original application date.

[~~(1) Except for a concurrent application for MA and SSI, an application shall be filed in the office of the Department for Social Insurance in the county in which the applicant resides.~~

~~(2) A concurrent application for SSI and MA shall be filed in the service area office of the Social Security Administration.~~]

(4) [~~(3)~~] Application by mail.

(a) A Kentucky resident who is temporarily out-of-state, or someone acting on his behalf may initiate the application process by mail if [~~when~~]:

1. An emergency arises from accident or sudden illness;

2. Care and services are needed immediately; and

3. Health would be endangered by returning to the state.

(b) Upon notification of the emergency an application form will be forwarded to the initiating party.

Section 4. [~~5.~~] Action on Applications. (1) A decision shall be made on each application and payment made within:

(a) Forty-five (45) days for AFDC or SSP [~~MA for families and children~~]; or

(b) Ninety (90) days for SSP [~~MA or OS~~] determinations in which permanent and total disability shall [~~must~~] be established.

(2) Exception to this time standard may be made if [~~when~~]:

(a) The applicant is unable to obtain necessary verification for a determination of eligibility; or

(b) For failure or delay, that cannot be controlled by the department, on the part of the applicant or examining physician [~~or because of an administrative emergency~~].

(3) The case record shall document the cause for the delay when the [~~above~~] time standards are not met.

(4) Failure to process an application within the [~~above~~] time frame shall not be used as the basis for denial.

Section 5. Voter Registration. (1) In accordance with KRS 116.048 and 42 USC 1973gg-10, 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; and

(b) Be present in the office at the time of the interview or when 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 assistance application shall not be registered to vote in this process, including a:

(a) Payee only;

(b) An authorized representative; or

(c) 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.

(7) Forms necessary to apply for assistance or to register an AFDC or SSP participant to vote are incorporated by reference in 904 KAR 3:030, Section 10.

Section 6. Disclosure of Information. Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted to the following individuals:

(1) Public employees including any duly identified representative of the Department of Health and Human Services in the performance of his duties in connection with the administration of the assistance program;

(2) Law enforcement agencies and representatives including county and commonwealth attorneys, county and circuit court judges and grant juries in discovering and prosecuting cases involving fraud.

(3) State and local law enforcement officials who, in the proper exercise of their duties, provide the name and Social Security number of an AFDC recipient, and satisfactorily demonstrate that the recipient is a fugitive felon. Release of information in this situation is limited to address of the AFDC recipient only.

(4) Members of Congress and the General Assembly, limited to cases of individual constituents who have requested information regarding their application or payment status.

(5) Any interested party that has requested a hearing before an agency hearing officer, to the extent necessary for the proper presentation of the case. Information in this situation is limited to that which is applicable to the hearing request.

(6) Officials administering any Federal or federally assisted program which provides assistance in cash or in kind, or services directly to individuals on the basis of need. Disclosure in this situation is limited to AFDC and benefits programs other than Medical Assistance.

(7) Any audit or similar activity conducted in connection with the administration of any federal or federally assisted program.

(8) Any employer to certify receipt of AFDC for purposes of claiming a tax credit under Public Law 94-12.

(9) Any individual or agency agreeing to Departmental standards of confidentiality for the purpose of the provision of social services, employment or training to recipients of AFDC and benefit programs other than Medical Assistance.

(10) Any service providers attempting to provide assistance to JOBS or self-initiated participants. Disclosure of information is this situation is limited to purposes directly connected with providing services or issuing supportive services payments.

(11) Officials administering any federally funded foster care and adoption assistance programs.

(12) Local law enforcement agency, The Kentucky State Police, commonwealth or county attorney to report known or suspected instances of child abuse and neglect of a child receiving assistance.

(13) Attorneys or absent parents who appear in the local office with a court order carrying a signature of a judge.

~~[Section 6. Material Incorporated by Reference. (1) Forms necessary for application for benefits under the AFDC, MS, QS or MA programs are incorporated effective January 1, 1993. These forms include the PA-1, revised October 1992, the PA-1A, revised effective March 1991, PA-1P, revised April 1992, and the PA-1UP, revised effective May 1991.~~

~~(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: April 12, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given 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 provision of voter assistance will affect anyone who is 18 years of age or over, is eligible to vote and is not currently registered to vote at his current address. The number of individuals affected by this policy is unknown. The intent of the service is to assist clients in voter registration and to make registration convenient, therefore, having a positive impact on the assistance group. The provision of interpreter services shall have a positive impact on deaf, hard of hearing, and non-English speaking individuals. Traditionally, the need for interpreter services is very minimal. The number of individuals that may be affected by the promulgation of this administrative regulation is unknown.

(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: 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:

1. First year: Additional costs for the printing of forms and systems changes 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: 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: 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? Tiering was not used since the application of policy is required to be applied in a like manner for all individuals.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 1973gg-10.

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions relating to voter registration and interpreter services are consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by 42 USC 1973gg-10.

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.

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. Voter registration through the Department for Social Insurance has been fully coordinated with the State Board of Elections, who is the liaison with each county clerk's office.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerk's office in each county is responsible for voter registration. The Department for Social Insurance (DSI) will forward voter registration forms completed in DSI offices to the County Clerk's Office, along with any changes in address as reported by program recipients.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation may increase the number of persons registered to vote in each county. However, DSI will assist local governments by providing program participants all forms necessary for voter registration and ensure that the forms are received by the County Clerk's Office.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:025. Technical requirements.

RELATES TO: [~~KRS 194.050,~~] 7 CFR 273.4, 273.5, 273.7, [~~273.21,~~] 7 USC 2015(e)

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Definitions. (1) "Certification period" means a definite period of time within which a household shall be eligible to receive food stamp benefits.

(2) "Quality control review" means a review of a statistically valid sample of active and denied or discontinued cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that inactive cases are not incorrectly denied or terminated.

(3) "Student status" means any person who is between the ages of eighteen (18) and fifty (50) inclusive, physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with federal regulations promulgated by the Food and Consumer [~~Nutrition~~] Service (FCS [~~FNS~~]), of the United States Department of Agriculture, the cabinet utilizes national uniform requirements of technical eligibility for the Food Stamp Program.

Section 3. Technical Eligibility Criteria. Technical eligibility requirements shall apply equally to all households and consist of:

(1) Residency. A household shall live in the county in which they make application;

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, both the applicant's and the authorized representative's identities shall be verified;

(3) Citizenship and alien status.

(a) Program participation shall be limited to:

1. Citizens of the United States; or

2. Eligible aliens as defined by 904 KAR 3:010.

(b) Individuals whose status is questionable shall be ineligible to participate until such status has been verified;

(c) A single household member shall attest in writing to the citizenship or alien status of each household member by signing the Food Stamp Application Form, which is incorporated by reference at 904 KAR 3:030 [~~;~~

~~(d) The departmental form required for the declaration of citizenship or alien status is incorporated into this administrative regulation by reference~~].

(4) Household size. Size of household shall be verified through readily available documentary evidence or through a collateral contact;

(5) Students. Any person who meets the definition of a student as specified in Section 1 of this administrative regulation shall be ineligible to participate unless they meet at least one (1) of the following criteria:

(a) Shall be engaged in paid employment for a minimum of twenty (20) hours per week or, if self-employed, shall be employed for a minimum of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours; or

(b) Shall participate in a state or federally financed work study program during the regular school year; or

(c) Shall be responsible for the care of a dependent household member under the age of six (6); or

(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6) but is under age twelve (12) where the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) and (b) of this subsection; or

(e) Shall receive benefits from the Aid to Families with Dependent Children Program (AFDC);

(f) Shall be assigned to or placed in an institution of higher learning through a program under:

1. 29 USC 1501;

2. 7 USC 2015; or

3. 19 USC 2296;

(g) Shall be enrolled in an institution of higher learning as a result of participation in a work incentive program under 42 USC 681; or

(h) Is a single parent with responsibility for the care of a dependent household member under age twelve (12).

[~~(6) Mandatory monthly reporting (MMR).~~

~~(a) Households of five (5) or more members in which one (1) or more members has gross earned income of $200 or more shall be required to file monthly reports, unless otherwise exempt.~~

~~(b) The following households shall be exempt from MMR:~~

~~1. Households whose sole source of earnings is from self-employment or contract self-employment income which is annualized for a twelve (12) month period;~~

~~2. Migrant or seasonal farm worker households;~~

~~3. Households in which all members are homeless individuals; or~~

~~4. Households with no earned income in which all adult members are elderly or disabled with no earned income.~~

~~(c) Departmental MMR forms are incorporated by reference in this administrative regulation.~~]

(6) [~~(7)~~] Social Security number (SSN).

(a) Households applying for or participating in the Food Stamp Program shall comply with SSN requirements by providing the SSN of each household member or applying for one prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in such individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(7) [~~(8)~~] Work registration. All household members shall be required to comply with the work registration requirements, unless exempt, as described in 904 KAR 3:041, Food Stamp Employment and Training Program.

(8) [~~(9)~~] Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

[~~Section 4. Material Incorporated by Reference. (1) Forms FS-301 and FS-301A are necessary for MMR and are incorporated effective June 1, 1991.~~

~~(2) Form FS-106.1 is necessary for the declaration of citizenship or alien status in the Food Stamp Program and is incorporated effective June 1, 1991.~~

~~(3) 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: April 10, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given 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 elimination of monthly reporting will reduce the paperwork burden for approximately 9,000 food stamp households.

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

(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:

1. First year following implementation: Paperwork requirements will be reduced for food stamp recipients by eliminating the requirement to complete a monthly report.

2. Second and subsequent years: The same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: $27,360

1. First year: Currently, the department mails approximately 9,000 first monthly reporting forms and approximately 3,000 second monthly

reporting forms at a rate of .19¢ per piece. We estimate that by eliminating monthly, administrative costs will be reduced by at least $27,360 per year.

2. Continuing cost or savings: Approximately the same as the first year, unless the bulk mail rate increases.

3. Additional factors increasing or decreasing costs: Staff time necessary to process monthly reports will be reduced. However, this savings will be absorbed by other regular duties and a slight increase in the frequency of recertification interviews resulting from the elimination of the monthly reporting requirement.

(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: Existing general and agency funding.

(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: Federal regulations at 7 CFR 273.21 allow states to implement Mandatory Monthly Reporting (MMR) as an option. This amendment deletes that process in Kentucky. If states do not opt to implement MMR, then income is calculated based on federal regulations at 7 CFR 273.10. There is no alternative method. States either implement MMR or they do not.

(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: None

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

(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. States may opt to implement MMR. There is no federal mandate that requires states to implement MMR.

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions relating to technical eligibility in the Food Stamp Program are consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. There is no federal mandate that requires MMR be implemented.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:030. Application process.

RELATES TO: KRS 194.050, 7 CFR 273.2, 273.10, 42 USC 1973gg-10

STATUTORY AUTHORITY: KRS 13A.120, 116.048, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall [is required to] administer a Food Stamp Program as prescribed under 7 USC 2011-2029. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of citizens of the Commonwealth. This administrative regulation sets forth the application process used by the cabinet in the administration of the Food Stamp Program. KRS 116.048 designates the cabinet to have responsibility for the administration of the Food Stamp Program as a voter registration agency in accordance with 42 USC 1973gg-10. Therefore, this administrative regulation sets forth policy and procedures necessary to provide an eligible Food Stamp Program participant the opportunity to register, or to decline from registering, to vote.

Section 1. Right to apply or Reapply. (1) An individual shall have the right to apply or reapply for food stamp benefits. The cabinet shall make the application process readily accessible to households.

(2) In accordance with the procedures described in 900 KAR 1:070, interpreter services shall be provided for persons who are:

(a) Deaf; or

(b) Hard of hearing.

(3) Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms specified by 900 KAR 1:070.

Section 2. Application Process. An application shall be considered to have been filed when:

(1) An application form is completed and signed;

(2) The applicant or representative is interviewed;

(3) Required information on the application is verified; and

(4) The application is received by the appropriate office.

Section 3. Who May Sign an Application. An application for food stamps shall be signed by:

(1) A responsible member of the household; or
(2) The household's authorized representative.

Section 4. Where Applications are Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in the office of the Department for Social Insurance in the county in which an applicant resides.

(2) A concurrent application for Supplemental Security Income and Food Stamps shall be filed in the service area office of the Social Security Administration.

Section 5. Prompt Action on Applications. The cabinet shall provide an eligible household, that completes the initial application process, an opportunity to participate as soon as possible but not later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 6. Expedited Service. A household eligible for expedited services shall be:

(1) A household in which:

(a) Monthly gross income is less than $150; and

(b) Liquid resources do not exceed $100; or

(2) A destitute migrant or seasonal farm work household whose liquid resources do not exceed $100; or

(3) A household containing homeless individuals; or

(4) A household for whom monthly rent or mortgage and actual utilities exceed the household's combined monthly gross income and liquid resources.

Section 7. Public Assistance Application Process. (1) A household in which all members are applying for Aid to Families with Dependent Children (AFDC) shall be allowed to simultaneously apply for food stamp benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 5 of this administrative regulation shall apply to public assistance applications.

(3) A household in which all members receive, or are authorized to receive, AFDC or Supplemental Security Income (SSI) shall be considered categorically eligible unless the entire household is:

(a) Institutionalized; or

(b) Disqualified from receiving food stamps.

(4) Categorically eligible households shall not be required to verify the following eligibility factors:

(a) Resources;

(b) Gross and net income limits;

(c) Social Security number information;

(d) Sponsored alien information; and

(e) Residency.

Section 8. Joint SSI and FS Application Process. A household in which all members are applicants or recipients of Supplemental Security Income (SSI) shall be allowed to simultaneously apply for both SSI and food stamps at the appropriate Social Security Administration office.

Section 9. Voter Registration. (1) In accordance with KRS 116.048 and 42 USC 1973gg-10, 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; and

(b) Be present in the office at the time of the interview or when 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 assistance application shall not be registered to vote in this process, including an:

(a) Authorized representative; or

(b) 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 be 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.

(7) Forms necessary to register a Food Stamp Program participant to vote are incorporated by reference.

Section 10. [~~9.~~] Material Incorporated by Reference. (1) Forms necessary for the application process and voter registration in the Food Stamp Program are incorporated by reference. These forms include the:

(a) KFS-77, revised 3/95; [~~7/93,~~]
(b) The KIM-100, Revised 1/95;
(c) The KIM-100 Supplement A, revised 1/95;
(d) The KIM-100 Supplement B, revised 5/93;
(e) The KIM-100 Supplement C, revised 7/94;
(f) The KIM-100 Supplement D, revised 1/95;
(g) The KIM-100 Supplement E, revised 1/95;
(h) The KIM-100 Supplement F, revised 5/93;
(i) The KIM-100 Supplement G, revised 1/95;
(j) The KIM-100 Supplement H, revised 1/95;
(k) The KIM-100 Supplement I, revised 1/95;
(l) The KIM-100 Supplement J, revised 1/95;
(m) The KIM-100 Supplement K, revised 5/93;
(n) The KIM-100 Supplement L, revised 1/95;
(o) The KIM-100 Supplement M, revised 1/95;
(p) The KIM-100 Supplement N, revised 5/93;
(q) The KIM-100 Supplement O, revised 5/93;
(r) The KIM-100 Supplement P, revised 5/93;
(s) The KIM-100 Supplement Q, revised 1/95;
(t) The KIM-100 Supplement R, revised 7/94;
(u) The KIM-100 Supplement S, revised 1/95;
(v) The KIM-100 Supplement SS, revised 3/94;
(w) The KIM-100 Supplement T, revised 1/95;
(x) The KIM-100 Supplement U, revised 5/93;
(y) The KIM-100 Supplement V, revised 1/95;
(z) The KIM-100 Supplement W, revised 5/93;
(aa) The KIM-100 Supplement X, revised 1/95;
(bb) The KIM-100 Supplement XX, revised 5/93;
(cc) The KIM-100 Supplement Y, revised 1/95;
(dd) The KIM-100 Supplement Z, revised 1/95;
(ee) The PAFS-706, revised 1/95;
(ff) The Voter Registration Application, revised 1/95. [~~KFS-100, revised 12/93, the KFS-100 Supplement A, revised 6/91, the KFS-100 Supplement B, revised 10/93, the KFS-100 Supplement C, revised 12/93, the KFS-100 Supplement D, revised 7/92, the KFS-100 Supplement E, revised 6/91, the KFS-100 Supplement F, revised 6/91, the KFS-100 Supplement G, revised 6/91, and the KFS-100 Supplement H, revised 4/91.~~]

(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 CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: April 12, 1995
FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given 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 provision of voter assistance will affect anyone who is over 18 years of age, is eligible to vote and is not currently registered to vote at his current address. The number of individuals affected by this policy is unknown. The intent of the service is to assist clients in voter registration and to make registration convenient, therefore, having a positive impact on the assistance group. The provision of interpreter services shall have a positive impact on persons who are deaf, hard of hearing, and non-English speaking individuals. Traditionally, the need for interpreter services is very minimal. The number of individuals that may be affected by the promulgation of this administrative regulation is unknown.

(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 and no written 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 and no written comments were received.

(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:

1. First year: Additional costs for the printing of forms and systems changes 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: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(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. 42 USC 1973gg-10
2. State compliance standards. There are no differing state compliance standards.
3. Minimum or uniform standards contained in the federal mandate. The provisions relating to voter registration and interpreter services are consistent with the Federal mandate and applied in a like manner on a statewide basis.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by 42 USC 1973gg-10.
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.

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. Voter registration through the Department for Social Insurance has been fully coordinated with the State Board of Elections, who is the liaison with each county clerk's office.
3. State the aspect or service of local government to which this

administrative regulation relates. The County Clerk's office in each county is responsible for voter registration. The Department for Social Insurance (DSI) will forward voter registration forms completed in DSI offices to the County Clerk's Office, along with any changes in address as reported by program recipients.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation may increase the number of persons registered to vote in each county. However, DSI will assist local governments by providing program participants all forms necessary for voter registration and ensure that the forms are received by the County Clerk's Office.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:035. Certification process.

RELATES TO: [~~KRS 194.050,~~] 7 CFR 273.1, 273.2, 273.5, 273.10, 273.11, 273.12, 273.14, [~~273.21,~~] 274.6[~~, PL 103-66~~]

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the certification process used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering the household's circumstances for the entire period for which each household is certified.

(2) The criteria shall be applicable to all households.

(3) Certain households require special or additional certification procedures as specified in Section 4 of this administrative regulation.

Section 2. Certification Periods. (1) The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided below, households shall be certified for at least three (3) months.

(a) If the certification process is completed after the 15th day of the month of application, a household eligible for a certification period of three (3) months or less shall, at the time of certification, have their certification period increased by one (1) month;

(b) A household shall be certified for one (1) or two (2) months, as appropriate if:

1. The household cannot reasonably predict what its circumstances will be in the near future; or

2. There is substantial likelihood of frequent and significant changes in income or household status.

(3) A household composed entirely of recipients of Aid to Families with Dependent Children (AFDC), or a combination of AFDC and Supplemental Security Income (SSI), shall be assigned a certification period to coincide with its AFDC reinvestigation date.

(4) The following households shall be certified for up to twelve (12) months:

(a) [~~A household which is required to submit a monthly report.~~

~~(b)~~] If other household circumstances are expected to remain stable, a household composed entirely of unemployable or elderly persons with very stable income; or

(b) [~~(c)~~] A household whose primary source of income is from:

1. Self-employment; or

2. Regular farm employment with the same employer if:

a. The income can be readily predicted; and

b. Household circumstances are not likely to change.

[~~(5) The following households shall be assigned a certification period not to exceed six (6) months, including those household types specified in subsection (4) of this section.~~

~~(a) A household which is granted separate household status because:~~

~~1. The household consists of an individual and the individual's minor child;~~

~~2. The individual and child are living with the individual's parent or sibling; and~~

~~3. The individual purchases and prepares meals separately from the parent or sibling; or~~

~~(b) A household that consists of recipients of AFDC or a combination of AFDC and SSI, receiving up to fifty (50) dollars child support payments forwarded from the Division of Child Support Enforcement. These households shall be exempt from the monthly reporting requirements.~~]

Section 3. Certification Notices to Households. The cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or

(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 904 KAR 3:030, Section 1, as follows:

(1) If the household files the application by the 15th day of the last month of the certification, the cabinet shall provide uninterrupted benefits if the household is otherwise eligible; or

(2) If the household files the application after the 15th day but prior to the last day of the last month of the certification, the cabinet shall provide benefits within thirty (30) days of date of the application if the household is otherwise eligible.

Section 5. Certification Process for Specific Households. Certain households have circumstances that are substantially different from other households and therefore require special or additional certification procedures.

(1) A household with self-employed members shall have its case processed as follows:

(a) Income is annualized over a twelve (12) month period if:

1. Self-employment income represents a household's annual income; or

2. Self-employment income is received on a monthly basis which represents a household's annual support;

(b) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover;

(c) The income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year; or

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business.

(2) A household with boarders shall have its case processed as follows:

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses;

(b) Deductible expenses include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(3) A household with ineligible members shall be processed, as follows:

(a) Ineligible due to:

1. Intentional program violation;

2. Failure to comply with the work requirements; or

3. Failure to comply with workforce requirements:

a. Income and resources in their entirety shall be counted as income available to the remaining household members;

b. Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions; and

c. The ineligible member shall not be included when:

(i) Assigning benefit level;

(ii) Comparing monthly income with income eligibility standard; and

(iii) Comparing household resources with resource eligibility standard;

(b) Ineligible due to:

1. Failure to provide a Social Security number; or

2. Ineligible alien status:

a. All resources of ineligible members shall be considered available to the remaining household members;

b. A pro rata share of the ineligible member's income shall be attributed to remaining household members;

c. Earned income deduction shall be applied to pro rata share of earnings; and

d. The ineligible member's share of dependent care and shelter expenses shall not be counted;

4. The ineligible member shall not be included when:

a. Assigning benefit level;

b. Comparing monthly income with income eligibility standard; and

c. Comparing household resources with resource eligibility standard.

(4) A household with nonhousehold members shall be processed as follows:

(a) The income and resources of a nonhousehold member (other than those described in subsection (3) of this section) shall not be considered available to the household with whom they reside;

(b) If earned income of household members and nonmembers are combined into one (1) wage, the agency shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income if the nonmember's share cannot be identified;

(c) The nonmember shall not be included when:

1. Assigning a benefit level to the household;

2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standard.

(5) A resident of a drug or alcoholic treatment and rehabilitation program in a private, nonprofit organization or a publicly operated community mental health center shall have his case processed as follows:

(a) An eligible household shall include:

1. A narcotic addict;

2. An alcoholic; and

3. His child;

(b) Certification shall be accomplished through an authorized representative;

(c) Food stamp processing standards and notice provisions shall apply to a resident recipient;

(d) Treatment center shall notify the agency of any changes in a resident's circumstances;

(e) Upon departure of the center, the resident shall be eligible to receive any remaining benefits, if otherwise eligible; and

(f) The organization or institution shall be responsible for knowingly misrepresenting household circumstances.

(6) A resident of a group living arrangement who is blind or disabled and receives retirees, survivors, and disabled individuals or SSI benefits shall have his case processed as follows:

(a) A resident shall apply on his own behalf or through use of the facility's authorized representative;

(b) Certification provisions applicable to all other households shall be applied;

(c) Responsibility for reporting changes depends upon who files the application:

1. If resident applies on his own behalf, the household shall report changes to the agency; or

2. If the center acts as authorized representative, the group living arrangement shall report changes;

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible; and

(e) The group living arrangement shall be responsible for knowingly misrepresenting household circumstances unless the household applied on its own behalf.

(7) A resident of a shelter for battered women and children shall have her case processed as follows:

(a) The shelter shall:

1. Have Food and Consumer ~~[nutrition]~~ Service (FCS) authorization to redeem Food Stamp coupons at wholesalers; or

2. Meet the federal definition of ~~[such]~~ a shelter;

(b) A shelter resident shall be certified for benefits, if otherwise eligible, if she is currently included in a former household which contains the person who abused her; and

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(8) An SSI recipient shall have his case processed as follows:

(a) Application may be filed at:

1. The Social Security Administration (SSA) Office; or

2. The local food stamp office;

(b) The cabinet shall not require an additional interview for applications filed at the SSA;

(c) The cabinet shall obtain all necessary verification prior to approving benefits;

(d) Certification periods shall conform to Section 2 of this administrative regulation; and

(e) Household changes in circumstances shall conform to Section 6 of this administrative regulation.

(9) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(10) Student households.

(a) Any person who meets all of the following criteria shall be ineligible to participate in the Food Stamp Program:

1. Between age eighteen (18) and fifty (50);

2. Physically and mentally fit; and

3. Enrolled at least half-time in an institution of higher education.

(b) The criteria in (a) of this subsection shall not deem a household member ineligible if the member meets at least one (1) of the criteria specified in 904 KAR 3:025, Section 3(5).

(11) Sponsored aliens.

(a) Income of the sponsored alien shall:

1. Include that portion of the sponsor's and his spouse's income deemed to be that of the alien;

2. Be subject to appropriate income exclusions; and

3. Be reduced by:

a. Twenty (20) percent earned income disregard, if appropriate; and

b. An amount equal to the Food Stamp Program monthly gross income limit for a household size equal to the household size of the sponsor.

(b) Resources of the sponsored alien shall include the total resources of the sponsor and the sponsor's spouse, reduced by $1500.

(c) The appropriate portions of income and resources of the sponsor and of the sponsor's spouse shall be deemed unearned income for a period of three (3) years following the alien's admission for permanent residence into the United States.

~~[(12) A household which is required, as specified in 904 KAR 3:025, Section 3(6) to comply with mandatory monthly reporting criteria shall have its case processed as follows:~~

~~(a) The cabinet shall adopt a two (2) month system in which the issuance month is the second month following its corresponding budget month;~~

~~(b) There shall be up to three (3) beginning months of participation in this system, the first month and the two (2) months following:~~

~~(c) Eligibility and benefit calculation shall be determined prospectively for beginning months;~~

~~(d) Ongoing eligibility shall be determined by considering all factors of eligibility prospectively and determining benefits retrospectively;~~

~~(e) Eligibility factors causing a period of ineligibility which exceeds one (1) month shall be acted upon immediately;~~

~~(f) A monthly reporting household which is ineligible for a period not to exceed one (1) month shall be treated as follows:~~

~~1. The ineligible household's issuance shall be suspended for one (1) month.~~

~~2. If the suspended household remains ineligible after one (1) month, the cabinet shall terminate the household's participation; and~~

~~(g) The recertification form shall serve as the report required for that month in which a household must be recertified.~~]

Section 6. Reporting Changes. (1) A certified household is required to report changes in household circumstances within ten (10) days of the date the change becomes known to the household.

(2) An applying household shall report all changes related to its food stamp eligibility and benefits:

(a) At the certification interview; or

(b) If changes occur after the interview but prior to receipt of the notice of eligibility, within ten (10) days of the date of the notice.

~~[(3) A household which is required to report monthly, shall not be required to submit any reports of changes other than the reports required under Section 5(12) of this administrative regulation.~~]

Section 7. Replacement Issuance. (1) The cabinet shall provide a replacement issuance to an eligible household if:

(a) Its authorization document was:

1. Not received in the mail;
2. Stolen from the mail;
3. Destroyed in a household misfortune;
4. Improperly manufactured;
5. Stolen after receipt; or
6. Mutilated;

(b) Its coupons were:

1. Not received in the mail;
2. Destroyed in a household misfortune;
3. Improperly manufactured; or
4. Mutilated;

(c) Food purchased with food stamps was destroyed in a household misfortune; or

(d) It received a partial coupon allotment.

(2) The cabinet shall not provide a replacement issuance to a household if after receipt:

(a) Coupons are:

1. Lost;
2. Stolen; or
3. Misplaced;

(b) Authorization documents are:

1. Lost; or
2. Misplaced;

(c) Coupons or authorization documents are totally destroyed in other than a disaster or misfortune; or

(d) Coupons sent by registered or certified mail are signed for by anyone residing with or visiting with the household.

(3) The cabinet shall not provide a replacement issuance if the household or authorized representative has not provided the written household statement of nonreceipt.

(4) The cabinet shall not provide a replacement allotment for a misfortune for the same month that the household is eligible for disaster food stamp benefits pursuant to a disaster declaration by the FCS ~~[FNS]~~.

(5) A replacement issuance shall be provided to a household if:

(a) The household reports a loss timely:

1. Orally; or
2. In writing;

(b) The household provides a statement of nonreceipt; and

(c) The original authorization document or allotment has not been returned to the cabinet at the time of the request for replacement.

(6) The report specified in subsection (5)(a) of this section shall be considered timely if it is made to the cabinet within ten (10) days of the date that:

(a) An authorization document is stolen from the household; or

(b) The following items are destroyed in a household misfortune:

1. Authorization document;
2. Coupons; or
3. Food purchased with food stamps.

(7) In a mail issuance county, the report must be made:

(a) Within the period of intended use; unless

(b) The original issuance was made after the 20th of the month. The period of intended use shall be extended to the last day of the month following the month of application.

(8) The number of replacement issuances which a household may receive shall be limited to:

(a) A total of two (2) countable replacements in six (6) months for:

1. Authorization documents; or
2. Coupons:
   a. Not received in the mail;
   b. Stolen from the mail; or
   c. Destroyed in a household misfortune.
3. Authorization documents stolen after receipt; and
4. Partial coupon allotments; and

(b) No limit shall be placed on the number of replacements for:

1. Partial allotments if the partial allotments were due to an error by the cabinet;
2. Authorization documents or coupons which were:
   a. Improperly manufactured; or
   b. Mutilated; or
   c. Food purchased with food stamp benefits which was destroyed in a household misfortune.

(9) The replacement shall not be considered a countable replacement if:

(a) The original or replacement issuance is returned or otherwise recouped by the cabinet;

(b) The original authorization document is not transacted;

(c) The replacement authorization document is not transacted; or

(d) The replacement issued due to an error by the cabinet.

(10) A replacement issuance shall be provided:

(a) In the amount of the loss of the household; and

(b) Up to a maximum of one (1) on the allotment; unless

(c) The issuance includes restored benefits which shall be replaced up to their full value.

(11) The cabinet shall provide a replacement issuance to an eligible household in accordance with 904 KAR 3:045, Section 4.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: April 10, 1995
FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given 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 elimination of monthly reporting will reduce the paperwork burden for approximately 9,000 food stamp households.

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

(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:

1. First year following implementation: Paperwork requirements will be reduced for food stamp recipients by eliminating the requirement to complete a monthly report.

2. Second and subsequent years: The same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: $27,360

1. First year: Currently, the department mails approximately 9,000 first monthly reporting forms and approximately 3,000 second monthly reporting forms at a rate of .19¢ per piece. We estimate that by eliminating monthly reporting, administrative costs will be reduced by at least $27,360 per year.

2. Continuing cost or savings: Approximately the same as the first year, unless the bulk mail rate increases.

3. Additional factors increasing or decreasing costs: Staff time necessary to process monthly reports will be reduced. However, this savings will be absorbed by other regular duties and a slight increase in the frequency of recertification interviews resulting from the elimination of the monthly reporting requirement.

(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: Existing general and agency funding.

(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: Federal regulations at 7 CFR 273.21 allow states to implement mandatory monthly reporting (MMR) as an option. This amendment deletes that process in Kentucky. If states do not opt to implement MMR, then income is calculated based on federal regulations at 7 CFR 273.10. There is no alternative method. States either implement MMR or they do not.

(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: None

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

(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. States may opt to implement MMR. There is no federal mandate that requires states to implement MMR.

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the Food Stamp Program are 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. There is no federal mandate that requires MMR be implemented.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 2:140. Child day care programs.

RELATES TO: KRS 199.892 - 896, 45 CFR 98, 256, 257, PL 99-457 Part H, PL 94-142.2

STATUTORY AUTHORITY: KRS 194.050, 199.892, 199.899

NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Human Resources. This administrative regulation is necessary to enable the Cabinet for Human Resources to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Block Grant and the Transitional and At-Risk Child Care Programs. The function of this administrative regulation is to establish procedures for the implementation of child day care programs.

Section 1. Definitions. (1) "At-risk child care, (ARCC)" means child care assistance provided to non-AFDC families who need care in order to work and who may otherwise be at risk of becoming dependent upon AFDC.

(2) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education, if post secondary, consistent with employment goals.

(3) "Center-based child care" means a Type I day care facility.

(4) "Certificate" means a payment mechanism provided by DSS and used by a family to secure day care from the provider of choice.

(5) [~~(4)~~] "Certified family child care home" means a home as governed by KRS 199.8982(1)(c) and 905 KAR 2:100.

(6) [~~(5)~~] "Child care and development block grant, (CCDBG)" means child care assistance provided to families through the state to improve the affordability, quality and availability of child care services for a low income family to work or attend training or educational programs.

(7) [~~(6)~~] "Child protective cases" means cases registered for services in which the case file contains case documentation that substantiates or reflects some indication of child abuse, neglect, dependency or exploitation. This category may include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families.

(8) [~~(7)~~] "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(9) [~~(8)~~] "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(10) [~~(9)~~] "Dedicated child care workers, (DCW)" means the Department for Social Services staff who work strictly with the day care program. The dedicated child care worker provides services to families through the following federally funded programs: Social Services Block Grant, (SSBG), Child Care and Development Block Grant, (CCDBG), At-Risk Child Care, (ARCC), and Transitional Child Care, (TCC).

(11) [~~(10)~~] "Dependent care disregard" means a method of providing child care for AFDC and medical assistance recipients with earned income and food stamp recipients with earned income or in training or educational programs which are preparatory to employment by deducting child care expenses from the gross income, thus allowing the AFDC recipient to retain more income to pay child care expenses. In cases where recipients are receiving assistance under more than one program, the highest disregard shall be used.

(12) [~~(11)~~] "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided under SSBG for child protective cases, a family shall meet both need and income status criteria.

(13) [~~(12)~~] "Employment" means public or private, full or part time, permanent or temporary work, including self-employment.

(14) [~~(13)~~] "Family" means one or more adults and children related by blood or law, including stepparents, residing in the same residence.

(15) "Family child care" means:

(a) Certified family child care homes as governed by 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children.

(16) "Group home child care" means a Type II day care facility.

(17) [~~(14)~~] "Licensed child day care facility" means a facility as governed by KRS 199.894.

(18) [~~(15)~~] "Physical or mental incapacity" means a child under the age of 18 who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself or herself for a part of the day.

(19) [~~(16)~~] "Priorities" mean that the client groups identified for receipt of day care are ranked in chronological order by priority.

(20) [~~(17)~~] "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed day care facility, certified Family Child Care Home, Unregulated Home or Registered Home.

(21) [~~(18)~~] "Purchase of care" means the purchase of child day care services from licensed facilities, certified registered homes or other eligible provider for authorized children to the extent funds are available.

(22) [~~(19)~~] "Registered provider" means a provider that is registered with the Department for Social Services as a provider of child care services through the Child Care and Development Block Grant, (CCDBG) or At-Risk Program, (ARCC).

(23) [~~(21)~~] "Relative" means for registration purposes:

(a) Grandparents, aunts and uncles who are required to register with the Department for Social Services before being eligible to receive payment for child care under CCDBG; and

(b) Relatives of the child by blood or marriage, eighteen years or older, including grandfather, grandmother, brother, sister uncle, aunt, nephew, niece or first cousin, including half-blood and preceding generations, who are not required to register with the Department for Social Services to be eligible to receive payment for child care under ARCC.

(24) [~~(21)~~] "Social services block grant, (SSBG)" means child care assistance provided by licensed or certified providers for families receiving protective and preventive services, including multiproblem families, and low income working parents.

(25) [~~(22)~~] "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or PL 94-142.2.

(26) [~~(23)~~] "Transitional child care, (TCC)" means child care assistance provided to families whose eligibility for AFDC has ceased due to earnings from employment, or as a result of the loss of income disregards due to the expiration of the time limit according to the federal regulation on AFDC. The purpose of TCC is to help prevent welfare dependency or potential welfare dependency.

(27) [~~(24)~~] "Type I day care facility" means a facility:

(a) Other than a dwelling unit which regularly receives four (4) or more children for day care; or

(b) A facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children.

(c) If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(28) [~~(25)~~] "Type II day care facility" means a home or dwelling unit which regularly provides care apart from parents for seven (7), but not more than twelve (12) children. The provider's own pre-school children shall be included in the number for which the home is licensed.

(29) [~~(26)~~] "Unregulated provider" means a child care provider who is not subject to be licensed, certified or registered by the state or federal government. Families receiving day care funds through the SSBG may not use unregulated care, however, unregulated care may be used by families receiving TCC or ARCC funds. Relative care as provided through the ARCC program, which is not required to be registered, shall be deemed unregulated.

(30) [~~(27)~~] "Waiting list" means a list that may be maintained by district DSS staff once funds are obligated in a district. The list is based on the availability of district day care funds. TCC families shall not be placed on a waiting list due to the uncapped funding source.

(31) [~~(28)~~] "Without regard to income" means that SSBG child day care services for child protective cases shall be provided or purchased without regard to family income. In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

Section 2. Technical Eligibility for CCDBG. A child shall be eligible for services as verified on the DSS-1A, Application for Services, herein incorporated by reference, if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;
2. A licensed or certified psychologist;
3. A qualified mental health professional; or
4. As accepted by a collateral agency (schools, comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) Sixty (60) percent of the states median income for a family of the same size at time of application; or

(b) Seventy-five (75) percent of the states median income for a family of the same size at the time of reauthorization; and

(c) To the extent necessary the eligibility levels of state median income specified in paragraphs (a) and (b) of this subsection may be revised based on the availability of state and federal funds.

(3) Resides with parents who are working or attending a job training or educational program;

(4) Fee requirement.

(a) A family receiving CCDBG funds shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

(5) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3(1) through (5) and 5(4) as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Disability.

(b) Limit parental rights as governed by Section 4 of this administrative regulation; or

(c) Violate provisions of Section 5(4) of this administrative regulation.

Section 3. Technical eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The case records shall:

(a) Substantiate or reflect some indication of child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented.

(3) Working parents may be eligible if:

(a) Child care needs exist in order to allow the parent to work;

(b) The family is income eligible as specified in Section 2(2)(a) and (b) of this administrative regulation; and

(c) ARCC and CCDBG funds are obligated.

Section 4. Technical Eligibility and Limitations for TCC. A family shall be notified of its potential eligibility for TCC when its AFDC benefits are terminated.

(1) The following requirements shall be met during any month for which TCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) of this administrative regulation or would be a dependent child except for the receipt of benefits under Supplemental Security Income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(b) Child care shall be necessary in order to permit a member of an AFDC family to accept or retain employment;

(c) Payments shall not be made for care provided by:

1. Parents;
2. Legal guardians;
3. Members of the assistance group; and
4. Providers not meeting applicable standards of state and local law.

(d) The family shall have ceased to be eligible for AFDC as a result of:

1. Increased hours of, or increased income from, employment; or
2. The loss of income disregards due to the time limitations at Section 4(3)(b) of 904 KAR 2:016;

(e) The family shall have received AFDC:

1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and
2. At least one (1) of the three (3) months was received in the state of Kentucky.

(f) The family:

1. Requests TCC benefits;
2. Provides the information necessary for determining eligibility and fees; and
3. Meets application requirements.

(2) Time limitations.

(a) Eligibility for TCC:

1. Begins with the first month that the family is ineligible for AFDC; and
2. Continues for a period of twelve (12) consecutive months.

(b) A family may begin to receive child care in any month during the twelve (12) month eligibility period.

(3) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:

(a) Terminates employment, unless good cause exists as follows:

1. The individual:

a. Is personally providing care for a child under age six (6); and

b. Employment will require the individual to work more than twenty (20) hours per week.

2. Child care:

a. Is necessary for the individual to participate in the program or accept employment; and

b. Is not available; or

c. The available child care does not meet the special needs of the child, e.g., a child who has physical or mental disabilities [~~physically or mentally disabled child~~].

3. The individual is unable to engage in employment or training for mental or physical disabilities [~~reasons~~], including participation in a drug or alcohol rehabilitation program.

4. Transportation is unavailable and there is no readily accessible alternative means of transportation available.

5. Travel time to work site exceeds two (2) hours daily.

6. Illness of another household member requiring the presence of the participant at home.

7. Temporary incarceration.

8. Discrimination by an employer based on age, race, sex color, disability, religious beliefs, national origin or political beliefs.

9. Work demand or conditions that render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The work presents a risk to the individual's health or safety.

10. Wage rates are decreased subsequent to acceptance of employment.

11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.

12. Employment would result in a net loss of cash income.

13. The client experiences a household emergency, including but not limited to: death of a member of the immediate family, entry into a spouse abuse center, or a natural disaster.

(b) Fails to cooperate with the State IV-A agency in establishing payment and enforcing child support obligations, per 904 KAR 2:006, Section 16.

(4) Fee requirements.

(a) A family receiving TCC shall be required to contribute toward the payment based on the family's income as described in Section 5(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 5. Technical Eligibility and Limitations for ARCC. (1) The following requirements shall be met during any month for which ARCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) and (2)(a), (b) of this administrative regulation.

(b) The family:

1. Is at risk of becoming eligible for AFDC;

2. Is not receiving AFDC; and

3. Needs child care in order to accept employment and remain employed.

(2) Child care limitations:

(a) Child care payments shall be provided:

1. Directly to the provider;

2. In an amount equal to the actual cost up to the payment maximum based on market rates described in Section 7(2) of this administrative regulation; or

3. In an amount equal to the difference between subparagraph b of this paragraph and the amount allowed as a deduction for child care costs to recipients of statutory benefits; and

4. If child care arrangements would otherwise be lost:

a. For up to two (2) weeks prior to the start of employment; or

b. For up to one (1) month during a break in employment if subsequent employment is scheduled to begin within that period.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. Not meeting applicable standards of state and local law;

4. Not registered by the department as required in Section 5 of this administrative regulation; or

5. Not allowing parental access.

(3) Fee requirements

(a) A family receiving ARCC shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 6. Parental Rights and Responsibilities. (1) Parents of an eligible child who receive or are offered child care services subject to the availability of state and federal funds shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Day Care Services Agreement and Child Care Certificate, herein incorporated by reference, which shall:

1. Be issued to the parent;

2. Be of value commensurate with the value of child care services provided in Section 6(1)(a) of this administrative regulation;

3. If chosen by the parent, may be used for child care services provided by a sectarian organization or agency;

4. Not be considered a contract or grant to the provider but assistance to the parent;

5. Allow parents to chose from a variety of child care categories in compliance with federal regulations governing child day care programs including:

a. Licensed child care facilities;

b. Certified family child care facilities (CFCCH);

c. Unregulated child care facilities; or

d. Registered child care facilities; and

6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Social Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet shall:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet shall make available to the parents and general public, consumer education about parental options relating to child care services including:

(a) Licensing and regulatory requirements; and

(b) Complaint procedures.

Section 7. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100;

(b) That are not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100 shall be registered with the Cabinet prior to

payment under the block grant using the DSS-77, Day Care Billing Statement, herein incorporated by reference except under TCC and relative provided care under ARCC; and

(c) Under CCDBG, nonrelative providers registered with the Cabinet shall become certified as governed by 905 KAR 2:100.

(d) Nonrelative providers providing care in the child's home shall be certified by meeting the requirements as follows:

1. The provider shall be at least eighteen (18) years of age;

2. The provider shall be physically capable of providing care to children, as stated by a qualified physician;

3. The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;

4. The provider shall not have been convicted of crimes against children, as shown by a criminal records check conducted within the past year by the Kentucky State Police; and

5. The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care.

(2) The cabinet has established maximum child day care payments as follows:

These charts represent the local maximum payment rate on a per day/weekly basis. If care exceeds five (5) days, the rate shall be the weekly maximum payment plus the additional designated daily amount reflecting the applicable rate. Chart abbreviations are as follows: FT - full time; PT - part time; WM - weekly maximum.

KENTUCKY CHILD CARE MAXIMUM PAYMENT LEVELS

WESTERN REGION

Purchase ADD #1
County: McCracken

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	12	12	60	11	16	55
Toddler	$12	16	60	11	11	55	11	16	55
Preschool	$12	14	60	11	10	55	11	16	55
School Age	$12	9	60	11	10	55	11	16	55
Special Needs									
Child	$12	16	60	13	13	65	10	16	50

Purchase ADD #1
Counties: Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	13	13	65	11	16	55
Toddler	$13	16	65	13	13	65	11	16	55
Preschool	$13	14	65	13	13	65	13	16	65
School Age	$12	9	60	13	13	65	12	16	60
Special Needs									
Child	$12	16	60	13	13	65	15	16	75

Pennyrile ADD #2
County: Christian

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	12	12	60	11	16	55
Toddler	$12	16	60	11	11	55	11	16	55
Preschool	$12	14	60	10	10	50	11	16	55
School Age	$11	8	55	10	10	50	11	16	55
Special Needs									
Child	$12	16	60	13	13	65	10	16	50

Pennyrile ADD #2
Counties: Caldwell, Crittenden, Hopkins, Livingston, Lyon, Muhlenberg, Todd, Trigg

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	13	13	65	11	16	55
Toddler	$13	16	65	11	13	65	11	16	55
Preschool	$13	14	65	13	13	65	13	16	65
School Age	$12	8	60	13	13	65	12	16	60
Special Needs									
Child	$12	16	60	13	13	65	15	16	75

Green River ADD #3
Counties: Daviess, Henderson

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	12	12	60	11	16	55
Toddler	$13	16	65	12	11	60	11	16	55
Preschool	$13	14	65	12	10	60	11	16	55
School Age	$13	10	65	12	10	60	11	16	55
Special Needs									
Child	$13	16	65	13	13	65	11	16	55

Green River ADD #3
Counties: Hancock, McLean, Ohio, Union, Webster

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	13	13	65	11	16	55
Toddler	$13	16	65	13	13	65	11	16	55
Preschool	$13	14	65	13	13	65	13	16	65
School Age	$13	10	65	13	13	65	12	16	60
Special Needs									
Child	$13	16	65	13	13	65	15	16	75

Barren River ADD #4
Counties: Allen, Barren, Butler, Edmonson, Hart, Logan, Metcalfe, Monroe, Simpson, Warren

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	13	13	65	11	16	55
Toddler	$13	16	65	13	13	65	11	16	55
Preschool	$13	14	65	13	13	65	13	16	65
School Age	$12	8	60	13	13	55	12	16	60
Special Needs									
Child	$13	16	65	13	13	65	15	16	75

Lincoln Trail ADD #5
Counties: Breckinridge, Grayson, Hardin, Larue, Marion, Meade, Nelson, Washington

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	16	65	13	13	65	11	16	55
Toddler	$13	16	65	13	13	65	11	16	55
Preschool	$13	14	65	13	13	65	13	16	65
School Age	$12	8	60	13	13	65	12	16	60
Special Needs									
Child	$12	16	60	13	13	65	15	16	75

Kipda ADD #6
Counties: Bullitt, Jefferson, Oldham, Shelby

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM

Infant	$15	12	75	14	11	70	13	12	65
Toddler	$15	14	75	14	11	70	13	12	65
Preschool	$14	15	70	13	10	65	12	12	60
School Age	$12	16	60	11	8	55	10	12	50
Special Needs									
Child	$15	15	75	14	14	70	15	13	75

Kipda ADD #6
Counties: Henry, Spencer, Trimble

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$16	12	80	15	15	75	15	12	75
Toddler	$16	14	80	15	15	75	15	12	75
Preschool	$15	15	75	15	10	75	15	12	75
School Age	$14	16	70	13	8	65	15	12	75
Special Needs									
Child	$15	15	75	14	14	70	15	13	75

Northern Ky. ADD #7
Counties: Boone, Campbell, Kenton

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$16	13	80	15	12	75	14	12	70
Toddler	$14	14	70	13	11	65	12	12	50
Preschool	$14	15	70	13	10	65	12	12	60
School Age	$13	16	65	12	9	60	11	12	55
Special Needs									
Child	$16	16	80	15	15	75	15	14	70

Northern Ky. ADD #7
Counties: Carroll, Gallatin, Grant, Owen, Pendleton

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$16	13	80	15	15	75	15	12	75
Toddler	$16	14	80	15	15	75	15	12	75
Preschool	$15	15	75	15	10	75	15	12	75
School Age	$14	16	70	13	9	65	15	12	75
Special Needs									
Child	$16	16	80	15	15	75	15	14	75

Buffalo Trace ADD #8
Counties: Bracken, Fleming, Lewis, Mason, Robertson

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	12	65	12	12	60	11	9	55
Toddler	$13	12	65	12	10	60	11	6	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$13	16	65	12	11	60	10	10	50

Gateway ADD #9
Counties: Bath, Menifee, Montgomery, Morgan, Rowan

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	12	65	12	12	60	11	9	55
Toddler	$13	12	65	12	10	60	11	6	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$13	16	65	12	10	60	10	9	50

Fivco ADD #10
Counties: Boyd, Carter, Greenup

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$14	12	70	13	12	65	12	9	60
Toddler	$13	12	65	12	10	60	11	8	55
Preschool	$13	12	65	12	10	60	11	10	55
School Age	$13	14	65	12	10	60	11	10	55
Special Needs									
Child	$14	16	70	13	13	65	12	12	60

Fivco ADD #10
Counties: Elliott, Lawrence

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$14	12	70	13	12	65	12	9	60
Toddler	$13	12	65	12	10	60	11	8	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$14	16	70	13	13	65	12	12	60

Big Sandy ADD #11
Counties: Floyd, Johnson, Magoffin, Martin, Pike

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	12	65	12	12	60	11	9	55
Toddler	$13	12	65	12	10	60	11	7	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$13	16	65	12	11	60	10	10	50

Kentucky River ADD #12
Counties: Breathitt, Knott, Lee, Leslie, Letcher, Owsley, Perry, Wolfe

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	12	65	12	12	60	11	9	55
Toddler	$13	12	65	12	10	60	11	8	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$13	16	65	12	12	60	11	11	55

Cumberland Valley ADD #13
Counties: Bell, Clay, Harlan, Jackson, Knox, Laurel, Rockcastle, Whitley

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$13	12	65	12	12	60	11	9	55
Toddler	$13	12	65	12	10	60	11	6	55
Preschool	$13	12	65	12	10	60	15	10	75
School Age	$13	14	65	12	10	60	12	10	60
Special Needs									
Child	$13	16	65	12	10	60	10	9	50

Lake Cumberland ADD #14
Counties: Adair, Casey, Clinton, Cumberland, Green, McCreary, Pulaski, Russell, Taylor, Wayne

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM

Infant	$16	8	80	15	15	75	15	12	75
Toddler	$16	14	80	15	15	75	15	12	75
Preschool	$15	13	75	15	8	75	15	12	75
School Age	$14	16	70	13	8	65	15	12	75
Special Needs Child	$14	11	70	14	14	70	15	12	75

Bluegrass ADD #15
Counties: Bourbon, Clark, Fayette, Franklin, Jessamine, Madison, Scott, Woodford

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$14	11	70	13	11	65	13	12	65
Toddler	$13	14	65	12	11	60	11	12	55
Preschool	$13	14	65	12	9	60	11	12	55
School Age	$13	16	65	12	9	60	11	12	55
Special Needs Child	$14	14	70	14	14	70	15	12	75

Bluegrass ADD #15
Counties: Anderson, Boyle, Estill, Garrard, Harrison, Lincoln, Mercer, Nicholas, Powell

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	$16	11	80	15	15	75	15	12	75
Toddler	$16	14	80	15	15	75	12	12	60
Preschool	$15	14	75	15	9	75	15	12	75
School Age	$14	16	70	13	9	65	15	12	75
Special Needs Child	$14	14	70	14	14	70	15	12	75

(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

~~[PURCHASE AREA DEVELOPMENT DISTRICT #1~~

	Special Needs		Infants		Toddlers		Pre-School		~~School~~ Age	
	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~
~~Center-based Group~~	~~$12~~	~~12~~	~~12~~	~~9~~	~~12~~	~~9~~	~~12~~	~~9~~	~~12~~	~~9~~
~~Home Family/ In Home~~	~~$11~~	~~11~~	~~11~~	~~8~~	~~11~~	~~8~~	~~11~~	~~8~~	~~11~~	~~8~~
	~~$10~~	~~10~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~

~~PENNYRILE AREA DEVELOPMENT DISTRICT #2~~

	Special Needs		Infants		Toddlers		Pre-School		~~School~~ Age	
	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~
~~Center-based Group~~	~~$11~~	~~11~~	~~11~~	~~8~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Home Family/ In Home~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
	~~$9~~	~~9~~	~~9~~	~~6~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~

~~GREEN RIVER AREA DEVELOPMENT DISTRICT #3~~

	Special Needs		Infants		Toddlers		Pre-School		~~School~~ Age	
	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~
~~Center-based Group~~	~~$13~~	~~13~~	~~13~~	~~10~~	~~13~~	~~10~~	~~13~~	~~10~~	~~13~~	~~10~~
~~Home Family/ In Home~~	~~$12~~	~~12~~	~~12~~	~~9~~	~~12~~	~~9~~	~~12~~	~~9~~	~~12~~	~~9~~
	~~$11~~	~~11~~	~~11~~	~~8~~	~~11~~	~~8~~	~~11~~	~~8~~	~~11~~	~~8~~

~~BARREN RIVER AREA DEVELOPMENT DISTRICT #4~~

	Special Needs		Infants		Toddlers		Pre-School		~~School~~ Age	
	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~
~~Center-based Group~~	~~$13~~	~~13~~	~~13~~	~~10~~	~~11~~	~~8~~	~~11~~	~~8~~	~~11~~	~~8~~
~~Home Family/ In Home~~	~~$12~~	~~12~~	~~12~~	~~9~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~
	~~$11~~	~~11~~	~~11~~	~~8~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~

~~LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5~~

	Special Needs		Infants		Toddlers		Pre-School		~~School~~ Age	
	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~
~~Center-based Group~~	~~$11~~	~~11~~	~~11~~	~~8~~	~~10~~	~~7~~	~~10~~	~~7~~	~~10~~	~~7~~
~~Home Family/ In Home~~	~~$10~~	~~10~~	~~10~~	~~7~~	~~9~~	~~6~~	~~9~~	~~6~~	~~9~~	~~6~~
	~~$9~~	~~9~~	~~9~~	~~6~~	~~8~~	~~5~~	~~8~~	~~5~~	~~8~~	~~5~~

~~KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6~~

	Special Needs		Infants		Toddlers		Pre-School		~~School~~ Age	
	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~
~~Center-based Group~~	~~$15~~	~~15~~	~~15~~	~~12~~	~~15~~	~~12~~	~~14~~	~~11~~	~~12~~	~~9~~
~~Home Family/ In Home~~	~~$14~~	~~14~~	~~14~~	~~11~~	~~14~~	~~11~~	~~13~~	~~10~~	~~11~~	~~8~~
	~~$13~~	~~13~~	~~13~~	~~10~~	~~13~~	~~10~~	~~12~~	~~9~~	~~10~~	~~7~~

~~NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7~~

	Special Needs		Infants		Toddlers		Pre-School		~~School~~ Age	
	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~
~~Center-based Group~~	~~$16~~	~~16~~	~~16~~	~~13~~	~~14~~	~~11~~	~~14~~	~~11~~	~~13~~	~~10~~
~~Home Family/ In Home~~	~~$15~~	~~15~~	~~15~~	~~12~~	~~13~~	~~10~~	~~13~~	~~10~~	~~12~~	~~9~~
	~~$14~~	~~14~~	~~14~~	~~11~~	~~12~~	~~9~~	~~12~~	~~9~~	~~11~~	~~8~~

~~BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8~~

	Special Needs		Infants		Toddlers		Pre-School		~~School~~ Age	
	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~	~~FT~~	~~PT~~
~~Center-based Group~~	~~$12~~	~~12~~	~~12~~	~~9~~	~~11~~	~~8~~	~~9~~	~~6~~	~~9~~	~~6~~
~~Home Family/~~	~~$11~~	~~11~~	~~11~~	~~8~~	~~10~~	~~7~~	~~8~~	~~5~~	~~8~~	~~5~~

In Home	$10	10	10	7	9	6	7	4	7	4

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	9	6	9	6	9	6	9	6
Group Home	$10	10	8	5	8	5	8	5	8	5
Family/ In Home	$9	9	7	4	7	4	7	4	7	4

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$14	14	14	11	13	10	13	10	13	10
Group Home	$13	13	13	10	12	9	12	9	12	9
Family/ In Home	$12	12	12	9	11	8	11	8	11	8

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$12	12	12	9	12	9	12	9	12	9
Group Home	$11	11	11	8	11	8	11	8	11	8
Family/ In home	$10	10	10	7	10	7	10	7	10	7

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$13	13	13	10	13	10	11	8	11	8
Group Home	$12	12	12	9	12	9	10	7	10	7
Family/ In Home	$11	11	11	8	11	8	9	6	9	6

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	11	8	11	8	11	8	11	8
Group Home	$10	10	10	7	10	7	10	7	10	7
Family/ In Home	$9	9	9	6	9	6	9	6	9	6

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$11	11	10	7	10	7	10	7	10	7
Group Home	$10	10	9	6	9	6	9	6	9	6
Family/ In Home	$9	9	8	5	8	5	8	5	8	5

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	$14	14	14	11	13	10	13	10	13	10
Group Home	$13	13	13	10	12	9	12	9	12	9
Family/ In Home	$12	12	12	9	11	8	11	8	11	8]

[(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:]

CHILD CARE FEE SCHEDULE

Income Range (Monthly)		FAMILY SIZE - Fee per agreement per family						
		2	3	4	5	6	7	8*
0	399	1.00	1.00	1.00	1.00	1.00	1.00	1.00
400	499	1.00	1.00	1.00	1.00	1.00	1.00	1.00
500	599	1.00	1.00	1.00	1.00	1.00	1.00	1.00
600	699	1.00	1.00	1.00	1.00	1.00	1.00	1.00
700	799	1.00	1.00	1.00	1.00	1.00	1.00	1.00
800	899	2.00	1.00	1.00	1.00	1.00	1.00	1.00
900	999	3.25	1.15	1.00	1.00	1.00	1.00	1.00
1000	1099	4.50	2.25	1.00	1.00	1.00	1.00	1.00
1100	1199	6.00	3.50	1.60	1.00	1.00	1.00	1.00
1200	1299	7.50	5.00	3.10	1.00	1.00	1.00	1.00
1300	1399	8.00	6.00	4.60	1.60	1.00	1.00	1.00
1400	1499	8.60	7.00	6.10	2.65	2.00	1.00	1.00
1500	1599	9.25	7.75	7.00	4.05	3.05	1.25	1.00
1600	1699	9.75	8.25	7.85	5.50	4.50	2.30	1.00
1700	1799	10.25	9.75	8.35	7.10	6.25	3.50	1.50
1800	1899	10.75	10.30	9.30	8.35	7.50	5.20	2.50
1900	1999	11.25	10.60	9.30	9.30	8.80	7.00	3.80
2000	2099	11.75	11.25	9.75	9.75	9.75	8.50	5.30
2100	2199	12.25	11.75	10.25	10.25	10.25	10.00	7.10
2200	2299	12.75	12.25	10.70	10.70	10.70	10.70	8.90
2300	2399	13.25	12.75	11.25	11.28	11.25	11.25	10.80
2400	2499	13.75	13.25	11.75	11.75	11.75	11.75	11.75
2500	2599	14.25	13.75	12.25	12.25	12.25	12.25	12.25
2600	2699	14.75	14.25	12.75	12.75	12.75	12.75	12.75
2700	2799	15.25	14.75	13.25	13.25	13.25	13.25	13.25

*For family size above eight (8), the parent fee shall not increase.

(a) Except fees shall not be assessed in:

1. A child protective case under SSBG; or

2. An AFDC, medical assistance or food stamp case where clients are receiving dependent care disregard.

(b) The DCW shall determine the maximum daily reimbursement rate and parent fee, not to exceed rates as specified in Section 7(2) of this administrative regulation and monitor the payment to the child care provider. If the parent fails to pay the fee the DCW shall develop a plan with the parent to pay the fee.

(c) The DCW shall advise the client to report family and financial

changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every six (6) months; and

2. Upon receipt of reported changes.

(4) The Cabinet for Human Resources may, except for TCC and protective service cases, establish priorities for child care services as follows:

(a) Children with special needs;

(b) Job Opportunity and Basic Skills Program or TCC participants who have children ineligible for child care payments under the programs;

(c) Families who lose eligibility in another child care program; and

(d) Other low income working parents or parents attending training or educational programs.

(5) The Department for Social Services shall exchange TCC client specific information to the Department for Social Insurance within ten (10) days of discovery.

(a) The DCW shall report the following case terminations to the local DSI, Division of Field Services Office:

1. When a TCC client quits a job without good cause;

2. Based on a TCC client's failure to pay a parent fee;

3. Based on a TCC client's refusal to cooperate with the Division of Child Support Enforcement; and

4. Client makes suitable arrangements to pay parent fee.

(b) The DCW shall report the following changes in client information to the Division for Child Support Enforcement:

1. TCC case approval for payments;

2. A child left the home;

3. Payments cease for a child;

4. Client's address changes;

5. An absent parent returns to the home;

6. A TCC case is terminated; or

7. A child is added to the case.

(6) Recoupment. The following provisions apply to overpayment in SSBG, CCDBG, TCC and ARCC;

(a) Necessary action shall be taken promptly to correct and recoup an overpayment in a case:

1. Of fraud;

2. Involving a current recipient; and

3. In which the overpayment would equal or exceed the cost of recovery.

(b) An overpayment shall be recovered from the child care provider.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(e) For TCC cases an overpayment, including assistance paid pending a hearing decision, shall be recovered from:

1. The responsible party;

2. The family unit which was overpaid;

3. The provider who was responsible for the overpayment;

4. Individuals who were members of the family when overpaid; or

5. A family that includes a member of a previously overpaid family.

(7) The DCW shall terminate day care services when due to need or income criteria, clients lose eligibility.

(a) If due to program policy changes the DCW shall:

1. Reassess the families so clients may be given ten (10) days notice of their eligibility, if they do not meet the new criteria after their authorization period expires;

2. Send written notices explaining new eligibility criteria with a notice of intended action.

(b) TCC clients may lose eligibility during the entitlement period without causing permanent termination of benefits if:

1. The client fails to cooperate in paying the parent fee, but later makes suitable arrangements;

2. The client moves out of state and returns to Kentucky within the entitlement period; and

3. The child requiring paid care leaves the home and returns.

(c) AFDC Unemployed Parent cases continue to be eligible for TCC without a deprivation.

(8) The child care worker shall notify the client of their rights to notice of adverse actions, hearings and appeals as governed by 905 KAR 1:320, Fair Hearing.

Section 8. Material Incorporated by Reference. (1) The DSS-76, Day Care Services Agreement and Child Care Certificate revised March 1995, the DSS-77, Day Care Billing Statement revised March, 1995 and the DSS-1A procedural instructions revised March, 1995 shall be incorporated by reference. [~~Forms necessary for the implementation of child day care services are herein incorporated by reference.~~]

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 22, 1995, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by May 17, 1995: William K. Moore, Jr., Office of Counsel, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are the 386 certified and 1800 licensed facilities providing care for approximately 12,000 children who are receiving subsidized payment for child care services. Another affected entity is the parents of the children receiving subsidized care. The Notice of Intent public hearing to receive public comment scheduled for March 31, 1995 was cancelled as the department failed to receive any request to attend the hearing.

(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. A direct savings to the providers of subsidized day care services is the revision in the maximum market rates to reflect the 75% of charges from providers within their geographical area. If all providers of day care services increased there rates to the maximum amount there might be an indirect cost to families not receiving subsidized care services.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. A direct savings to the providers of subsidized day care services is the revision in the maximum market rates to reflect the 75% of charges from providers within their geographical area.

(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 first year additional compliance, reporting or paperwork requirements necessary to implement the revised child care rates.

2. Second and subsequent years: There are no second or

subsequent years additional compliance, reporting or paperwork requirements necessary to implement the revised child care rates.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: We estimate that there will be an additional first year cost to the agency of $238,292 per month as a result of the increase in the maximum child care rates. Since providers seem to phase-in new rates on their individual schedules and the department has held 10% of the funding for the past six months, we anticipate that the department can absorb the first year increases. We will continue to monitor the monthly expenditures and if necessary limit the number of new applications for services.

2. Continuing costs or savings: With the increased maximum child care market rates the department will continue to monitor the monthly expenditures to ensure fiscal accountability for FY'96, which may include limiting the number of new applications.

3. Additional factors increasing or decreasing costs: Additional factors increasing costs include the time schedules used by providers to revise current rates and the development of additional child care providers in each geographical area. The amount of increase may be determined by the law of supply and demand in each area of the state.

(b) Reporting and paperwork requirements: The department has revised some definitions to coincide with the market rate survey and federal categories of child care. These revisions require some system modification and training of staff to implement these revised child care market rates.

(4) Assessment of anticipated effect on state and local revenues: These is a positive effect on state and local revenues as the rates may increase payments to day care providers that will be turned over in the local economy in payments to cover care giver costs and supplies. Additionally the ability of parents to enter and remain in the job market may increase if additional child care is available.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation of this administrative regulation include the Social Services Block Grant, Child Care Development Block Grant and the Transitional and At-Risk Child Care Programs (Title IV-A).

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

(a) Geographical area in which administrative regulation will be implemented: The Notice of Intent public hearing to receive public comment scheduled for March 31, 1995 was cancelled as the department failed to receive any request to attend the hearing.

(b) Kentucky: The Notice of Intent public hearing to receive public comment scheduled for March 31, 1995 was cancelled as the Department failed to receive any request to attend the hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because implementation of the revised market rate survey are required pursuant to KRS 199.899 and 45 CFR 255.1.

(8) Assessment of expected benefits: The assessment of expected benefits include the implementation of child care market rates that represent the 75% of current charges from providers in each area as a result of the survey completed by the University of Kentucky for the Department for Social Services.

(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 implementation of child care market rates that represent the 75% of current charges from providers in each area as a result of the survey completed by the University of Kentucky for the Department for Social Services.

(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 regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect on the environment and public health if this 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 regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This regulation was not tiered as it implements the revised market rates on a statewide basis for all subsidized child care payments.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:016. Psychiatric hospital services.

RELATES TO: KRS 205.520

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

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

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

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

Section 3. Condition of Eligibility for Participation. An appropriately accredited psychiatric hospital desiring to participate in the Medicaid program shall be required as a condition of eligibility to

participate in the Medicare program when the hospital serves patients eligible for payments under the Medicare program.

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

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

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

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

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

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

(a) Determine patient status;

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

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

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

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

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

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

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: April 14, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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: State owned psychiatric hospitals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No hearing was requested as a result of the Notice of Intent being published and no written 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 hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions:

(10) Any additional information or comments: This action is being taken to help offset the costs of providing care to indigent patients in state psychiatric hospitals through the use of federal financial participation in disproportionate share hospital payments.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, APRIL 14, 1995

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

200 KAR 22:020. Guideline for comprehensive employment manuals required by pilot agencies under KRS 18A.430.

RELATES TO: KRS 18A.430

STATUTORY AUTHORITY: KRS 13A.100(1), 18A.430(1)(b), (c)

NECESSITY AND FUNCTION: KRS 18A.430(1)(a) provides that pilot agencies participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in each organizational unit of the pilot agencies. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the administrative regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This administrative regulation establishes a guideline to be used by the pilot agencies in the development of the employment manual prescribed by KRS 18A.430(1).

Section 1. Guideline for Development of Employment Manual. (1) In developing the comprehensive employment manual prescribed by KRS 18A.430(1), a pilot agency participating in the Pilot Personnel Program shall use the "Guideline for Comprehensive Employment Manual Required by Pilot Agencies under KRS 18A.430" ("guideline") as prepared by the Finance and Administration Cabinet and the Department of Personnel. The "guideline" shall be used as a model and may be modified as required by the organizational structure of the agency participating in the Pilot Personnel Program or the particular program for which the comprehensive employment manual is being developed.

(2) If an agency in which a pilot program is located submits a proposed administrative regulation to the Finance and Administration Cabinet for promulgation under KRS 18A.430(1)(c), the proposed administrative regulation shall include the following statement which shall be signed by the head of the agency:

"This draft has been prepared by (insert name of administrative body) in accordance with the applicable provisions of KRS Chapters 13A and 18A and is submitted for review and approval to the Secretary of the Finance and Administration Cabinet pursuant to the provisions of KRS 18A.430(1)(c)."

Section 2. Incorporation by Reference. (1) The "Guideline for Comprehensive Employment Manuals Required by Pilot Agencies under KRS 18A.430" (revised January 1995) is incorporated by reference.

(2) The "guideline" may be inspected, copied, or obtained at the Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUALLEN, Secretary

APPROVED BY AGENCY: April 7, 1995

FILED WITH LRC: April 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 31, 1995, at 10 a.m., in the offices of the Finance and Administration Cabinet, Room 386, Capitol Annex, Frankfort, Kentucky 40601. Persons interested in attending this hearing shall notify the agency representative designated below in writing by May 26, 1995, five days prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing will be open to the public, and any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless it is requested in writing with the cost of the transcript to be borne by the requesting party. If you do not wish to attend the public hearing, you may still submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gail Prewitt, Executive Assistant, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601, (502) 564-4240.

REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt, Executive Assistant

(1) Type and number of entities affected: This regulation will affect all agencies which submit proposals for pilot personnel programs under the provisions of KRS 18A.400 to 18A.450.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. To date, no public comments have been 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 direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. To date, no public comments have been received.

(c) Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Pursuant to KRS 18A.430(1)(a), pilot programs are already required to develop comprehensive employment manuals establishing conditions of employment for employees in each organizational unit. This regulation should reduce the programs's compliance and paperwork requirements by providing a guideline to be used by the agencies in developing the employment manuals.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Under KRS 18A.430(1)(c), employment manuals developed by the pilot agencies are required to be promulgated as administrative regulations by the Secretary of the Finance and Administration Cabinet. By requiring a standardized guideline for development of the employment manuals by the pilot agencies, the time necessary for the secretary to review and promulgate the employment manuals as administrative regulations will be reduced.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Under KRS 18A.430(1)(c), employment manuals developed by the pilot agencies are required to be promulgated as administrative regulations by the Secretary of the Finance and Administration Cabinet. By requiring a standardized guideline for development of the employment manuals by the pilot agencies, the time necessary for the secretary to review and promulgate the employment manuals as administrative regulations will be reduced.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Pilot programs will be required to absorb the costs of developing employment manuals in their operating budgets. This regulation will reduce the cost of development by providing a guideline to be used by the agencies.

(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 date, no public comments have been received. However, no economic impact is expected.

(b) Kentucky: To date, no public comments have been received. However, no economic impact is expected.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Secretary, there are no statutes, rules, administrative regulations or government policies which are in conflict, overlap, or duplicate the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This is a procedural regulation which applies to all agencies equally.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:125. Small game and furbearer hunting on federal 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 150.015, 150.021, 150.025, 150.170, 150.175

NECESSITY AND FUNCTION: To establish exceptions to statewide small game and furbearer hunting on federal areas. The substance of this administrative regulation was formerly contained in 301 KAR 2:049. Substantive changes from 301 KAR 2:049 consist of changes in hunting season dates and removal of the requirements that trappers apply for a drawing at Land Between the Lakes.

Section 1. Season dates, bag limits and other requirements of 301 KAR 2:251, 2:049 and 2:050 apply unless specified otherwise in this administrative regulation.

Section 2. Fort Campbell . (1) Exceptions to statewide seasons and limits.

(a) Squirrels: third Saturday in August through the last Sunday in January.

(b) Quail: Thanksgiving day through the last Sunday in February.

(c) Rabbit: Thanksgiving day through the last Sunday in February; bag limit five (5); possession limit ten (10).

(d) Raccoon, foxes and opossum: taking with gun or dogs, Thanksgiving day through the last Sunday in January; limit one (1) per person.

(e) Groundhog: the second Saturday in May through the second Sunday in August.

(f) Coyote: May 1 through May 30 in Areas 16-51, and during legal hunts for other species.

(g) Frogs: year-round; daily and possession limit, ten (10).

(h) Crow: Thanksgiving Day through the last Sunday in February.

(i) Bobcat: no open season.

(2) Posthunting requirements.

(a) Persons shall not hunt on:

1. Tuesdays or Wednesdays except when Tuesday or Wednesday is a federal holiday;

2. December 25 or January 1.

(b) Persons shall obtain permission for each hunt at Building #6645.

(c) Hunters shall stay within assigned areas.

(d) Hunters shall obtain a fifteen (15) dollar posthunting permit.

(e) Hunters between the ages of twelve (12) and eighteen (18) shall possess a valid hunter safety certificate.

Section 3. Fort Knox. (1) Exceptions to statewide seasons and limits.

(a) Furbearer trapping: no open season.

(b) Grouse: December 1 through December 31; daily limit, one (1).

(2) Post requirements.

(a) Persons shall obtain permission for each hunt at the Hunt Control Office.

(b) Hunters shall stay in their assigned areas.

(c) Hunters thirty-eight (38) years of age and younger shall possess their own hunter safety certificate.

(d) Hunters shall not use pistols, centerfire rifles or crossbows.

(e) Hunters shall not possess loaded firearms:

1. While in a vehicle;

2. While in a nonhunting area;

3. During nonhunting hours; or

4. After having taken the legal game bag limit.

(f) Persons shall not operate vehicles off maintained roads, except as otherwise authorized.

Section 4. Land Between the Lakes. (1) Exceptions to statewide seasons or limits.

(a) Squirrels:

1. The third Saturday in August through the fourth Friday in September;

2. December 1 through January 31; and

3. During deer archery season by legally licensed and equipped deer archery hunters.

(b) Quail and rabbit: December 1 through the last day of February.

(c) Raccoon and opossum: Tuesday, Thursday, Friday and Saturday nights, December 1 through January 31 in designated areas.

(d) Fox chasing: the third Saturday in August through the third Saturday in September south of Highway 68, from sunset to sunrise.

(e) Fox and bobcat gun and archery hunting: December 1 through January 31.

(f) Groundhog: March 15 through March 31, and during the LBL deer archery season by legally licensed and equipped deer archery hunters.

(g) Coyote: daylight hours only by legally licensed hunters during LBL open seasons with firearms or archery equipment specified for that season.

(h) Trapping season, furbearers and bobcats: fourteen (14) consecutive days beginning the second Monday in January.

(i) Crow: December 1 through the last day of February.

(2) General requirements.

(a) Persons hunting the species listed in this section shall not use:

1. Crossbows.

2. Shotgun slugs or shot larger than BB.

3. Center-fire rifles or center-fire handguns, except that groundhog hunters may use center-fire rifles during the spring groundhog season.

(b) Hunters shall remove harvested groundhogs from Land Between the Lakes.

(c) Persons shall not use firearms to hunt groundhogs in Hunt Area 8 or the portion of Hunt Area 9 designated as the off-highway vehicle area.

(3) Trapping requirements.

(a) Persons shall obtain Land Between the Lakes Hunter Use Permit before trapping.

(b) Persons shall not trap outside of designated areas.

(c) Trappers shall report their harvest in accordance with LBL instructions.

(4) Field trials and dog training requirements.

(a) Bird dog, beagle and raccoon hound training season: October 1 through October 31 in designated areas.

(b) Field trials: September 1 through March 31, on a scheduled basis only.

(c) Hunters shall equip their dogs with collars bearing the owner's name, address, and telephone number.

(d) Hunters shall not use dogs from the fourth Saturday in September through November 30, except during authorized field trials in designated dog training hunt areas.

(e) Persons shall submit written requests for field trials at least ten (10) days prior to the proposed trial date.

(f) Approval to conduct field trials shall be granted to established field trial clubs with a department field trial permit issued pursuant to KRS 150.370(2)(b).

(g) Field trial participants shall be listed on the club roster for that trial.

(5) Requirements for bobcat hunting and trapping.

(a) The limit is two (2) bobcats per person per season by any legal method.

(b) The bobcat harvest quota is twenty-four (24). If the quota of twenty-four (24) bobcats will be filled prior to January 31, the season shall close. Land Between the Lakes shall give a minimum of twenty-four (24) hours notice of the time and date of closure.

(c) Hunters or trappers shall have bobcats tagged by taking the entire carcass, skinned or unskinned, to LBL check stations, Golden Pond Administrative Office, or Patrol Office for checking:

1. Before leaving LBL; or

2. Within forty-eight (48) hours of harvest.

(d) Persons shall not hunt or call bobcats except during daylight hours.

(e) Persons shall not use electronic or amplified calls to hunt bobcats.

Section 5. Reelfoot National Wildlife Refuge. (1) Exceptions to statewide seasons or limits.

(a) Squirrels: the last Saturday in August through September 30 in areas designated by signs as open to public hunting.

(b) Raccoon:

1. Four (4) consecutive nights beginning the third Wednesday in October;

2. Four (4) consecutive nights beginning the fourth Wednesday in October;

3. Hunting hours, 7:30 p.m. to 12 midnight.

4. No bag or possession limits.

5. Hunters shall check in and out at designated check stations, and shall present harvested raccoons for inspection and tagging at the refuge check station.

(2) General requirements.

(a) Hunters shall have in their possession a Refuge Hunt Brochure.

(b) Persons shall not hunt other species on this area.

(c) Hunters shall remain in assigned areas.

C. THOMAS BENNETT, Commissioner
GREG GINTER, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 14, 1995 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 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 May 21, 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: Don Walker, Acting Director, 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: Approximately 15,000 small game hunters utilize the federally-owned areas covered by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation continues seasons in place for many years and will have no impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on costs of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation continues a requirement that persons apply in advance for some hunts and check in and out.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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:

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds will be expended by enforcement personnel on federal installations; Fish and Game Fund monies will be used for any state enforcement of the provisions of this administrative regulation on LBL.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. This administrative regulation will have no economic impact, since it continues seasons already in place.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternates are (1) to permit hunting on federal areas under statewide regulations, or (2) close the areas to hunting. Alternative (1) was rejected because of the need for specialized requirements for the use of LBL by hunters. Alternative (2) was rejected because closing these area would mean a loss of recreational activity and the loss of economic activities associated with that recreation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Controlling hunter access and activities will lead to increased public safety and better management of the wildlife resources at these areas.

(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: An increased potential for hunting accidents if access for some popular hunts were not controlled, and a decrease in the effectiveness of wildlife management practices.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? 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.

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

401 KAR 5:030. Antidegradation policy implementation methodology.

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 40 CFR Part 131, 33 USC 1313, 1342

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and lists among the purposes of KRS Chapter 224: safeguarding from pollution the uncontaminated waters of the Commonwealth, preventing the creation of any new pollution in the waters of the Commonwealth, and abating any existing pollution. This administrative regulation sets forth a methodology to implement the antidegradation policy contained in 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Implementation of Antidegradation Policy. The following procedures shall govern implementation of the antidegradation policy of 401 KAR 5:029, Section 1. Surface waters shall be placed into one (1) of four (4) classifications: outstanding national resource waters, outstanding state resource waters, high quality waters, or use protected waters.

(1) Procedure for implementing the antidegradation policy in outstanding national resource waters for point source discharges.

(a) Water quality shall be maintained and protected in outstanding national resource waters.

(b) The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support their designated uses.

(2) Procedure for implementing the antidegradation policy in high quality waters for point source discharges.

(a) A KPDES permit for a new unpermitted or expanded discharge shall contain effluent limitations that are as follows:

1. Domestic discharges shall have an effluent quality of no greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand, two (2) mg/l ammonia-nitrogen, 0.010 mg/l total residual chlorine, ten (10) mg/l total suspended solids, one (1) mg/l total phosphorus, a minimum seven (7) mg/l dissolved oxygen, a chronic whole effluent toxicity limit unless an acute whole effluent toxicity limit is more stringent, and a geometric mean value for fecal coliform bacteria not to exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days nor 400 colonies per 100 milliliters during a period of seven (7) consecutive days.

2. Chloride limits shall be based on the domestic water supply criterion of 250 mg/l.

3. Stormwater discharges are exempt from antidegradation implementation procedures for high quality waters, but are subject to control by existing cabinet programs.

4. Chronic whole effluent toxicity limits shall apply unless an acute whole effluent toxicity limit is more stringent.

5. Carcinogenic pollutants shall be limited as in use protected waters.

6. All other waste discharges shall be restricted to one-half (1/2) of the limitation that would have been permitted for use protected waters at standard design conditions.

7. KPDES permit renewals that result in no increase in pollutant loading are exempt from high quality waters antidegradation implementation procedures.

(b) If the permit applicant determines that it can meet these limitations, the KPDES permit shall be issued with these limitations without further antidegradation review as described in subsection (3) of this section for use protected waters. If a KPDES permit applicant cannot meet those effluent limitations the applicant may request a less stringent limitation. In making this request, the applicant shall demonstrate to the satisfaction of the cabinet that:

1. The applicant has conducted a thorough alternative or enhanced treatment analysis that investigated other alternative or enhanced treatment options that were available, technically feasible, and cost-effective, including alternate discharge locations that would eliminate the need for less stringent limitations; and

2. The applicant has conducted a thorough pollution prevention alternatives analysis that investigated any cost-effective pollution prevention alternatives and techniques that were available that would eliminate the need for stringent limitations or significantly reduce the

extent of the less stringent limitations.

3. If the applicant satisfies the requirements of subparagraphs 1 and 2 of this paragraph, the applicant may then be permitted a less stringent level of treatment. In allowing the resultant lowering of water quality, the cabinet shall assure water quality necessary to fully protect existing uses.

(3) Procedure for implementing antidegradation policy in use protected waters for point source discharges.

(a) All existing uses shall be protected and the level of water quality necessary to protect these uses shall be assured in these surface waters.

(b) The process to allow discharges to these surface waters and to assure their protection is regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program.

(4) These procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through antidegradation implementation, for dischargers within its jurisdiction to surface waters of the Commonwealth.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: April 14, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled on May 22, 1995 at 7 p.m. in the Auditorium of the Cabinet for Human Resources Building, 275 East Main, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Jack A. Wilson in writing at the address noted below by May 17, 1995, of their intent to attend the hearing and be heard. 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. Persons testifying at the hearing are requested to provide the cabinet with a written copy of their testimony, if available. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Jack A. Wilson at the address below no later than the close of the public hearing on May 22, 1995. The Natural Resources and Environmental Protection cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The Cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before May 17, 1995 between 8 a.m. and 4:30 p.m. (EDT).

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation implements the antidegradation policy of 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy. Individuals, businesses, organizations, and governments that will have new or expanded wastewater discharges into streams classified as high quality waters are affected by stricter discharge limits. Effluent limitations are set for carbonaceous biochemical oxygen demand, ammonia-nitrogen, residual chlorine, suspended solids, phosphorus, dissolved oxygen, fecal coliforms, and a chronic whole effluent toxicity limit unless an acute whole effluent toxicity limit is more stringent. All other waste discharges are twice as stringent as discharges into waters classified as use protected with some exceptions. Discharges into outstanding national resource waters are prohibited except for certain short-term disturbances, such as bridge construction. This regulation also applies indirectly to persons served by domestic water supplies, agricultural water users, recreational enthusiasts, and the tourism industry.

(2) Direct and indirect costs or savings on the affected entities: The stricter permit limits imposed on new or expanded point source dischargers into high quality waters could result in additional treatment outlays, training costs, and operational changes. New or expanded dischargers that cannot meet the high quality water permit limits may incur costs of alternatives and pollution prevention analyses. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

(a) Effect on the 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 specific comments were received for this regulation; see the regulatory impact analysis for 401 KAR 5:026.

(b) Effect on the 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 received.

(c) Effect on the compliance, reporting, and paperwork requirements, to the extent available from the public comments received, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No comments received.

2. Second and subsequent years: No comments received.

(3) Effects on the promulgating administrative body: The cabinet's antidegradation policy will involve additional reviews of alternatives and pollution prevention analyses. The permitting process itself will not change significantly.

(a) Direct and indirect costs or savings: No significant additional costs are anticipated.

1. First year: No significant costs are anticipated.

2. Continuing costs or savings: No significant costs are anticipated.

3. Additional factors increasing or decreasing costs: Alternatives and pollution prevention analyses must be reviewed and determinations made as to their allowability. Costs may increase if the division's findings are contested.

(b) Reporting and paperwork requirements: Implementing the antidegradation policy will involve minimal internal paperwork.

(4) Assessment of anticipated effect on state and local revenues: Some localities may be affected because of the presence of high quality waters, causing tax-generating businesses to locate elsewhere. However, protection of outstanding national resource waters, outstanding state resource waters, and high quality waters may have a positive influence on revenues derived from water-based tourism.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the general fund and federal funds, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No comments received.

(b) Kentucky: Comments received are given in the regulatory impact analysis for 401 KAR 5:026.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This new regulation implements Kentucky's antidegradation policy, which is contained in 401 KAR 5:029. Implementation of an antidegradation policy is required by the Clean Water Act and 40 CFR 131.12, therefore no alternatives were considered. The domestic discharge limits for new or expanded discharges to high

quality waters are stringent but technologically achievable.

(8) Assessment of expected benefits of the administrative regulation: The quality of aquatic-based recreation (e.g., fishing, swimming, skiing, and boating) will be preserved. Drinking water treatment costs will be contained because of controlled pollutant amounts. Aquatic biodiversity will be maintained.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation reduces the amount of permissible point source pollutant loading into high quality waters. Aquatic recreation, such as swimming, wading, skiing, and boating, depends on the maintenance of clean, safe water. High quality waters protect rare aquatic species and support a rich biodiversity of plants, fish, and macroinvertebrates. The quality of outstanding national resource waters will be preserved which enhances their long-term values as environmental resources.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be a detrimental effect on the environment if this regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this regulation would allow the degradation of those streams and lakes identified as outstanding national resource waters and high quality waters. Although these waters would meet designated uses, any increment of water quality greater than that necessary to support propagation of fish, shellfish, wildlife, and recreation in and on the water could be lost.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations or government policies are in conflict, overlap, or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: No conflict exists.

(11) Any additional information or comments: See the regulatory impact analyses prepared for 401 KAR 5:001, 5:026, 5:029, 5:030, and 5:031 to obtain an overview of the water quality standards regulations and their impacts. 401 KAR 5:030 is printed elsewhere in the May Administrative Register of Kentucky.

(12) TIERING: Is tiering applied? Tiering was not applied. The regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, processes, or treatment employed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges into high quality waters or outstanding national resource waters.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to local governments' waste water treatment service.

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. Waste water treatment costs may increase for those local governments that will have new or expanded discharges into high quality waters, although local governments withdrawing drinking water from these waters may have lower treatment costs.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states and permit the adoption of certain general policies such as mixing zones. The U.S. Environmental Protection Agency does provide guidance to the states, but individual decisions concerning the states water quality programs are left to the states.

2. State compliance standards. 401 KAR 5:001, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. None

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard or additional or different responsibilities or requirements.

KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD

418 KAR 1:010. Definitions for 418 KAR Chapter 1, repeal of 301 KAR 10:010.

RELATES TO: KRS 146.415(1), 146.550 through 146.570, 446.010(18)

STATUTORY AUTHORITY: KRS Chapter 13A, 146.550 through 146.570

NECESSITY AND FUNCTION: KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. The purpose of this administrative regulation is to define terms used in 418 KAR Chapter 1.

Section 1. Definitions for 418 KAR Chapter 1. The following definitions shall apply to 418 KAR Chapter 1:

(1) "Access land" means land necessary for reasonable and planned ingress and egress from the project site.

(2) "Acquisition" means the procurement of land. Its costs include the applicant's standard acquisition costs which have been approved by the board, including, but not limited to, options, required carrying costs and relocation assistance, appraisals, maps, surveys, studies, title opinions, title insurance and environmental audits, inspections and remediation. Its costs also include KHLCFB, staff and agent expenses associated with verifying information on all proposed acquisitions.

(3) "Areas important to migratory birds" means those areas important to the reproduction and survival of migratory birds, including, but not limited to:

(a) Large tracts of contiguous forest;

(b) Wooded greenspace areas;

(c) Shallow open water habitats with expansive areas of shoreline; and

(d) Wetlands or wetland complexes including marshes, deep water sloughs, and swamps.

(4) "Board" means the Kentucky Heritage Land Conservation Fund Board.

(5) "Buffer land" means land that will aid in protecting the project site from harm, or will prevent degradation of the visitor experience at the project site.

(6) "Carrying costs" include, but are not limited to, interest on borrowed money, reasonable management costs consistent with the preliminary RMP and incurred while land is being held pending sale, and reimbursement of reasonable overhead costs not to exceed three (3) percent of the sale price.

(7) "Chair" means the chairperson of the Kentucky Heritage Land Conservation Fund Board.

(8) "Fund" means the Kentucky Heritage Land Conservation Fund.

(9) "Grant" means an award of money from the Kentucky Heritage Land Conservation Fund pursuant to KRS 146.570(f).

(10) "Greenspace" means undeveloped land in or around urban areas, including, but not limited to, forests and other natural vegetation, stream-side corridors, natural areas, and abandoned rights-of-way.

(11) "Land" - the definition of "land" is governed by KRS 446.010(18).

(12) "Local governments" means local government entities, including, but not limited to, county governments, municipalities, school districts, and special districts, or a combination thereof.

(13) "Management" means the stewardship necessary to fulfill the purposes of KRS 146.550 through 146.570 and 418 KAR Chapter 1 and encompasses the initial site development costs and reasonable operating costs including, but not limited to, consultant and contractor fees, facility development, supplies, materials, site-specific equipment and staff costs.

(14) "Money" means money received from the Kentucky Heritage Land Conservation Fund.

(15) "Natural area" - the definition of "natural area" is governed by KRS 146.415(1).

(16) "Natural functions" means the interrelationships among the living and nonliving components of ecosystems and includes, but is not limited to, energy fixation and conversions; ecosystem productivity and biomass accumulation; cycling; storage, transport, release, and retention of water and other nutrients; food web relationships and dynamics; weathering (e.g., rocks); and development of substrates (e.g., soils, sediments).

(17) "Natural state" means the condition of any area which retains, has substantially reestablished, or is in the process of reestablishing, an indigenous ecosystem.

(18) "Outdoor recreation" means activity on a subject property that does not cause meaningful harm to the property or its natural state, or hinder the heritage land conservation purposes of KRS 146.550 through 146.570.

(19) "RMP" means resource management plan.

(20) "Project" means land acquisition and management activities for the purposes set forth in KRS 146.550 through 146.570.

(21) "State agency" means any department, program cabinet, institution, board, commission, office or agency of the Commonwealth of Kentucky.

(22) "Tract" means, in the case of final RMPs, all parcels of land within a project boundary approved by the board, and, in the case of preliminary RMPs, all parcels of land within the project boundary included in the application to the board.

(23) "USGS" means United States Geological Survey.

(24) "Wetlands" - the definition of "wetlands" is governed by KRS 146.550(1).

Section 2. Repeal of 301 KAR 10:010. 301 KAR 10:010, entitled Kentucky Heritage Land Conservation Fund Board, is hereby repealed.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held May 31, 1995, at 10 a.m. EDT in Training Rooms A and B, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601. Persons interested in being heard at this hearing shall notify this agency in writing by May 26, 1995. If no written notice 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. To ensure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. A transcript of the public hearing will not be made unless a written request for transcript is made in which case the person making the request shall have the responsibility of paying for the transcript. If you do not wish to be heard at the public hearing, you may nevertheless submit written comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on May 26, 1995. Send written notice of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

CONTACT PERSON: William H. Martin, Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 107 Mero Street, Frankfort, Kentucky 40601, (502) 564-2184.

The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or provisions of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Any individual who requires special accommodations in connection with this proceeding should contact Bobbie Benson at 107 Mero Street, Frankfort, Kentucky 40601, (502) 564-2184 (phone), or (502) 564-6193 (telefax) at least one (1) week prior to the date the accommodations will be needed.

REGULATORY IMPACT ANALYSIS

Contact Person: William H. Martin

(1) Type and number of entities affected: This regulation defines terms employed in 418 KAR Chapter 1. As such, it will affect all state agencies, local governments, and state colleges and universities applying for Kentucky Heritage Land Conservation Fund money. Given the large number of local government entities potentially eligible for fund money, it is impossible to accurately determine the number of entities affected.

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

(a) Effect on the 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. This regulation contains definitions only.

(b) Effect on the 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. See above.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: None. See above.

2. Second and subsequent years: None. See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None. This regulation contains definitions only.

2. Continuing costs or savings: None. See above.

3. Additional factors increasing or decreasing costs: None. See above.

(b) Reporting and paperwork requirements: None.

(4) Assessment of anticipated effect on state and local revenues: Not applicable. This regulation contains definitions only.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable. This regulation contains definitions only.

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

(a) Geographical area in which administration regulation will be implemented: None. This regulation contains definitions only.

(b) Kentucky: None. See above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable. This regulation contains definitions only.

(8) Assessment of expected benefits of the administrative regulation: Not applicable. This regulation contains definitions only.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None. This regulation contains definitions only.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable. See above.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Some terms in this administrative regulation are defined in the Kentucky Revised Statutes and other titles and chapters of the Kentucky Administrative Register. To avoid duplication, references have been made to chapters and sections of the Kentucky Revised Statutes in which applicable definitions appear. KRS 13A.222 requires any definitions to be placed in the first section of an administrative regulation or in a separate regulation at the beginning of each chapter.

(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.

(11) Any additional information or comments: No

(12) TIERING: Is tiering applied? No. Tiering is not applicable to a regulation which contains definitions only.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. This regulation is promulgated pursuant to KRS 146.550 through 146.570.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect local government entities, including counties, municipalities, school districts, special districts or a combination thereof, that apply for Kentucky Heritage Land Conservation Fund money.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the Kentucky Heritage Land Conservation Fund, for which local governments are eligible pursuant to KRS 146.570(4)(f).

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 (+/-): None

Expenditures (+/-): None

Other Explanation: This administrative regulation contains definitions only.

KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD

418 KAR 1:020. Administrative procedures of the board.

RELATES TO: KRS 61.805 through 61.850, 61.870 through 61.884, 146.550 through 146.570,

STATUTORY AUTHORITY: KRS 146.560, 146.565, 146.570

NECESSITY AND FUNCTION: KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. This administrative regulation establishes the administrative procedures the board will employ to implement these duties.

Section 1. Meetings. (1) Meetings of the board shall be conducted in accordance with the Kentucky Open Meetings Laws, KRS 61.805 through 61.850.

(2) Regular meetings. The board shall meet quarterly at times and places designated by the chair. The board shall provide for a yearly schedule of regular meetings pursuant to KRS 61.820. This schedule shall be made available to the public. Should any regular meeting be rescheduled, the board shall provide written notice of the rescheduled meeting pursuant to KRS 61.823(3) through (4).

(3) Special meetings. The chair or any four (4) members of the board may call a special meeting. The board shall provide written notice of a special meeting pursuant to KRS 61.823(3) through (4), unless the meeting is an emergency meeting, in which case the board shall comply with the notice requirements of KRS 61.823(5).

(4) Closed meetings. Deliberations on the future acquisition of land may be closed to the public when publicity would be likely to affect the value of the land. Meetings may also be closed to the public for any other reason permitted by KRS 61.810.

Section 2. Quorum. Seven (7) members of the board, including at least three (3) who are members pursuant to KRS 146.560(1)(a) through (e) and four (4) who have been appointed pursuant to KRS 146.560(1)(f) through (k), shall constitute a quorum. The board shall act by a majority of those present at a meeting at which a quorum is present.

Section 3. Meeting Participation. (1) Board members may participate in meetings in person or by video teleconference pursuant to KRS 61.826.

(2) The designation of a board member pursuant to KRS

146.560(1)(a) through (e) shall be in writing and shall be submitted to the board prior to any meeting the designee attends as a member. If the requirements of this subsection are not met, the designee shall not be permitted to vote.

Section 4. Meeting Minutes, Annual Report. (1) Meeting minutes. Minutes of each meeting of the board shall be prepared, mailed to the members of the board, and made available to interested parties upon request to the chair.

(2) Annual report. An annual report of the activities of the board for the previous year shall be prepared. This report shall include a cumulative list of all approved projects and a brief status report of all areas acquired through the fund. The board shall submit the annual report to the Legislative Research Commission by October 1 of each year. Upon receipt of the annual report, the Legislative Research Commission may publish it in the Legislative Record or other appropriate publication.

Section 5. Inspection of Public Records. Public records of the board shall be made available for public inspection in accordance with the Kentucky Open Records Act, KRS 61.870 through 61.884. The title and address of the official custodian of the board's records shall be Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601.

Section 6. Principal Office. The principal office of the board shall be located at the Office of the Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601. Its regular office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except for state holidays.

Section 7. Officers. The board shall nominate and elect a vice-chair and a treasurer. The vice-chair's duty is to preside over meetings in the absence of the chair. The treasurer, which shall be a member appointed pursuant to KRS 146.560(1)(f) through (k), shall monitor and report disbursements and receipts.

Section 8. Committees. (1) There shall be two (2) standing committees, a projects review committee and a stewardship committee. The chair, with board approval, may also create other committees for specific purposes and a definite term.

(2)(a) The purpose of the projects review committee shall be to review state agency project applications submitted pursuant to 418 KAR 1:030 and competitive grant applications submitted pursuant to 418 KAR 1:040 and determine their compliance with the four (4) priorities for acquisition set forth in KRS Chapter 146.560(2)(a) through (d) and their completeness and accuracy. The findings as to each application shall be set forth in a report which shall be submitted to individual board members at least fifteen (15) days prior to any meeting of the board at which the application is to be considered. A copy of this report shall also be delivered to the applicant. The projects review committee may also assist applicants in the preparation of applications.The projects review committee may contact an applicant at any time before its report is due to correct minor deficiencies in an application.

(b) The purpose of the stewardship committee shall be to review, and make recommendations to the board concerning, RMPs (preliminary and final) and to ensure that the management of land purchased, in whole or in part, with fund money meets the requirements of KRS 146.550 through 146.570, this chapter, memorandums of agreement between the board and a recipient of fund money, conservation easements which pertain to the project site, and the latest RMP approved by the board.

(3) Each committee shall consist of at least five (5) board members. The members, including a chair for each committee, shall be appointed by the chair of the board, with approval of the board.

(4) A majority of the members of a committee shall constitute a quorum. A committee shall act by a majority of those present at a meeting at which a quorum is present.

(5) Committee members shall serve for a term of one (1) year, but shall remain in office until removed or a successor is appointed. Committees shall be reestablished at the last meeting of each calendar year. Committee members shall be eligible for reappointment.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held May 31, 1995, at 10 a.m. EDT in Training Rooms A and B, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601. Persons interested in being heard at this hearing shall notify this agency in writing by May 26, 1995. If no written notice 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. To ensure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. A transcript of the public hearing will not be made unless a written request for transcript is made in which case the person making the request shall have the responsibility of paying for the transcript. If you do not wish to be heard at the public hearing, you may nevertheless submit written comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on May 26, 1995. Send written notice of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

CONTACT PERSON: William H. Martin, Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 107 Mero Street, Frankfort, Kentucky 40601, (502) 564-2184.

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REGULATORY IMPACT ANALYSIS

Contact Person: William H. Martin

(1) Type and number of entities affected: This administrative regulation governs the administrative procedures of the Kentucky Heritage Land Conservation Fund Board. As such, the regulation will pertain to any state agency, local government, and state college or university applying for Kentucky Heritage Land Conservation Fund money. Given the large number of local government entities eligible for fund money, it is impossible to determine the number of affected entities.

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

(a) Effect on the 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. This regulation governs the administrative procedures only of the board.

(b) Effect on the 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. See above.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: None. See above.

2. Second and subsequent years: None. See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The seven (7) nonstate-agency members of the board are eligible for mileage (at 22 cents per mile) for each meeting attended. In addition to mileage, the board incurs approximately $60 of additional expenses per meeting. There are 4 regular meetings of the board per year. It is impossible to predict how many special meetings and committee meetings will be held per year. The board may incur small additional costs if board members choose to participate in meetings via video teleconference pursuant to KRS 61.826.

2. Continuing costs or savings: The continuing costs will be approximately the same as those of the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Pursuant to Section 4, minutes will be prepared for each meeting. Section 3 requires state agency member designations of alternates to be in writing. Section 8 requires the projects review committee to prepare a report which contains the committee's findings as to the completeness and accuracy of each application and its compliance with the priorities for acquisition set forth in KRS 146.560(2)(a) through (d). Finally, Section 4 requires the board to prepare an annual report of its activities.

(4) Assessment of anticipated effect on state and local revenues: Negligible

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Kentucky Heritage Land Conservation Fund. Also, pursuant to KRS 146.560(1), the board will receive staff support from the Natural Resources and Environmental Protection Cabinet and the Department of Fish and Wildlife Resources.

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

(a) Geographical area in which administration regulation will be implemented: None. This administrative regulation governs the administrative procedures of the board.

(b) Kentucky: None. See above.

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

(8) Assessment of expected benefits of the administrative regulation: The entities eligible for fund money will benefit from their awareness of the board's procedures. Also, Section 8 permits the projects review committee to assist applicants in the preparation of applications.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation sets forth the procedures of the board which will administer funds for the acquisition and management of lands which meet the priorities for acquisition set forth in KRS 146.560.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without administrative procedures, the board could not administer the fund or review and approve grant applications payable from the fund.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicts. This regulation does, however, make clear that the board must meet the requirements of the Kentucky Open Records Act and the Kentucky Opens Meetings Laws. This reiteration is necessary to ensure that future members of the board will be made aware of these requirements.

(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.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. Tiering is not applicable to the administrative procedures of the board.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. This regulation is promulgated pursuant to KRS 146.560 through 146.570.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect local government entities, including counties, municipalities, school districts, special districts or a combination thereof, that apply for Kentucky Heritage Land Conservation Fund money.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the Kentucky Heritage Land Conservation Fund, for which local governments are eligible pursuant to KRS 146.570(4)(f).

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 (+/-): None

Expenditures (+/-): None

Other Explanation: This administrative regulation governs the administrative procedures only of the Kentucky Heritage Land Conservation Fund Board.

KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD

418 KAR 1:030. State agency projects.

RELATES TO: KRS 146.200 to 146.360, 146.550 through 146.570

STATUTORY AUTHORITY: KRS 146.560, 146.565, 146.570

NECESSITY AND FUNCTION: KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. KRS 146.570(4)(a) through (e) authorizes the allocation of fund money to certain state agencies. This administration regulation establishes standards for the review and

approval of proposed state agency projects funded pursuant to KRS 146.570(4)(a) through (e).

Section 1. Approval of Certain Expenditures. Upon written request of a state agency, the board may give advance approval to certain categories of expenditures of money received pursuant to KRS 146.570(4)(a) through (e) including, but not limited to, appraisals, title opinions, and environmental audits.

Section 2. Application. (1) A state agency seeking approval for projects funded pursuant to KRS 146.570(4)(a) through (e) shall submit to the board a completed project application. Application shall be made on the form incorporated by reference in Section 6 of this administrative regulation. This subsection shall not apply to expenditures that have received approval pursuant to Section 1 of this administrative regulation.

(2) The state agency project application shall contain at least the following:

(a) General information about the applicant, including, but not limited to, its name and address and the name, address, and phone number of its contact person;

(b) An identification of the priorities for acquisition, as set forth in KRS 146.560(2)(a) through (d), for which the site qualifies;

(c) A description of the project and project site and a delineation of project significance, including a description of how the project site qualifies for each applicable priority for acquisition;

(d) A 1:24,000 USGS topographic map with project site clearly outlined, and other maps, as appropriate;

(e) A preliminary RMP which meets the requirements of KRS 146.550 through 146.570, this chapter, and the preliminary RMP instructions incorporated by reference in 418 KAR 1:060, Section 16;

(f) An estimation of acquisition and management costs, the total amount of money requested from the fund, a specification of the forms and sources of matching funds, if any, and assurances as to the certainty of those funds; and

(g) A certification clause signed by an authorized agency official. In the case of joint applications, the certification clause shall be signed by an authorized official from each joint applicant.

(3) State agencies may submit joint project applications. The preliminary RMP for a joint project shall specify which state agency will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

(4) Beginning January 1, 1996, an application shall be received by the board at least sixty (60) days prior to the meeting at which it is to be considered. Applications and information received after this deadline will be considered at the next available meeting. Applications will be promptly forwarded to members of the projects review committee for review. Individual board members shall receive the project review committee's report on an application at least fifteen (15) days prior to a meeting at which that application is to be considered. If the project review committee report lists deficiencies in the application, the state agency shall have an opportunity to correct these deficiencies. However, no additional information will be accepted after the sixty (60) day deadline, except that the projects review committee may, at its discretion, accept information to correct minor deficiencies after the sixty (60) day deadline but at least fifteen (15) days before the meeting at which the information is to be considered.

Section 3. Review of Application. After reviewing the report received from the projects review committee pursuant to 418 KAR 1:020, Sections 8(2)(a), and 2(4) of this administrative regulation, the board shall review each application and evaluate it based on the following criteria:

(1) Whether the proposed project meets one (1) or more of the following priorities for acquisition:

(a) Natural areas that possess unique features such as habitat for rare and endangered species;

(b) Areas important to migratory birds;

(c) Areas that perform important natural functions that are subject to alteration or loss; and

(d) Areas to be preserved in their natural state for public use, outdoor recreation and education;

(2) Whether the proposed project site is a natural area or wetland, and whether access or buffer land is necessary;

(3) Property costs, seeking to maximize public benefit by taking advantage of priority areas below fair market value and where public or private funds are available on a matching basis;

(4) The completeness and accuracy of the application;

(5) The information in the application and its attachments;

(6) Whether the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(7) The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(8) The significance of the natural and educational resources on the project site;

(9) The prevalence of this type of project and project site in public systems;

(10) The threat of loss or degradation of the project site if not protected;

(11) The overall cost compared to the benefit to the Commonwealth of Kentucky; and

(12) In the case of a project application submitted pursuant to KRS 146.570(4)(d), whether the proposed acquisition is within a wild river corridor established by the Kentucky Wild Rivers Act, KRS 146.200 to 146.360, and the administrative regulations promulgated pursuant thereto.

Section 4. Project Approval or Denial. (1) The board shall approve or deny a project application, with or without conditions or amendments, by the vote of a majority of those present at a meeting at which a quorum is present.

(2) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a project application and, if denied, the reasons for denial.

Section 5. Agreements. Funds shall not be disbursed until the applicant enters into a written memorandum of agreement with the board which requires the applicant, at a minimum, to meet the requirements of KRS Chapter 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth of Kentucky, the application, any conservation easement which pertains to the project site, and the latest RMP approved by the board.

Section 6. Incorporation by Reference. The following document is incorporated by reference and is available for public inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601: State Agency Project Application, Form Number HL-1, Kentucky Heritage Land Conservation Fund Board, Frankfort, Kentucky, April 1995.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held May 31, 1995, at 10 a.m. EDT in Training Rooms A and B, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601. Persons interested in being heard at this hearing shall notify this agency in writing by May 26, 1995. If no written notice 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 opportu-

nity to comment on the proposed administrative regulation. To ensure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. A transcript of the public hearing will not be made unless a written request for transcript is made in which case the person making the request shall have the responsibility of paying for the transcript. If you do not wish to be heard at the public hearing, you may nevertheless submit written comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on May 26, 1995. Send written notice of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

CONTACT PERSON: William H. Martin, Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 107 Mero Street, Frankfort, Kentucky 40601, (502) 564-2184.

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REGULATORY IMPACT ANALYSIS

Contact Person: William H. Martin

(1) Type and number of entities affected: The following 5 state agencies will be affected: the Department of Parks, the Department of Fish and Wildlife Resources, the Division of Forestry, the Division of Water, and the Kentucky Nature Preserves Commission.

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

(a) Effect on the 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 be implemented throughout the Commonwealth. Kentucky residents may be employed to conduct management activities on lands acquired with Kentucky Heritage Land Conservation Fund money.

(b) Effect on the 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) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: With the exception of certain categories of expenditures which receive the prior approval of the board, this administrative regulation requires the above 5 agencies to submit state agency project applications as a prerequisite to expenditure of fund money. Also, those agencies whose applications are approved must enter into written memoranda of agreement with the Kentucky Heritage Land Conservation Fund Board prior to receiving fund money.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The board may incur minor costs associated with the review of state agency project applications.

2. Continuing costs or savings: Continuing costs or savings will depend upon the number of applications submitted per year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation requires the board's projects review committee to submit reports on each application 15 days prior to the meeting at which the application is to be considered. It also requires the board to provide written notice of the approval or denial of a project application. Finally, the board must enter into memoranda of agreement with successful applicants prior to disbursing fund money.

(4) Assessment of anticipated effect on state and local revenues: This regulation will provide a mechanism whereby the 5 agencies listed in (1) above can apply for Kentucky Heritage Land Conservation Fund money pursuant to KRS 146.570(4)(a) through (e).

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Heritage Land Conservation Fund. KRS 146.560(1) also directs the Natural Resources and Environmental Protection Cabinet and the Department of Fish and Wildlife Resources to provide staff support to the board.

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

(a) Geographical area in which administration regulation will be implemented: This regulation will be implemented throughout the Commonwealth. It may have a positive economic impact on the geographical areas in which heritage lands are located. Many sites will be available for public use, outdoor recreation and education, and people visiting and working at the sites will have a positive effect on the revenues of local merchants.

(b) Kentucky: Same as above.

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

(8) Assessment of expected benefits of the administrative regulation: This regulation will enable the 5 agencies identified above to acquire and manage areas which meet the priories for acquisition set forth in KRS 146.560(2)(a) through (e). Expected benefits include heritage land conservation and environmental education throughout the Commonwealth. Important natural areas will be protected and preserved for future generations.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: See (8) above.

(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: KRS 146.560(2) requires the board to promulgate administrative regulations for application for fund money, review and approval of proposed projects, and acquisition. Without this regulation, the 5 state agencies identified above could not purchase and manage heritage lands pursuant to the mandate of KRS 146.550 through 146.570.

(10) 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.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. This administrative regulation applies to state agencies only.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. This regulation is promulgated pursuant to KRS 146.560 through 146.570.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. Not applicable.

KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD

418 KAR 1:040. Competitive grants.

RELATES TO: KRS 146.550 through 146.570, 382.800 through 382.860

STATUTORY AUTHORITY: KRS 146.560, 146.565, 146.570

NECESSITY AND FUNCTION: KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. KRS 146.570(f) authorizes the allocation of fund money to state agencies, local governments, and state colleges and universities. This administrative regulation establishes standards for the review and approval of grants funded pursuant to KRS 146.570(4)(f).

Section 1. Application. (1) State agencies, local governments, and state colleges and universities seeking grants pursuant to KRS 146.570(4)(f) shall submit to the board a completed competitive grant application package. Application shall be made on the form incorporated by reference in Section 5 of this administrative regulation.

(2) The competitive grant application shall contain at least the following:

(a) A cover letter which contains the original signature of the authorized official who signs the certification clause and which authorizes the contact person, if any, to represent the applicant;

(b) General information about the applicant, including, but not limited to, its name and address and the name, address, and phone number of its contact person;

(c) An identification of the priorities for acquisition, as set forth in KRS 146.560(2)(a) through (d), for which the site qualifies;

(d) The status of land acquisition;

(e) An estimation of acquisition and management costs, the amount of money requested from the fund, a specification of the forms and sources of matching funds, if any, and assurances as to the certainty of those funds;

(f) A description of the project and project site which augments the preliminary RMP and includes the following information:

1. A description of the project and the project site;

2. A comparison of the project site to the surrounding landscape;

3. The importance of the project to the applicant and the Commonwealth of Kentucky;

4. An explanation of why the project qualifies for fund money;

5. A description of partnerships with other agencies;

6. A detailed budget describing proposed fund expenditures and total project expenditures; and

7. An identification of nonfund money and its sources.

(g) A 1:24,000 topographic map with the project site clearly outlined and any nearby public lands identified;

(h) A site map of appropriate scale which clearly identifies existing and planned facilities, access points and other appropriate information;

(i) A preliminary RMP which meets the requirements of KRS 146.550 through 146.570, this chapter, and the preliminary RMP instructions incorporated by reference in 418 KAR 1:060, Section 16;

(j) Other pertinent information, including at least two (2) project endorsements; and

(k) A certification clause signed by an authorized agency official. In the case of joint applications, the certification clause shall be signed by an authorized official from each joint applicant.

(3) Money expended by an applicant in connection with a denied application for funds, grants or projects under this section shall not be reimbursed to the applicant.

(4) An applicant shall not supply false or misleading information to the board and shall provide to the board verification that all information in the grant application is true and accurate.

(5) Grant applicants may submit joint applications. The preliminary RMP for a joint application shall specify which entity will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

(6) Beginning January 1, 1996, an application shall be received by the board at least sixty (60) days prior to the meeting at which it is to be considered. Applications and information received after this deadline will be considered at the next available meeting. Applications will be promptly forwarded to members of the Projects Review Committee for review. Individual board members shall receive the Projects Review Committee's report on an application at least fifteen (15) days prior to a meeting at which that application is to be considered. If the project review committee report lists deficiencies in the application, the applicant shall have an opportunity to correct these deficiencies. However, no additional information will be accepted after the sixty (60) day deadline, except that the Projects Review Committee may, at its discretion, accept information to correct minor deficiencies after the sixty (60) day deadline but at least fifteen (15) days before the meeting at which the information is to be considered.

Section 2. Review of Application. (1) After reviewing the report received from the Projects Review Committee pursuant to 418 KAR 1:020, Sections 8(2)(a), and 1(6) of this administrative regulation, each board member shall review each application package and evaluate it based on the following criteria:

(a) Whether the fund contains adequate money to fund the proposed project;

(b) Whether the proposed project meets one (1) or more of the following priorities for acquisition:

1. Natural areas that possess unique features such as habitat for rare and endangered species;

2. Areas important to migratory birds;

3. Areas that perform important natural functions that are subject to alteration or loss; and

4. Areas to be preserved in their natural state for public use, outdoor recreation and education;

(c) Whether the proposed acquisition is a natural area or wetland and whether access or buffer land is necessary;

(d) Property costs, seeking to maximize public benefit by taking advantage of priority areas below fair market value and where public or private funds are available on a matching basis;

(e) The completeness and accuracy of the application package;

(f) The information in the application package;

(g) Whether the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(h) The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(i) The significance of the natural and educational resources on the project site;

(j) The prevalence of this type of project and project site in public systems;

(k) The threat of loss or degradation of the project site if not protected;

(l) The overall cost compared to the benefit to the Commonwealth of Kentucky; and

(m) Any other factors deemed relevant by the board.

(2) The board shall approve or deny a competitive grant application, with or without conditions or amendments, by the vote of a majority of those present at a meeting at which a quorum is present.

The board may only approve expenditures that do not exceed funds currently available, and, in the case of numerous applications, the total cost of which exceeds funds available, the board may conduct a series of votes to narrow the list of applications.

(3) Funds and grant applications may be carried over from meeting to meeting and the board may decline to approve any or all grant applications at a given meeting.

(4) The board may, itself or through an agent, verify the accuracy of the information in a grant application and make such further investigation of the merits of a proposed acquisition as the board deems appropriate.

(5) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a grant application and, if denied, the reasons for denial.

Section 3. Agreements. Funds shall not be disbursed until the applicant has entered into a written memorandum of agreement with the board which requires the applicant, at a minimum, to meet the requirements of KRS Chapter 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth of Kentucky, the application, conservation easements which pertain to the project site, and the latest RMP approved by the board.

Section 4. Conservation Easements. Local governments shall convey to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in whole or in part, with fund proceeds. This conveyance shall occur simultaneously with the disbursement of fund money. The conservation easement shall, at a minimum, meet the requirements of KRS 382.800 through 382.860 and ensure that lands acquired are maintained in perpetuity for the purposes set out in KRS 146.560.

Section 5. Incorporation by Reference. The following document is incorporated by reference and is available for public inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601: Competitive Grant Application, Form Number HL-2, Kentucky Heritage Land Conservation Fund Board, Frankfort, Kentucky, April 1995.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held May 31, 1995, at 10 a.m. EDT in Training Rooms A and B, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601. Persons interested in being heard at this hearing shall notify this agency in writing by May 26, 1995. If no written notice 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. To ensure an accurate record, th re cabinetequests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. A transcript of the public hearing will not be made unless a written request for transcript is made in which case the person making the request shall have the responsibility of paying for the transcript. If you do not wish to be heard at the public hearing, you may nevertheless submit written comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on May 26, 1995. Send written notice of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

CONTACT PERSON: William H. Martin, Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 107 Mero Street, Frankfort, Kentucky 40601, (502) 564-2184.

The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or provisions of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Any individual who requires special accommodations in connection with this proceeding should contact Bobbie Benson at 107 Mero Street, Frankfort, Kentucky 40601, (502) 564-2184 (phone), or (502) 564-6193 (telefax) at least one (1) week prior to the date the accommodations will be needed.

REGULATORY IMPACT ANALYSIS

Contact Person: William H. Martin

(1) Type and number of entities affected: State agencies, local governments, and state colleges and universities that apply for Kentucky Heritage Land Conservation Fund money pursuant to KRS 146.570(4)(f). Due to the large number of local governments potentially eligible for fund money, the number of entities affected is impossible to determine.

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

(a) Effect on the 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 be implemented throughout the Commonwealth. Kentucky residents may be employed to conduct management activities on lands acquired with fund money.

(b) Effect on the 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) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: This regulation requires state agencies, local governments, and state colleges and universities to submit competitive grant applications as a prerequisite to receiving grants from the fund. Those entities whose applications are approved must enter into written memoranda of agreement with the Kentucky Heritage Land Conservation Fund Board prior to receiving fund money. Local governments must also convey conservation easements to the Commonwealth.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The board may incur relatively minor costs associated with the review of competitive grant applications, including those associated with verifying information in the application and investigating the merits of proposed acquisitions.

2. Continuing costs or savings: Continuing costs or savings will depend upon the number of applications submitted per year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This regulation requires the board's Projects Review Committee to submit reports on each application fifteen (15) days prior to the meeting at which the application is to be considered. It also requires the board to provide written notice of the approval or denial of a competitive grant application. Finally, the board must enter into memoranda of agreement with applicants and prepare conservation easements for local government projects.

(4) Assessment of anticipated effect on state and local revenues: This regulation will provide a mechanism whereby state agencies, local governments and state colleges and universities can apply for Kentucky Heritage Land Conservation Fund money pursuant to KRS 146.560(4)(f). Local governments will conserve local funds if success-

ful in their applications.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Heritage Land Conservation Fund. KRS 146.560(1) also directs the Natural Resources and Environmental Protection Cabinet and the Department of Fish and Wildlife Resources to provide staff support to the board.

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

(a) Geographical area in which administration regulation will be implemented: This regulation will be implemented throughout the Commonwealth. It may have a positive economic impact on the geographical areas in which heritage lands are acquired. Many sites will be available for public use, outdoor recreation and education , and people visiting and working at those sites will have a positive effect on the revenues of local merchants.

(b) Kentucky: Same as above.

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

(8) Assessment of expected benefits of the administrative regulation: This regulation will enable state agencies, local governments, and state colleges and universities to acquire and manage areas which meet the priories for acquisition set forth in KRS 146.560(2)(a) through (e). Expected benefits include heritage land conservation and environmental education through the Commonwealth. Important natural areas will be protected and preserved for future generations. State parks, state forests, wild river corridors, wildlife management areas, and urban greenspace will provide important wildlife habitat and recreational areas.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: See (8) above.

(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: KRS 146.560(2) requires the board to promulgate administrative regulations for application for fund money, review and approval of grants, and acquisition. Without this regulation, state agencies, local governments, and state colleges and universities will be unable to purchase and manage heritage lands pursuant to the mandate of KRS 146.550 through 146.570. Urban areas would be unable to attain greenspace that can provide a cleaner, healthier urban environment.

(10) 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.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? Yes. While Section 4 of this administrative regulation requires successful local government applicants to convey conservation easements to the Commonwealth simultaneously with the disbursement of fund money, state agencies and state colleges and universities are not subject to this requirement. Title to property held by state entities is already in the name of the Commonwealth. There is no need for the Commonwealth to convey a conservation easement to itself.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. This regulation is promulgated pursuant to KRS 146.560 through 146.570.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect local government entities, including counties, municipalities, school districts, special districts or a combination thereof, that apply for Kentucky Heritage Land Conservation Fund money pursuant to KRS 146.570(4)(f).

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the Kentucky Heritage Land Conservation Fund, for which local governments are eligible pursuant to KRS 146.570(4)(f).

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 (+/-): Possible increase.

Expenditures (+/-): None

Other Explanation: This administrative regulation provides procedures that local governments will utilize to apply for Kentucky Heritage Land Conservation Fund money available pursuant to KRS 146.570(4)(f). It encourages the acquisition of priority areas for less than fair market value and where public or private funds are available on a matching basis.

KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD

418 KAR 1:050. Procedures for acquisition of land.

RELATES TO: KRS 146.550 through 146.570

STATUTORY AUTHORITY: KRS 146.560, 146.565, 146.570

NECESSITY AND FUNCTION: KRS 146.560(2) directs the board to promulgate administrative regulations, in accordance with the provisions of KRS Chapter 13A, on acquisition. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

Section 1. Applicants shall attempt to acquire land below fair market value and acquire matching public or private funds.

Section 2. Transfer of Funds. Expenditures approved by the board shall be disbursed promptly by the Natural Resources and Environmental Protection Cabinet, provided the recipient of fund money has entered into the written memorandum of agreement required by 401 KAR 1:030, Section 5, or 418 KAR 1:040, Section 3; has complied strictly with the requirements of the application, the most recent RMP approved by the board, KRS 146.550 through 146.570, this chapter, and any other applicable laws of the Commonwealth of Kentucky; and, in the case of local governments, has conveyed to the board a conservation easement pursuant to 418 KAR 1:040, Section 4.

Section 3. Deadline for Acquisition. The project site shall be acquired within two (2) years of board approval of the acquisition. Extensions may be granted by the board upon receipt of a written request for extension.

Section 4. Verification. Recipients of fund money shall provide to the board, within ninety (90) days of land acquisition, verification of land acquisition and money expended for acquisition.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held May 31, 1995, at 10 a.m. EDT in Training Rooms A and B, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601. Persons interested in being heard at this hearing shall notify this agency in writing by May 26, 1995. If no written notice 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. To ensure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. A transcript of the public hearing will not be made unless a written request for transcript is made in which case the person making the request shall have the responsibility of paying for the transcript. If you do not wish to be heard at the public hearing, you may nevertheless submit written comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on May 26, 1995. Send written notice of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

CONTACT PERSON: William H. Martin, Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 107 Mero Street, Frankfort, Kentucky 40601, (502) 564-2184.

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REGULATORY IMPACT ANALYSIS

Contact Person: William H. Martin

(1) Type and number of entities affected: State agencies, local governments, and state colleges and universities that acquire land which has been funded, at least in part, by the Kentucky Heritage Land Conservation Fund. Due to the large number of local governments potentially eligible for fund money, the number of entities affected is impossible to determine.

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

(a) Effect on the 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. This administrative regulation governs the acquisition of land only.

(b) Effect on the 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. See above.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: This administrative regulation requires recipients of fund money to provide the board, within 90 days of land acquisition, verification of land acquisition and money expended for acquisition.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation requires all applicants for fund money to attempt to acquire land below fair market value and acquire matching public or private funds.

2. Continuing costs or savings: Same as above.

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: Not applicable.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits of the administrative regulation: This administrative regulation requires all applicants for fund money to attempt to acquire land below fair market value and acquire matching public or private funds. It also requires project sites to be purchased within 2 years of board approval of the acquisition. This deadline will guarantee that fund money will not be tied up indefinitely and will help keep property costs down. Finally, it provides for verification of land acquisition and costs.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: See (8) above.

(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: Less heritage land would be acquired without the efficiency requirements and safeguards set forth in (8) above.

(10) 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.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. The efficiency requirements and safeguards set forth in (8) above apply equally to all state and local entities eligible for fund money.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. This regulation is promulgated pursuant to KRS 146.560 through 146.570.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local

government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect local government entities, including counties, municipalities, school districts, special districts or a combination thereof, whose applications for Kentucky Heritage Land Conservation Fund money are approved.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to acquisitions of land which are funded by the Kentucky Heritage Land Conservation Fund.

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 (+/-): Possible increase.

Expenditures (+/-): None

Other Explanation: This administrative regulation governs the acquisition process for land funded by the Kentucky Heritage Land Conservation Fund, including the transfer of funds for acquisition and management. It encourages the acquisition of priority areas for less than fair market value and where public or private funds are available on a matching basis.

KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD

418 KAR 1:060. Management.

RELATES TO: KRS 146.550 through 146.570

STATUTORY AUTHORITY: KRS 146.560, 146.565, 146.570

NECESSITY AND FUNCTION: KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. KRS 146.565 requires prior board approval of expenditure of funds. KRS 146.570(3) requires each recipient of fund money to develop and implement a resource management plan, allocate at least ten (10) percent of fund money received for management, and maintain in perpetuity, for the purposes set out in KRS 146.560, lands acquired with fund money. This administrative regulation governs the management of land acquired with fund money.

Section 1. Purpose. Each recipient of fund money shall maintain in perpetuity for the purposes set forth in KRS 146.560 land acquired with fund money. Management practices shall also meet the requirements of KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth, the application, any memorandum of agreement between the board and the recipient of fund money, any conservation easement which pertains to the project site, and the most recent RMP approved by the board.

Section 2. Preliminary RMP. (1) An applicant for fund money shall submit to the board a preliminary RMP simultaneously with an application submitted pursuant to 418 KAR 1:030 or 1:040. The applicant shall follow the preliminary RMP instructions incorporated by reference in Section 16 of this administrative regulation.

(2) The preliminary RMP shall include at least the following information:

(a) The purpose for which the project site will be acquired and managed;

(b) A description of the management activities that will occur on the project site, including those related to natural resource protection, resource restoration and enhancement, archeological and historical resource protection, security, safety, and maintenance of the project site;

(c) An explanation of how the management activities will further the purpose of the project site;

(d) A description of physical improvements, existing and proposed, at the project site, and an explanation of how these activities will be coordinated with the protection of plant and animal species and communities;

(e) A description of how public access will be provided;

(f) A description of all agreements, existing and anticipated, which affect, or may affect, the project site and its use, including, but not limited to, management agreements, leases, easements, and licenses;

(g) A description of existing and anticipated types of public use and restrictions at the project site; and

(h) The approximate costs, including staffing costs, and potential funding sources for the items listed in paragraphs (a) through (g) of this subsection.

Section 3. Final RMP. (1) A recipient of fund money shall file with the county clerk in each county in which the project site is located, within two and one-half (2 1/2) years of land acquisition, a final RMP which has been approved by the board, is consistent with the preliminary RMP and application, and meets the requirements of KRS 146.550 through 146.570, this chapter, any memorandum of agreement between the board and the recipient, and any conservation easement which pertains to the project site. The applicant shall follow the final RMP instructions incorporated by reference in Section 16 of this administrative regulation.

(2) The final RMP shall include at least the following information:

(a) A table of contents;

(b) General information including the name of the project, the location of the project site, the name, address, and phone number of the property owner and contact persons, a description of natural resources, and historical information relative to site management;

(c) The purpose(s) and proposed future uses of the project site;

(d) An explanation of how commitments made in the application, preliminary RMP, memorandum of agreement and conservation easement are reflected in the management plan;

(e) A description of the management activities that will occur on the project site, including those related to natural resource protection, resource restoration and enhancement, archeological and historical resource protection, staffing, security, safety, maintenance of the project site, and coordination of management activities with adjacent landowners and other resource protection agencies;

(f) An explanation of how the proposed management activities will further the purpose(s) of the project site;

(g) The identification and location of physical improvements, existing and proposed, on a master site plan;

(h) A description of how public access will be provided;

(i) A description of all agreements, existing and anticipated, which affect, or may affect, the project site and its use, including, but not limited to, management agreements, leases, easements, and licenses;

(j) A description of existing and anticipated types of public use and restrictions at the project site;

(k) A monitoring plan to ensure the continued viability of natural communities and endangered, threatened and special concern plant and animal species on the project site;

(l) An explanation of the procedures that will be utilized to assess progress in achieving the goals set forth in the final RMP;

(m) An explanation of the procedures that will be utilized to ensure that the project site is identified on all signs, literature, and advertising as being publicly owned and as having been purchased with fund money; and

(n) The estimated costs of the activities listed in paragraphs (c) through (m) of this subsection.

Section 4. Land acquired, in whole or in part, with money from the fund shall be managed in strict accordance with the most recent RMP approved by the board.

Section 5. Amendment of RMPs. RMPs may be amended only upon prior written board approval. Until and unless board approval of an amendment is obtained, the recipient of fund money shall adhere strictly to the most recent RMP approved by the board.

Section 6. Management Agreements. A recipient of fund money may, with prior approval of the board, enter into agreements with third parties for management of land. Despite the terms of any management agreement, the recipient of fund money retains full responsibility for management of the land in accordance with the requirements of KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth of Kentucky, any memorandum of agreement between the board and the recipient, any conservation easement which pertains to the project site, and the most recent RMP approved by the board.

Section 7. Time Limits. Money initially approved by the board for management shall be expended within two and one-half (2 1/2) years of land acquisition. Extensions may be granted for cause by the board upon receipt of a written request for extension.

Section 8. Application for Additional Management Funds. (1) The board may, at its discretion, grant requests for additional management money. Requests for additional management money shall be in writing and shall be submitted to the board at least two and one-half (2 1/2) years after land acquisition.

(2) Additional management awards shall not exceed fifty (50) percent of the initial management funds allocated to the project.

(3) The board shall consider the following factors in its evaluation of requests for additional management money:

(a) The applicant's past management record;

(b) The applicant's need for additional management funds; and

(c) Funds available.

Section 9. Verification. Recipients of fund money shall provide to the board, within three (3) years of land acquisition or six (6) months of expenditure of funds, whichever comes first, verification of money expended on land management.

Section 10. Joint RMPs. Applicants may submit joint RMPs which specify which entity will perform each aspect of management. Each applicant shall remain responsible for all aspects of management.

Section 11. Reports. (1) Recipients of fund money shall submit to the board management reports detailing:

(a) The status of the project;

(b) The applicant's compliance with the most recent RMP approved by the board; and

(c) The status of any final RMP that has yet to be submitted to, or approved by, the board.

(2) Management reports shall be submitted annually until the final RMP has received board approval. Thereafter, the reports shall be submitted biennially. State agency reports are due on or before the date of the first board meeting of the year. Local government and state college and university reports are due on or before the date of the third board meeting of the year.

Section 12. Filing. Recipients of fund money shall file, in the office of the county clerk in the county in which the land is located, approved preliminary RMPs within thirty (30) days of land acquisition. Final RMPs shall be filed within the time limits set forth in Section 3 of this administrative regulation. Approved RMP amendments shall be filed within thirty (30) days of receipt of board approval.

Section 13. Right of Entry. Recipients of fund money shall permit members or agents of the board to enter, at any reasonable time, with or without notice, property purchased, in whole or in part, with fund money to ensure that the property is being managed in accordance with KRS 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth, the application, any memorandum of agreement between the board and the recipient, any conservation easement that pertains to the project site, and the most recent RMP approved by the board.

Section 14. Transfer or Encumbrance of Land. Recipients of fund money shall not, without prior board approval, sell, give, devise, or otherwise convey or encumber land acquired, in whole or in part, with fund money.

Section 15. Identification. The project site shall be identified on all signs, literature, and advertising as being publicly owned and as having been purchased with money from the fund.

Section 16. Incorporation by Reference. The following documents are incorporated by reference and are available for public inspection between the hours of 8 a.m. and 4:30 p.m., Monday though Friday, at the Office of the Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601:

(1) Preliminary Resource Management Plan Instructions, Form Number HL-3, Kentucky Heritage Land Conservation Fund Board, Frankfort, Kentucky, April 1995; and

(2) Final Resource Management Plan Instructions, Form Number HL-4, Kentucky Heritage Land Conservation Fund Board, Frankfort, Kentucky, April 1995.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held May 31, 1995, at 10 a.m. EDT in Training Rooms A and B, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601. Persons interested in being heard at this hearing shall notify this agency in writing by May 26, 1995. If no written notice 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. To ensure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. A transcript of the public hearing will not be made unless a written request for transcript is made in which case the person making the request shall have the responsibility of paying for the transcript. If you do not wish to be heard at the public hearing, you may nevertheless submit written comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on May 26, 1995. Send written notice of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

CONTACT PERSON: William H. Martin, Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 107 Mero Street, Frankfort, Kentucky 40601, (502) 564-2184.

The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or provisions of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Any individual who requires special accommodations in connection with this proceeding should contact Bobbie Benson at 107 Mero Street,

Frankfort, Kentucky 40601, (502) 564-2184 (phone), or (502) 564-6193 (telefax) at least one (1) week prior to the date the accommodations will be needed.

REGULATORY IMPACT ANALYSIS

Contact Person: William H. Martin

(1) Type and number of entities affected: State agencies, local governments and state colleges and universities that apply for Kentucky Heritage Land Conservation Fund money. Due to the large number of local governments potentially eligible for fund money, the number of entities affected is impossible to determine.

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

(a) Effect on the 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 be implemented throughout the Commonwealth. Kentucky residents may be employed to conduct management activities on lands acquired with fund money.

(b) Effect on the 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) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: This administrative regulation requires applicants for fund money to submit a resource management plan with their application. It also requires recipients of fund money to submit: (1) a final resource management plan within 2 1/2 years of land acquisition; (2) verification of money expended on management; and (3) annual management reports until the final RMP has been approved, then biennial management reports. Finally, it permits recipients of fund money to submit written requests for additional management money if needed.

2. Second and subsequent years: Same as above. In addition, management of heritage lands may periodically require the hiring of permanent and seasonal staff.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The stewardship committee may incur relatively minor costs associated with the review of preliminary and final resource management plans and ensuring that land purchased with fund money is being maintained for the purposes set out in KRS 146.560. The exact costs cannot be determined since it will depend upon the number of applications submitted and approved and the complexity of the management issues associated with each project.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: This regulation will allow local governments,as well as state agencies and state colleges and universities, to apply for additional management funds from the Kentucky Heritage Land Conservation Fund.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Heritage Land Conservation Fund. KRS 146.560(1) also directs the Natural Resources and Environmental Protection Cabinet and the Department of Fish and Wildlife Resources to provide staff support to the board.

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits of the administrative regulation: The resource management plans, verification of money expended on management, and management plans required by this regulation will ensure that lands acquired with fund money are maintained in perpetuity for the purposes set out in KRS 146.560. Also, permitting recipients of fund money to apply for additional management money, if needed, will reduce strains on state and local budgets.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will ensure that lands acquired with fund money are maintained in perpetuity for the purposes set out in KRS 146.560 and that moneys in the fund are used exclusively for the purposes of acquisition and management of lands. It also ensures that acquisition and management money not expended is returned to the board.

(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 this administrative regulation is not implemented, heritage lands may not be maintained for the purposes set out in KRS 146.560 and fund money may be misspent.

(10) 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.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. Since KRS 146.570(3) requires that all lands acquired with fund money be maintained in perpetuity for the purposes set out in KRS 146.560, there is no reason to differentiate between state and local entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. This regulation is promulgated pursuant to KRS 146.560 through 146.570.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect local government entities, including counties, municipalities, school districts, special districts or a combination thereof, who receive Kentucky Heritage Land Conservation Fund money.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the management of land funded by the Kentucky Heritage Land Conservation Fund and permits local governments to apply for additional management money.

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 (+/-): None

Expenditures (+/-): None

Other Explanation: This administrative regulation governs the management of land acquired with Kentucky Heritage Land Conservation Fund money. It requires recipients of fund money to develop and implement resource management plans and submit management reports to the Kentucky Heritage Land Conservation Fund. In addition, when heritage lands are acquired, management of these lands may require additional employees. However, this regulation also provides a mechanism whereby local governments can apply for management money to cover the costs associated with these requirements. At least 10% of the original fund award must be allocated for management. This initial amount should cover the management costs incurred for the first 2 1/2 years after land acquisition. After 2 1/2 years, recipients of fund money become eligible to apply for additional management money.

KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD

418 KAR 1:070. Remedies.

RELATES TO: KRS 146.550 through 146.570

STATUTORY AUTHORITY: KRS 146.560, 146.565, 146.570

NECESSITY AND FUNCTION: KRS 146.570(3) requires each recipient of money to implement a RMP for each tract acquired, allocate at least ten (10) percent of moneys received for management, and maintain in perpetuity, for the purposes set out in KRS 146.560, lands acquired with fund money. It also requires fund money to be spent exclusively on acquisition and management of lands as defined in KRS 146.560. Pursuant to KRS 146.565, board approval is a prerequisite to land acquisition and expenditure of funds. This administrative regulation ensures that land acquired with fund money is maintained in accordance with these requirements and that fund money is used for acquisition and management only, in accordance with KRS 146.560.

Section 1. Forfeiture of Money. (1) Funds approved by the board pursuant to KRS 146.570(4)(f) for land acquisition which, within two (2) years of board approval, is not expended on acquisition of approved land shall revert to the board. The board may grant written extensions for cause upon receipt of a written request.

(2) Money initially approved by the board for management pursuant to KRS 146.570(4)(f) which, within two and one-half (2 1/2) years of land acquisition, is not expended on management of approved land shall revert to the board. The board may grant written extensions for cause upon receipt of a written request.

Section 2. Forfeiture of Land. (1) The following occurrences may result, as determined by the board, in the forfeiture of land acquired with fund proceeds:

(a) Failure to maintain and manage land acquired with fund proceeds for the purposes set forth in KRS 146.560;

(b) Violation of a memorandum of agreement between the board and the recipient of fund money;

(c) Violation of the terms of any conservation easement which pertains to land purchased, in whole or in part, with fund proceeds;

(d) Falsification of information or inaccurate information in the application for a competitive grant or state agency project;

(e) Failure to provide, within ninety (90) days of acquisition, verification of land acquisition and money expended for acquisition;

(f) Falsification of information or inaccurate information in the preliminary or final RMP;

(g) Failure to adhere strictly to, or implement, the most recent RMP which has received board approval;

(h) Failure to file with the county clerk's office, within two and one-half (2 1/2) years of land acquisition, a final RMP which has been approved by the board;

(i) Expenditure of fund money on anything other than items which have received prior board approval;

(j) Failure to provide verification, within three (3) years of land acquisition or six (6) months of expenditure of funds, whichever comes first, of money expended on management of the land;

(k) Failure to permit entry of members or agents of the board pursuant to 418 KAR 1:060, Section 13;

(l) Failure to submit reports to the board pursuant to 418 KAR 1:060, Section 11;

(m) Any attempt to transfer land in violation of 418 KAR 1:060, Section 14; or

(n) Dissolution of the recipient entity.

(2) Any land forfeited pursuant to this administrative regulation shall be transferred to an appropriate land management entity, as designated by the board. Forfeited land shall continue to be managed in accordance with 418 KAR 1:060, Section 1.

Section 3. Other Remedies. The board may utilize all other remedies available to it by law, including, but not limited to, injunctions and restraining orders to enforce the provisions of KRS 146.550 through 146.570, this chapter, and any other applicable laws of the Commonwealth of Kentucky; any application submitted to the board; any memorandum of agreement between the board and a recipient of fund money; any conversation easement which pertains to land purchased, in whole or in part, with fund money; and any RMP approved by the board.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held May 31, 1995, at 10 a.m. EDT in Training Rooms A and B, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601. Persons interested in being heard at this hearing shall notify this agency in writing by May 26, 1995. If no written notice 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. To ensure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. A transcript of the public hearing will not be made unless a written request for transcript is made in which case the person making the request shall have the responsibility of paying for the transcript. If you do not wish to be heard at the public hearing, you may nevertheless submit written comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on May 26, 1995. Send written notice of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

CONTACT PERSON: William H. Martin, Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 107 Mero Street, Frankfort, Kentucky 40601, (502) 564-2184.

The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or provisions of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Any individual who requires special accommodations in connection with this proceeding should contact Bobbie Benson at 107 Mero Street, Frankfort, Kentucky 40601, (502) 564-2184 (phone), or (502) 564-6193 (telefax) at least one (1) week prior to the date the accommodations will be needed.

REGULATORY IMPACT ANALYSIS

Contact Person: William H. Martin

(1) Type and number of entities affected: State agencies, local governments and state colleges and universities that receive Kentucky Heritage Land Conservation Fund money. Due to the large number of local governments potentially eligible for fund money, the number of entities affected is impossible to determine.

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

(a) Effect on the 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. This administrative regulation contains remedies only.

(b) Effect on the 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. See above.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: None. See above.

2. Second and subsequent years: None. See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation enables the Kentucky Heritage Land Conservation Fund Board to transfer land to an appropriate land management entity if the recipient of fund money fails to comply with the requirements of KRS 146.550 through 146.570 and 418 KAR Chapter 1, as proposed. It also enables the board to utilize all other remedies available at law, including, but not limited to, injunctions and restraining orders.

2. Continuing costs or savings: Same as above. In addition, this regulation permits the board to recover fund money not spent on acquisition and management of approved land within certain time limits.

3. Additional factors increasing or decreasing costs: KRS 146.560(1) directs the Natural Resources and Environmental Protection Cabinet and the Department of Fish and Wildlife Resources to provide staff support to the board. In addition, in an effort to minimize the need for the remedies set forth in this regulation, the application , review, acquisition, and management procedures set forth in the preceding proposed regulations were designed to detect, and correct, problems at an early stage.

(b) Reporting and paperwork requirements: The only paperwork that will be incurred as a result of this administrative regulation is whatever letters or pleadings are necessary to enforce the requirements of KRS 146.550 through 146.570 and 418 KAR Chapter 1, as proposed.

(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: Staff support from the Natural Resources and Environmental Protection Cabinet and the Department of Fish and Wildlife Resources.

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

(a) Geographical area in which administration regulation will be implemented: This administrative regulation will only affect those recipients of fund money who fail to meet the requirements of KRS 146.550 through 146.570 and 418 KAR Chapter 1, as proposed. Those recipients may be required to return fund money, or land acquired with fund money, or they may be forced, via court action, to comply with board requirements.

(b) Kentucky: Same as above.

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

(8) Assessment of expected benefits of the administrative regulation: This administrative regulation ensures that fund money will be spent on acquisition and management of lands as defined in KRS 146.560. It also ensures that lands acquired will be maintained in perpetuity for the purposes set out in KRS 146.560.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: See (8) above.

(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: The board could not ensure that fund money is spent exclusively on acquisition and management or that lands acquired are maintained in perpetuity for the purposes set out in KRS 146.560. In addition, fund money could be tied up indefinitely.

(10) 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.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. The requirements of KRS 146.550 through 146.570 apply equally to all affected entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. This regulation is promulgated pursuant to KRS 146.560 through 146.570.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect local government entities, including counties, municipalities, school districts, special districts or a combination thereof, who receive Kentucky Heritage Land Conservation Fund money.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation provides the Kentucky Heritage Land Conservation Fund Board with remedies should recipients of Kentucky Heritage Land Conservation Fund money fail to meet the requirements of KRS 146.550 through 146.570 and 418 KAR Chapter 1, as proposed.

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 (+/-): None

Expenditures (+/-): None

Other Explanation: No effect on the expenditures and revenues of local government entities is expected because this regulation pertains to remedies only and will only be implemented if recipients of Kentucky Heritage Land Conservation Fund money fail to comply with the requirements of KRS 146.550 through 146.570 and 418

Chapter 1, as proposed. The remedies include forfeiture of fund money not expended within certain time limits, forfeiture of land purchased with fund money, and injunctions and restraining orders to ensure that fund money is expended for the purposes set forth in KRS 146.550 through 146.570 and that land acquired is maintained in perpetuity for the purposes set forth in KRS 146.560.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of the Commissioner

702 KAR 1:140. Student records; hearing procedures.

RELATES TO: KRS 160.730
STATUTORY AUTHORITY: KRS 156.070, 160.730
NECESSITY AND FUNCTION: KRS 160.730 provides for parents or eligible students to challenge the content of a student record to ensure that the record or report is not inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. KRS 160.370 also mandates that the Department of Education establish by administrative regulation hearing procedures that may be utilized to challenge the content of a student record when no agreement can be reached. This administrative regulation establishes those hearing procedures.

Section 1. If a school decides not to comply with a request of a student's parent(s) or legal guardian to amend the education record of the student, the school shall notify the student's parent(s) or guardian of the decision and advise them of their right to a hearing to challenge the information believed to be inaccurate, misleading, or in violation of the student's rights.

Section 2. Hearing Procedures. (1) Upon request, the school district shall arrange for a hearing and notify the student's parent(s) or guardian, reasonably in advance, of the date, place, and time of the hearing.

(2) The hearing shall be conducted by a hearing officer who is a disinterested party and is a certified official of the district appointed by the superintendent.

(3) The hearing shall be private. Persons other than the student, parent(s), witnesses, and counsel shall not be admitted into the hearing.

(4) The hearing officer shall hear evidence from the school staff and the student's parent(s) or guardian to determine any points of disagreement regarding the records.

(5) The student's parent(s) or guardian shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The parent(s) or guardian may be assisted by one (1) or more individuals, including an attorney.

(6) The hearing officer shall make a determination after hearing the evidence and make a recommendation in writing within ten (10) working days following the close of the hearing. The hearing officer shall make a determination based solely on the evidence presented at the hearing, and shall include a summary of the evidence and the reason for the decision. The parties to the hearing shall be provided a copy of the hearing officer's decision.

Section 3. Posthearing Procedures. (1) If the hearing officer decides after the hearing the challenged information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the hearing officer shall inform the student's parent(s) or guardian of the right to place a statement in the record commenting on the contested information or stating why he disagrees with the decision of the hearing officer. The statement shall be maintained as a part of the student's education records as long as the contested portion is maintained. If the school district discloses the contested portions of the record, it shall also disclose the statement.

(2) If, as a result of the hearing, the hearing officer decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school district shall amend the record accordingly and inform in writing the student's parent(s) or guardian of the amendment.

Section 4. Alternative Hearing Procedures. If a school district has a records hearing policy and procedure that provides a substantially equivalent level of due process protection as provided in this administrative regulation, the school district may elect to submit its policy on records hearing procedure to the Department of Education, Office of Legal Services, for its review and approval as to compliance with this administrative regulation.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: April 12, 1995
FILED WITH LRC: April 13, 1995 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education. 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Kevin M. Noland
(1) Type and number of entities affected: 176 local school districts.
(2) Direct and indirect costs or savings on the:
(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
1. First year following implementation: 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: No additional revenue is required. Regulation will be enforced by Department of Education.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 160.730 requires promulgation of a regulation on this subject.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation, if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. The administrative regulation applies equally to all 176 local school districts.

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

702 KAR 3:246. School council allocation formula: KETS district administrative system chart of accounts.

RELATES TO: KRS 160.345

STATUTORY AUTHORITY: KRS 156.070, 160.345

NECESSITY AND FUNCTION: KRS 160.345(8) mandates that the Kentucky Board of Education adopt a formula by administrative regulation which guides the way in which school district funds shall be allocated to each school council. This administrative regulation is designed for use by local school districts utilizing the Kentucky Education Technology System (KETS) District Administrative System Chart of Accounts per 702 KAR 3:120.

Section 1. Definitions. (1) "Categorical programs" means programs under which funding and uses for the funding are specifically set by the funding authority.

(2) "Instructional supplies and materials" means items that are consumed or worn out in the instructional process to include:

(a) Library books;

(b) Periodicals and newspapers;

(c) Library supplies;

(d) Audio visual material and equipment;

(e) Supplementary books;

(f) Reference materials;

(g) Instructional software; and

(h) Teaching supplies to include paper products.

(3) "Instructional equipment" means initial or additional furniture, fixtures, and equipment for instruction which may be purchased, leased, or rented. "Instructional equipment" shall not mean computer laboratories, or the initial inventory of a new school plant.

(4) "Instructional travel" means travel for all personnel and their assistants, including travel in connection with every day instructional activities and travel to conventions, meetings and workshops.

(5) "District average teacher's salary" means the total of all teacher salaries for 185 days in noncategorical programs in the district divided by the number of teachers in the noncategorical programs in the district.

Section 2. The local school district shall provide to school councils established by January 30 an allocation for the next budget year by March 1 of each year in accordance with this administrative regulation.

Section 3. The local school district shall calculate the funds available for distribution to school councils using only the general fund and by excluding the following proposed district-wide expenditures from the general fund in the district draft budget:

(1) Function 1200, Home and hospital.

(2) Function 1900, Other instructional programs.

(3) Function 2100, Student support services, except for school-based employees and specified supplies.

(4) Function 2210, Instructional staff support services, improvement of instruction, central office staff and supplies only.

(5) Function 2300, District administration support services.

(6) Function 2500, Business support services.

(7) Function 2600, Plant operation and maintenance, except for school-based employees and specified supplies.

(8) Function 2700, Student transportation.

(9) Function 2800, Central Office support services.

(10) Function 3000, Noninstructional services.

(11) Function 4000, Facilities acquisition and construction services.

(12) Function 5000, Other.

(13) All expenditures for extra duty and extended employment, exceptional children services, and itinerant teachers in all codes.

Section 4. Allocation for Certified Staff. (1) A board staffing policy or guidelines shall be established to determine the number of allocated positions for each school. To determine the allocation to school councils for certified staff, the district shall provide sufficient funds:

(a) To meet class size caps established in KRS 157.360 based on the projected full-time equivalent enrollment for the upcoming school year; and

(b) To meet other classroom teaching and certified staff positions not included in paragraph (a) of this subsection that are generated by the local board certified staffing policy.

(2) Each district shall file a copy of the staffing policy or guidelines with the Division of School-based Decision Making by July 1, 1995. Any revisions shall be submitted within thirty (30) days of action.

(3) Funds for positions allocated in subsection (1) of this section shall be based on the previous year's actual 185 day salary and associated fringe benefits except sick, personal, or emergency leave adjusted by changes in rank, additional year of experience, and changes in the district's salary schedule for each existing staff member.

(4) Funds for new and vacant certified staff positions shall be based on a minimum of ninety-five (95) percent of the district's average 185 day certified salary and associated fringe benefits except sick, personal, or emergency leave adjusted for changes in the district's salary schedule for noncategorical staff paid in the previous year.

(5) If the actual salary of new certified personnel is less than ninety-five (95) percent of the certified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enroll-

ment shall be made by September 15. Notification to councils of adjustments is required only if adjustments represent changes in staffing due to enrollment increases or decreases.

Section 5. Allocation for Classified Staff. (1) A board staffing policy or guidelines shall be established to determine the number of allocated positions for each school. Each district shall file a copy of the staffing policy or guidelines with the Division of School-based Decision Making by July 1, 1995. Any revisions shall be submitted within thirty (30) days of action.

(2) Funds shall be provided for all school-based classified positions in noncategorical programs generated by the local board classified staffing policy using the previous year's salary adjusted for any district-wide increase.

(3) Funds shall be allocated for fringe benefit amounts except for sick, personal, or emergency leave for each classified staff member.

(4) Funds for new or vacant positions shall be based on ninety-five (95) percent of the district's average classified salary for that personnel job class and associated fringe benefits except for sick, personal, or emergency leave for noncategorical staff adjusted for any district-wide increase.

(5) If the actual salary of new classified personnel is less than ninety-five (95) percent of the classified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. Notification to councils of adjustments is required only if adjustments represent changes in staffing due to enrollment increases or decreases.

Section 6. Instructional Supplies, Materials, Travel, and Equipment. (1) For instructional supplies, materials, travel, and equipment school councils shall receive a minimum allocation of three and one-half (3 1/2) percent of the statewide guaranteed base funding level for Support Education Excellence in Kentucky (SEEK) based on prior year final average daily attendance.

(2) The amount generated in subsection (1) of this section shall be adjusted at the end of the second school month for changes in average daily attendance and projected funding for SEEK. Notification to councils of adjustments shall additionally include September 15 adjustments for which notification was not required.

(3) Allocations under subsections (1) and (2) of this section shall not include funds for operating expenses, including utilities, or for health and safety requirements of schools.

Section 7. Distribution of the Balance. (1) The balance between the amount generated in Sections 4, 5, and 6 of this administrative regulation and the amount available for distribution to school councils from Section 3 of this administrative regulation shall be distributed in one (1) of the following manners:

(a) An amount per prior year final average daily attendance;

(b) Based on pupil needs identified by school councils and designated by the local school board. Money provided under this subsection shall be used only for the needs identified by the council and designated by the board;

(c) A combination of subsections (a) and (b) of this section.

(2) An adjustment may be made to allocations under subsection (1) of this section at the end of the second school month for changes in average daily attendance and projected funding for SEEK.

(3) If Sections 4, 5, and 6 of this administrative regulation generate more funds than are available in Section 3 of this administrative regulation for distribution to school councils, the local board shall make every reasonable effort to make up the deficit.

Section 8. Nothing in this administrative regulation shall prohibit the district from providing funds to school councils in excess of the allocation amounts generated by Sections 4, 5, and 6 of this administrative regulation or other operational and capital outlay items.

Section 9. Each year school councils shall review the budgets for all categorical programs and provide comments to the local board prior to the adoption of the budgets. The district board of education shall develop allocation procedures for professional development funds pursuant to KRS 160.345(8).

Section 10. No school council allocation by the district shall result in a proposed expenditure that would cause the district budget to hold in reserve less than the required amount set by KRS 160.470.

Section 11. Nothing in this administrative regulation shall prohibit districts from passing on to school councils any reduction in state and local revenues.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education. 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 districts.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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

702 KAR 3:280. School district Medicaid providers.

RELATES TO: KRS 156.070, 605.115

STATUTORY AUTHORITY: KRS 156.070,156.160

NECESSITY AND FUNCTION: KRS 156.070 sets forth the State Board for Elementary and Secondary Education's plenary powers over the management and control of local school districts. KRS 156.160 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations deemed necessary for the management of the school districts under its control. This administrative regulation is necessary to implement KRS 605.115 which allows school districts to become Medicaid providers.

Section 1. Definitions. (1) "Medicaid provider" means a qualified medical provider who has entered into an agreement to provide Medicaid-covered services to Medicaid-eligible recipients.

(2) "Medicaid recipient" means a student who has applied for and been determined eligible for Medicaid-covered benefits.

(3) "School district Medicaid providers" means a local school district which has entered into an agreement with the Cabinet for Human Resources to receive Medicaid reimbursement for provided health-related services.

Section 2. Administrative Guidelines. (1) In order to receive federal Medicaid reimbursement, local school districts shall document the expenditure of state funds for Medicaid reimbursable services provided to eligible Medicaid recipients. This documentation of expenditure of state funds shall be available as needed for verification of state matching dollars entitling the local school district to reimbursement for specific Medicaid reimbursable services locally provided.

(2) Documentation of available state matching dollars to the Cabinet for Human Resources shall include an invoice for Medicaid eligible services already provided which shall be signed by the local school district superintendent or finance officer certifying that funds are available for paying the state share of the Medicaid payment.

(3) Federal dollars shall not be used to receive Medicaid matched dollars.

(4) Local school districts shall provide an annual audit by a certified public accounting firm detailing Medicaid services provided and expenses incurred to both the Department of Education and the Cabinet for Human Resources.

(5) At any time, the Cabinet for Human Resources may audit a local school district to verify compliance with all federal and state Medicaid statutes and regulations relating to local school district receipt of Medicaid reimbursement for approved services. Unless otherwise prohibited by federal or state statutes or regulations, the Cabinet for Human Resources shall notify the Department of Education and, as appropriate, the local school district of any pending audit.

(6) Local school districts that want to contract with a third party administrator to provide Medicaid billing services may do so only with administrators that have been approved by the Department of Education.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education. 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact: Kyna Koch, Director

(1) Type and number of entities affected: Number of participating local school districts undetermined.

(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: Additional paperwork

requirements for local school districts, the Department of Education and the Cabinet for Human Resources.

2. Second and subsequent years: Additional paperwork requirements will be continuing.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Indeterminable at this time because the number of school districts who will participate is unknown.

2. Continuing costs or savings: Additional costs will be continuing.

3. Additional factors increasing or decreasing costs: The administration of Medicaid claims will increase costs.

(b) Reporting and paperwork requirements: School districts will be required to submit documentation of available state match and for Medicaid covered services being provided. The Department of Education and Cabinet for Human Resources will have increased monitoring functions.

(4) Assessment of anticipated effect on state and local revenues: Indeterminable at this time.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Local and state funds will be used by school districts to document required state matching dollars. Existing staff in the Department of Education will be used for routine monitoring. The Cabinet for Human Resources will conduct any necessary investigations.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: New law. No alternatives are available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: School districts will have increased resources for the purchasing of health care services.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Increased access to health care for eligible students may not occur.

(c) If detrimental effect would occur, explain detrimental effect: Funding for health-related services might not otherwise be available and, thus, access to health care may be reduced.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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

702 KAR 7:031. Repeal of 702 KAR 7:030, Census.

RELATES TO: KRS 159.170, 159.250

STATUTORY AUTHORITY: 156.070, 156.160

NECESSITY AND FUNCTION: 702 KAR 7:030 is no longer required because census is mandated in statute and the notice of student transfer requirement is incorporated into 702 KAR 7:050.

Section 1. 702 KAR 7:030, Census, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education. 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(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: None

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: 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 occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments: Promulgation of this regulation will eliminate repetition of statutory mandates.

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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

702 KAR 7:041. Repeal of 702 KAR 7:040, Experimental schools.

RELATES TO: KRS 157.510, 157.520, 158.060, 158.070

STATUTORY AUTHORITY: 156.070, 158.070

NECESSITY AND FUNCTION: 702 KAR 7:040 is no longer required as a result of the amendment to KRS 158.060 and 157.520 which now provide flexibility at the school district level to provide at least the equivalent of six (6) hours of daily instruction during the school year.

Section 1. 702 KAR 7:040, Experimental schools, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education as required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 30, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 25, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education. 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch, Director

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(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: None

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: 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 occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

KENTUCKY COMMISSION ON THE DEAF AND HARD OF HEARING

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive telecommunications devices for the deaf.

RELATES TO: KRS 12.290, 163.510

STATUTORY AUTHORITY: KRS 163.525(5)

NECESSITY AND FUNCTION: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications devices to any deaf, hard of hearing, or speech-impaired persons qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the criteria for awarding assistance and the procedures for application and certification.

Section 1. Definitions. (1) "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).

(2) "TDD Distribution Program" is defined by KRS 163.525(1)(b).

(3) "KCDHH" is defined by KRS 163.506 and 163.510.

(4) "Specialized telecommunications equipment (STE)" means equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile), amplified ring signal devices, large visual display TDDs, artificial larynx and electronic speech aids.

(5) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(6) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(7) "Voucher" is a form which authorizes the recipient to purchase specialized telecommunications equipment through the KCDHH TDD Distribution Program.

(8) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology.

(9) "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(10) "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

(11) "Application" means the KCDHH TDD Distribution Program application which is entitled "Application and Certification to Receive Specialized Telecommunications Equipment".

(12) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(13) "Fiscal constraint" means when seventy-five (75) percent of program funds have been disbursed or encumbered.

(14) "Completion date" means the date that all supporting documentation for the application is received by the KCDHH, as determined by the TDD Distribution Program Coordinator.

(15) "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.

(16) "Deaf and hard of hearing" is defined by KRS 163.500.

(17) "Deaf-blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A legal resident of the state of Kentucky;

(b) At least five (5) years of age and if the applicant is between five (5) and eighteen (18) years of age, parents or guardians shall apply on behalf of applicants and assume full responsibility for the equipment; and

(c) Deaf, hard of hearing or speech impaired such that the applicant cannot use the telephone for communication without adaptive equipment.

(2) Initial and replacement applications shall be:

(a) Made on forms provided by the KCDHH;

(b) Signed and submitted in person or via mail;

(c) Accompanied by documented proof of eligibility as required by the KCDHH.

(3) The KCDHH shall require that applicants provide professional verification of the extent and permanence of their disability. The certification shall be included as part of the application form.

(a) Verification shall be at the applicant's expense.

(b) Certification shall be done by:

1. A licensed physician;

2. An audiologist;

3. A speech-language pathologist; or

4. Public or private agencies working with deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(4) Except for individuals who receive assistance from programs designed to provide telephone services to those who would not normally be able to afford it, applicants shall subscribe to or have currently applied for telephone service, which shall include:

(a) Installation of a telephone line in their home at their own expense; and

(b) Payment of monthly telephone bills.

(5) Eligible applicants shall be awarded program participation on a first-come, first-served basis, in accordance with the completion date, as determined by the dated signature of the TDD distribution coordinator.

(6) KCDHH shall distribute the STE through the voucher system established in 735 KAR 1:020.

(7) One (1) TDD and adaptive equipment shall be distributed to a deaf, hard of hearing or speech-impaired individual for one (1) residential access line only.

Section 3. Application and Certification Procedures for Eligibility. (1)(a) "Application and Certification to Receive Specialized Telecommunications Equipment," (July 1995), is incorporated by reference.

(b) It may be inspected, copied or obtained at the Kentucky Commission on the Deaf and Hard of Hearing, 134 Brighton Park Boulevard, Frankfort, Kentucky, 40601, Monday through Friday 8 a.m. to 4:30 p.m. The KCDHH telephone number is 1-800-372-2907 V/TDD or 502-573-2604 V/TDD; the KCDHH fax number is (502) 573-3594.

(2) As KCDHH recognizes that the demand for the specialized telecommunications equipment may exceed available funds, so the following statement shall be included on all application forms, which the applicant shall be required to sign: "The KCDHH has a limited amount of funds for the program. There is the possibility that recipients may be placed on a waiting list to receive the specialized telecommunications equipment, due to a large number of applications and the exhaustion of these limited funds on an annual basis. The specialized telecommunications equipment shall be distributed on a nondiscriminatory, first-come, first-served basis."

Section 4. Application Process. (1) The KCDHH staff may provide assistance in completing forms when requested by an applicant.

(2) The TDD program coordinator shall review all applications in the order the KCDHH office receives them to determine:

(a) The application is complete;

(b) All required attachments are included; and

(c) All eligibility requirements are met.

(3) An application, whether initial or replacement, found to be complete shall be dated and signed by the TDD distribution coordinator. The completion date shall determine the first-come, first-serve roster.

(4) Applicants shall be notified in writing whether their initial or replacement application, has been accepted or rejected within sixty (60) calendar days of the completion date, unless a letter as described in subsection (5) of this section has been forwarded indicating otherwise.

(5) During the first two (2) years of program implementation when there is an expected flood of applications, applicants shall be advised within sixty (60) days in writing that their applications may take longer than sixty (60) days to process.

(6) At the end of the second year, the application process shall be reevaluated, and, if feasible, a sixty (60) day response time shall be instated.

(7) If the KCDHH finds that an applicant is ineligible to participate in the program, the applicant shall be given written justification for the determination within sixty (60) days unless a letter as specified in subsection (5) of this section is sent. Any applicant who has been denied participation may reapply if, due to a change in conditions, he meets eligibility requirements as delineated in Section 2 of this administrative regulation.

(8) When a party wishes to appeal an agency decision, the

KCDHH shall comply with the provisions of KRS Chapter 13B.

Section 5. Initial and replacement applications shall be denied when:

(1) The applicant has already been issued a voucher pursuant to 735 KAR 1:020, Section 3, which is still valid toward the purchase of specialized telecommunications equipment under this program;

(2) The applicant has received STE from the TDD Distribution Program within the preceding four (4) years;

(3) The applicant is an active client of the Department of Vocational Rehabilitation and receives STE as part of an IWRP (individual written rehabilitation plan);

(4) The applicant has negligently or willfully damaged STE previously received from the KCDHH's TDD Distribution Program, or violated other provisions of the administrative regulations governing the TDD Distribution Program;

(5) The applicant fails to provide a police report of a stolen device or refuses to cooperate with the police investigation in the prosecution of the suspect, including the refusal to testify in court when subpoenaed to do so;

(6) The applicant is found negligent in a police report of a stolen device, such as doors to the house or car left unlocked or unattended;

(7) The applicant has lost or sold the STE; or

(8) In the case of replacement equipment after four (4) years have passed, if the original STE is found to be technologically up to date and functional by the KCDHH.

Section 6. Replacement Equipment. (1) A recipient may apply for replacement equipment if:

(a) The specialized telecommunications equipment is damaged through natural disasters, such as lightning, electrical storms, floods or other acts of God;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the TDD Distribution Program and is deemed more appropriate to the recipient's disability than a device previously purchased by the recipient through a voucher issued by the KCDHH; or

(d) It has been four (4) years since the applicant last received specialized telecommunications equipment.

(2) Replacement equipment shall be issued to applicants:

(a) Who can demonstrate eligibility; and

(b) Who comply with the provisions of the administrative regulations governing the TDD Distribution Program: 735 KAR 1:010 and 735 KAR 1:020.

(3) Priority shall be given in the distribution of replacement equipment to first-time recipients during times of fiscal constraint.

(4) If the replacement equipment is requested because the specialized telecommunications equipment is damaged through natural disasters, such as lightning, electrical storms, or floods, then:

(a) The recipient shall first send the damaged equipment to the vendor.

(b) If the vendor certifies to the KCDHH that the equipment provided to the recipient is unrepairable due to natural disaster, a replacement unit shall be issued to the recipient, upon reapplication, subject to:

1. Equipment availability;

2. Compliance with eligibility criteria established in this administrative regulation; and

3. The first-come, first-served provision.

(5) If the recipient obtains certification from a physician, audiologist, or speech-language pathologist stating that the recipient would benefit from another device available through the KCDHH TDD Distribution Program due to a change in disability status or a new device becoming available, then replacement equipment shall be issued to the applicant. As an alternative, public or private agencies working with deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(6) If the replacement equipment is requested due to the STE being stolen, then the recipient shall:

(a) Notify local police; and

(b) Forward a copy of the police report to the KCDHH within five (5) working days of the date the theft was reported; and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

(7) If the replacement equipment is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall then determine whether or not the original STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the replacement application process as delineated in 735 KAR 1:010 and 735 KAR 1:020; or

2. Not determined to be technologically obsolete or nonfunctional then the application for replacement STE shall be denied.

Section 7. Loan Equipment. (1) When recipients' STE is under repair or maintenance, the KCDHH shall provide, at no cost, "loaner" STE upon receiving a completed Loan Agreement Form from the recipient.

(2)(a) "Loan Agreement Form" (July 1995) is herein incorporated by reference.

(b) It may be inspected, copied, or obtained from the KCDHH, 134 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. - 4:30 p.m. The KCDHH phone number is (502) 573-2604 V/TDD or 800-372-2907 V/TDD; the KCDHH fax number is (502) 573-3594.

Section 8. Fraud. If a recipient obtained specialized telecommunications equipment under false premises or through misrepresentation of facts on the KCDHH application, the KCDHH may demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH TDD Distribution Program.

Section 9. Confidentiality. (1) Applications and other client materials submitted to the TDD Distribution Program shall be kept confidential by KCDHH personnel and other persons authorized by the KCDHH to view the materials.

(2) The applicant's eligibility and participation in the program shall also be confidential and shall not be released without the applicant's written consent and authorization.

THERESA KIDWELL, Chair

APPROVED BY AGENCY: March 28, 1995

FILED WITH LRC: April 4, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation (735 KAR 1:010) shall be held on May 23, 1995 in the State Board Room on the first floor of the Capitol Plaza Tower in Frankfort, Kentucky. The public hearing will be from 1 p.m. to 4 p.m. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend this 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 regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted on the proposed administrative regulations. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulations to the contact person. Any ADA accommodation requests should be made to the

contact person at least one week prior to the public hearing, so the promulgating agency may respond appropriately.

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 134 Brighton Park Boulevard, Frankfort, Kentucky 40601, (502) 573-2604 (V/TTY).

REGULATORY IMPACT ANALYSIS

(1) Type and number of entities affected: All applicants for specialized telecommunications equipment to be distributed under the Telecommunications Device for the Deaf Distribution Program will be affected by this program. It is not possible to state a specific number of applicants because such a program with a targeted audience of deaf, hard of hearing, and speech-impaired Kentucky residents has never before been implemented. Also, unquantifiable factors such as the outreach program, word-of-mouth advertising, and formal advertising will directly impact the number of applicants.

(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 will be no costs affecting the cost of living and employment in the geographical area in which the administrative regulation is implemented except that deaf, hard of hearing, and speech impaired recipients' opportunities to access telecommunications will be enhanced in that this program will enable them to purchase specialized telecommunications equipment in order to access and use their residential phone lines.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: There will be no effect on the cost of doing business in the geographical area in which the administrative regulation is implemented. There is a potential for business conducted by phone to increase as deaf, hard of hearing, and speech-impaired recipients gain previously denied access to the telecommunications system. Some manufacturers and distributors of the specialized telecommunications equipment may directly benefit from the advent of this distribution program, if they contract with the KCDHH.

(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 of applicants is monitored in that applications are not deemed complete until all criteria and requisite paperwork has been submitted to the TDD Distribution Program Coordinator. Vendors with whom the KCDHH contracts will have to detail, using the voucher, the recipient's purchase of specialized telecommunications equipment in order to be reimbursed by the KCDHH.

2. Second and subsequent years: The compliance, reporting, and paperwork for the second and subsequent years is the same as for the first year following implementation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Indirect costs to the KCDHH from July 1994 to July 1995 were staff time, phone use, copying, printing, and computer supplies such as printer cartridges and paper. Costs after implementation in July 1995 are minimal because all direct costs will be covered by the revenues generated by the telephone surcharge tax.

2. Continuing costs or savings: Continued indirect costs to the KCDHH after July 1995 will be 5% of the executive director's time to supervise the implementation and administration of this program. Two additional full-time positions will be necessary to implement the provisions of the program; however, these two positions will be funded by the telephone surcharge tax. No savings to the promulgating administrative body are foreseen; however, it is expected that administrative costs of operating the TDD Distribution Program will decrease after the first year of implementation.

3. Additional factors increasing or decreasing costs: If the number of qualified applicants exceeds the number of specialized telecommunications equipment available for distribution, the KCDHH will ask that the $200,000 cap be raised via an increase in the surcharge tax on telephone access lines.

(b) Reporting and paperwork requirements: The promulgating administrative body will make an annual report to the General Assembly regarding the TDD Distribution Program. Additional paperwork will be required in terms of the application form, processing the applications, and utilizing the voucher system to enable recipients to choose their specialized telecommunications equipment and for the contracted vendors to receive reimbursement. A system designed to track recipients and the distributed specialized telecommunications equipment will require additional paperwork.

(4) Assessment of the anticipated effect on state and local revenue: The Public Service Commission (PSC) has determined that the funding mechanism for the TDD Distribution Program will be a one cent surcharge tax on access lines of the local exchange carriers. For the administrative and distribution costs of the program, the PSC will direct the bank to deposit $200,000 annually into the KCDHH's TDD Distribution Program account via the State General Depository Account.

(5) Source of revenue to be used for implementation and enforcement of the administrative regulation: The source of revenue, which was determined by the Public Service Commission, is a one cent surcharge tax on all access lines of the local exchange carriers.

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

(a) Geographic area in which administrative regulation will be implemented: One public comment was received indicating that telephone companies will benefit from the TDD Distribution Program in the following ways: (1) increased customer base; (2) increased toll revenue; (3) enhanced public relations image, and (4) improved ability to assess consumer needs.

(b) Kentucky: See the response to 6(a).

(7) Assessment of alternative methods: Reasons why alternatives were rejected: In the course of researching TDD Distribution Programs in other states, the KCDHH considered the following alternatives:

(a) Purchasing the specialized telecommunications equipment in bulk and distributing it from one central location; and

(b) Establishing allocation categories for (1) those with financial hardship and (2) children to prioritize the distribution of the specialized telecommunications equipment; and

(c) Having the KCDHH retain ownership of all of the distributed specialized telecommunications equipment. All of these alternative were rejected because they are not cost-effective for the KCDHH as the administering agency.

(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 effect on the environmental welfare in Kentucky; public health of deaf, hard of hearing, and speech-impaired recipients will be enhanced because the barriers preventing them from using telecommunications will be removed.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: There would be no detrimental effect on the environmental welfare; the public health of deaf, hard of hearing, and speech-impaired individuals would remain in a state of semi-isolation.

(c) If detrimental effect would result, explain detrimental effect: There would be no additional detrimental effect.

(9) Identify any statue, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no statue, administrative regulation or government policy which may be in conflict, overlapping or duplication with these proposed administrative regulations.

(10) Any additional information or comments: The promulgating agency has no additional information or comments.

(11) TIERING: Is tiering applied? Yes. Tiering was applied in times of 'fiscal constraint' which is defined as when 75% of program funds have been disbursed or encumbered. In times of fiscal constraint, preference is given to those deaf, hard of hearing, and speech-impaired individuals who have not previously received specialized telecommunications equipment.

KENTUCKY COMMISSION ON THE DEAF AND HARD OF HEARING

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO: KRS 12.290, 163.510

STATUTORY AUTHORITY: KRS 163.525(5)

NECESSITY AND FUNCTION: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications devices to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the processing system for vendors, security, and the maintenance and repair of the STE.

Section 1. Definitions. (1) "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).

(2) "TDD Distribution Program" is defined by KRS 163.525(1)(b).

(3) "KCDHH" is defined by KRS 163.506 and 163.510.

(4) "Specialized telecommunications equipment (STE)" means equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile), amplified ring signal devices, large visual display TDDs, artificial larynx and electronic speech aids.

(5) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(6) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(7) "Voucher" is a form which authorizes the recipient to purchase specialized telecommunications equipment through the KCDHH TDD Distribution Program.

(8) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology.

(9) "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(10) "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

(11) "Application" means the KCDHH TDD Distribution Program application which is entitled "Application and Certification to Receive Specialized Telecommunications Equipment".

(12) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(13) "Fiscal constraint" means when seventy-five (75) percent of program funds have been disbursed or encumbered.

(14) "Completion date" means the date that all supporting documentation for the application is received by the KCDHH, as determined by the TDD Distribution Program Coordinator.

(15) "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.

(16) "Deaf and hard of hearing" is defined by KRS 163.500.

(17) "Deaf-blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.

Section 2. Processing System Including Vendor Participation. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with the provisions of the Model Procurement Code (KRS Chapter 45A) and shall be applied uniformly to applicants and vendors.

(3) The KCDHH TDD Distribution Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Voucher System. (1) The KCDHH shall issue vouchers to recipients who shall be responsible for using the voucher to purchase the STE directly from the vendor.

(2)(a) The voucher (July 1995) is herein incorporated by reference.

(b) It may be inspected, copied, and obtained at the Kentucky Commission on the Deaf and Hard of Hearing, 134 Brighton Park Boulevard, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. - 4:30 p.m.

(3) The recipient shall:

(a) Order the specialized telecommunications equipment from a contracted vendor within sixty (60) days of the voucher date of issuance; and

(b) Send a copy of the receipt for the device to the KCDHH when the specialized telecommunications equipment has been received.

(4) The vendor shall be responsible for complying with the terms of the voucher, as established in the contract between the vendor and the KCDHH, and shall send the:

(a) STE directly to the recipients' Kentucky residence; and

(b) KCDHH:

1. An itemized invoice; and

2. A copy of the voucher in order to receive payment for the STE.

(5) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(6) The vendors, in exchange for the vouchers and an itemized invoice, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(7) Ownership rights and responsibilities for the TDD shall belong to the recipient, as evidenced by the recipient's copy of the voucher.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment. However, the recipient shall contact the KCDHH and comply with the repair and maintenance procedures established in Section 5 of this administrative regulation in order to have repairs made to the STE and to receive loaner STE.

(b) Recipients shall assume all responsibilities for:

1. Paying their monthly phone bills;

2. Purchasing or leasing a telephone;

3. Purchasing batteries and paper for the printer; and

4. Paying other general costs and supplies associated with the functions and use of the STE.

(c) Recipients shall be responsible for the loss of STE received or borrowed under the auspices of the KCDHH TDD Distribution Program.

Section 4. Security. (1) Equipment obtained under this program shall not be sold, loaned, or otherwise transferred out of the possession of the originally authorized recipient.

(2) The recipient shall notify the KCDHH within five (5) working days if the equipment is lost, stolen, or damaged. If stolen, the recipient shall:

(a) Notify local police;

(b) Forward a copy of the police report to the KCDHH within five (5) working days of the date the theft was reported; and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

Section 5. Equipment Loan Program/Maintenance and Repair Procedures. (1) The KCDHH shall maintain a stock of at least twenty (20) "loaner" units to be used by recipients when their STE has been sent to the manufacturer for repair or maintenance.

(2) The loan program shall only be available to recipients of the TDD Distribution Program. The loan period shall extend until the recipient's STE is returned in working condition.

(3) To participate in the loan program, the recipient shall:

(a) Sign the "Loan Agreement Form," as incorporated in 735 KAR 1:010;

(b) Submit the Loan Agreement Form and the malfunctioning STE to the KCDHH offices.

(4) The KCDHH shall issue loaner STE to the recipient.

(5) The KCDHH shall assume responsibility for shipping the STE to the contracted repair agent.

(6) When the repaired STE is received by the KCDHH, the KCDHH shall:

(a) Notify the recipient that their STE is repaired; and

(b) Request the return of the loaner STE.

(7) The recipient shall return the loaner STE to the KCDHH, either by insured, certified mail (with return receipt requested) or in person. When the recipient has returned the STE in good working condition, then the KCDHH shall send the repaired STE to the recipient.

(8) If the recipient does not return the loaner equipment then the KCDHH shall retain the original, repaired STE in exchange.

(9) The KCDHH reserves the right to repossess the loan equipment at any time if:

(a) There is a change in the recipient's eligibility status;

(b) Repeated negligent or willful damage is done to the equipment; or

(c) There are other violations of the administrative regulations governing the TDD Distribution Program.

(10) Loaner equipment shall be marked with nonremovable identification by the company supplying the equipment.

(11) In the event equipment is lost or stolen, the recipient shall immediately notify the KCDHH, who shall notify manufacturers, distributors and repairmen of the serial numbers of the missing equipment so that it can be identified and returned to the KCDHH. Any person who attempts to sell or knowingly purchase stolen equipment shall be prosecuted to the full extent of the law.

(12) The recipient shall be responsible for the replacement or repair of the loaner STE should the STE be damaged, lost, or stolen while in their possession, in accordance with the provisions of 735 KAR 1:010, unless the police report or vendor certifies that the theft or damage was not due to negligence or willful damage done on the part of the recipient.

(13) If the recipient moves:

(a) To a different address within the Commonwealth of Kentucky, the KCDHH shall be notified immediately of the address change; or

(b) Out of state, the equipment shall be returned to KCDHH.

THERESA KIDWELL, Chair

APPROVED BY AGENCY: March 28, 1995

FILED WITH LRC: April 4, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation (735 KAR 1:020) shall be held on May 23, 1995 in the State Board Room on the first floor of the Capitol Plaza Tower in Frankfort, Kentucky. The public hearing will be from 1 p.m. to 4 p.m. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend this 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 regulations. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments may be submitted on the proposed administrative regulations. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulations to the contact person. Any ADA accommodation requests should be made to the contact person at least one week prior to the public hearing, so the promulgating agency may respond appropriately.

Contact Person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 134 Brighton Park Boulevard, Frankfort, Kentucky 40601, (502) 573-2604 (V/TTY).

REGULATORY IMPACT ANALYSIS

(1) Type and number of entities affected: All applicants for specialized telecommunications equipment to be distributed under the telecommunications device for the Deaf Distribution Program will be affected by this program. It is not possible to state a specific number of applicants because such a program with a targeted audience of deaf, hard of hearing, and speech-impaired Kentucky residents has never before been implemented. Also, unquantifiable factors such as the outreach program, word-of-mouth advertising, and formal advertising will directly impact the number of applicants.

(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 will be no costs affecting the cost of living and employment in the geographical area in which the administrative regulation is implemented except that deaf, hard of hearing, and speech impaired recipients' opportunities to access telecommunications will be enhanced in that this program will enable them to purchase specialized telecommunications equipment in order to access and use their residential phone lines.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: There will be no effect on the cost of doing business in the geographical area in which the administrative regulation is implemented. There is a potential for business conducted by phone to increase as deaf, hard of hearing, and speech-impaired recipients gain previously denied access to the telecommunications system. Some manufacturers and distributors of the specialized telecommunications equipment may directly benefit from the advent of this distribution program, if they contract with the KCDHH.

(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 of applicants is monitored in that applications are not deemed complete until all criteria and requisite paperwork has been submitted to the TDD Distribution Program Coordinator. Vendors with whom the KCDHH contracts will have to detail, using the voucher, the recipient's purchase of specialized telecommunications equipment in order to be reimbursed by the KCDHH.

2. Second and subsequent years: The compliance, reporting, and paperwork for the second and subsequent years is the same as for the first year following implementation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Indirect costs to the KCDHH from July 1994 to July 1995 were staff time, phone use, copying, printing, and computer supplies such as printer cartridges and paper. Costs after implemen-

tation in July 1995 are minimal because all direct costs will be covered by the revenues generated by the telephone surcharge tax.

2. Continuing costs or savings: Continued indirect costs to the KCDHH after July 1995 will be 5% of the executive director's time to supervise the implementation and administration of this program. Two additional full-time positions will be necessary to implement the provisions of the program; however, these two positions will be funded by the telephone surcharge tax. No savings to the promulgating administrative body are foreseen; however, it is expected that administrative costs of operating the TDD Distribution Program will decrease after the first year of implementation.

3. Additional factors increasing or decreasing costs: If the number of qualified applicants exceeds the number of specialized telecommunications equipment available for distribution, the KCDHH will ask that the $200,000 cap be raised via an increase in the surcharge tax on telephone access lines.

(b) Reporting and paperwork requirements: The promulgating administrative body will make an annual report to the General Assembly regarding the TDD Distribution Program. Additional paperwork will be required in terms of the application form, processing the applications, and utilizing the voucher system to enable recipients to choose their specialized telecommunications equipment and for the contracted vendors to receive reimbursement. A system designed to track recipients and the distributed specialized telecommunications equipment will require additional paperwork.

(4) Assessment of the anticipated effect on state and local revenue: The Public Service Commission (PSC) has determined that the funding mechanism for the TDD Distribution Program will be a one cent surcharge tax on access lines of the local exchange carriers. For the administrative and distribution costs of the program, the PSC will direct the bank to deposit $200,000 annually into the KCDHH's TDD Distribution Program account via the State General Depository Account.

(5) Source of revenue to be used for implementation and enforcement of the administrative regulation: The source of revenue, which was determined by the Public Service Commission, is a one cent surcharge tax on all access lines of the local exchange carriers.

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

(a) Geographic area in which administrative regulation will be implemented: One public comment was received indicating that telephone companies will benefit from the TDD Distribution Program in the following ways: (1) increased customer base; (2) increased toll revenue; (3) enhanced public relations image, and (4) improved ability to assess consumer needs.

(b) Kentucky: See the response to 6(a).

(7) Assessment of alternative methods: Reasons why alternatives were rejected: In the course of researching TDD Distribution Programs in other states, the KCDHH considered the following alternatives:

(a) Purchasing the specialized telecommunications equipment in bulk and distributing it from one central location; and

(b) Establishing allocation categories for (1) those with financial hardship and (2) children to prioritize the distribution of the specialized telecommunications equipment; and

(c) Having the KCDHH retain ownership of all of the distributed specialized telecommunications equipment. All of these alternative were rejected because they are not cost-effective for the KCDHH as the administering agency.

(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 effect on the environmental welfare in Kentucky; public health of deaf, hard of hearing, and speech-impaired recipients will be enhanced because the barriers preventing them from using telecommunications will be removed.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: There would be no detrimental effect on the environmental welfare; the public health of deaf, hard of hearing, and speech-impaired individuals would remain in a state of semi-isolation.

(c) If detrimental effect would result, explain detrimental effect: There would be no additional detrimental effect.

(9) Identify any statue, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no statue, administrative regulation or government policy which may be in conflict, overlapping or duplication with these proposed administrative regulations.

(10) Any additional information or comments: The promulgating agency has no additional information or comments.

(11) TIERING: Is tiering applied? Yes. Tiering was applied in times of "fiscal constraint" which is defined as when 75% of program funds have been disbursed or encumbered. In times of fiscal constraint, preference is given to those deaf, hard of hearing, and speech-impaired individuals who have not previously received specialized telecommunications equipment.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 9:230. Licensing requirements for administrators.

RELATES TO: KRS 304.9-051, 304.9-052

STATUTORY AUTHORITY: KRS 304.2-110

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. This administrative regulation sets forth the information to be filed with the commissioner to demonstrate required qualifications for obtaining an administrator license.

Section 1. Definitions. (1) "Corporate administrator" means any corporation, company, partnership, joint stock company, association, or other entity acting as administrator.

(2) "Individual administrator" means any administrator that is not a corporate administrator as defined in subsection (1) of this section.

Section 2. (1) Any person applying for an administrator's license shall do so on a form prescribed by the commissioner and shall additionally supply the following information:

(a) The names of the following:

1. The board of directors;
2. The board of trustees;
3. The executive committee; and
4. Any other governing body.

(b) The names, addresses, official positions, professional qualifications, and attained educational level of the individuals who are responsible for the actual conduct of the business affairs, including the creation and implementation of business policies and procedures, of the administrator under the authority of its license.

(2) All individuals acting on behalf of the administrator who make, define, or interpret the administrator's procedures and contractual duties under the written agreement between the administrator and any insurer with regards to the handling and processing of claims filed, premiums or charges received, and services provided shall obtain an individual administrator license pursuant to KRS 304.9-052.

(3) All applicants shall have successfully attained an educational level equivalent to that required for graduation from an accredited four (4) year college or university. Each year of experience in the insurance business in claims handling, underwriting, or marketing may be substituted for one (1) year of the college or university education

requirement.

Section 3. Any applicant for an administrator license that intends to directly or indirectly solicit insurance contracts, receive commissions, or to otherwise act as an insurance agent shall provide proof that it has a license as an insurance agent in the Commonwealth.

Section 4. (1) In the case of an individual administrator, proof of competency, trustworthiness, reliability, and good reputation, as required by KRS 304.9-052, shall be submitted in the form of:

(a) A certificate by the insurer, Employee Retirement Income Security Act ("ERISA") plan, or administrator with whom the applicant has contracted to serve as administrator, subject to the issuance of the license, stating that the insurer, ERISA plan, or administrator has either made, or caused to be made by responsible investigators, an investigation into the competency, trustworthiness, reliability, and good reputation of the applicant together with a brief synopsis of the findings resulting therefrom; or

(b) Three (3) letters of recommendation attesting to the competency, trustworthiness, reliability, and good reputation of the applicant written on his behalf by persons not related to him by blood or marriage, one (1) of whom shall be a Kentucky licensed administrator or Kentucky licensed insurer, which letters shall also state the extent of familiarity, both as to length of time and degree of knowledge, possessed by the writer with regard to both personal and business conduct of the applicant.

(2) In the case of a corporate administrator, proof of competency, trustworthiness, reliability, and good reputation shall be submitted in the form of:

(a) A certificate by the insurer, ERISA plan, or administrator with which the applicant has contracted to serve as administrator, subject to the issuance of the license, stating that the insurer, ERISA plan, or administrator has either made, or caused to be made by responsible investigators, an investigation into the competency, trustworthiness, reliability, and good reputation of the applicant and the management, including the directors, of the applicant, together with a brief synopsis of the findings resulting therefrom; or

(b) Three (3) letters of recommendation attesting to the competency, trustworthiness, reliability, and good reputation of the applicant and the management, including the directors, of the applicant written on its behalf by persons not having a financial interest, directly or indirectly, in the applicant, and one (1) of whom shall be a Kentucky licensed administrator or Kentucky licensed insurer, which letters shall also state the extent of familiarity, both as to length of time and degree of knowledge, possessed by the writer with regard to both personal and business conduct of the applicant and the management, including the directors, of the applicant.

Section 5. (1) Every administrator shall demonstrate financial responsibility by obtaining a bond or insurance policy, issued by a surety or insurer authorized to transact insurance business in Kentucky or by depositing cash with the commissioner. Every administrator who obtains a bond or insurance policy shall file with the commissioner proof of the bond or insurance policy. The proof of a bond or insurance policy shall be on a form prescribed by the commissioner. The cash, bond, or insurance policy shall be issued to pay any person who sustains a loss as a result of the following acts of an administrator:

(a) Violation of or failure to comply with any applicable requirement of the Kentucky Insurance Code;

(b) Misplacement, misapplication, or misappropriation of funds received by it;

(c) Fraud or dishonesty committed by the administrator in the administration of its duties;

(d) Theft, forgery, or alteration of claims, premiums, or assets; and

(e) Negligence by the administrator.

(2) The amount of the financial responsibility cash, bond, or insurance policy shall be as follows:

(a) For a corporate administrator, the cash, bond, or insurance policy shall not be less than ten (10) percent of the amount of total funds handled by the administrator rounded to the nearest $10,000, or $50,000, whichever is greater. The amount of the cash, bond, or insurance policy required shall not exceed $1,000,000.

(b) For an individual administrator, the cash, bond, or insurance policy shall be $50,000.

(3) The amount of total funds handled by an administrator shall be determined by the sum of the total premiums collected and total claims paid by the administrator during the preceding calendar year. This amount shall be reported by all administrators to the commissioner on or before the first day of March of each year on a form as the commissioner may prescribe.

(4) Each financial responsibility bond or insurance policy shall be continuous in nature and shall not be terminated unless at least thirty (30) days' prior written notice has been given to the administrator by mailing the notice to the administrator's last known address and by mailing the notice to the commissioner.

(5) If at any time notice is given to the commissioner that any bond or insurance policy filed pursuant to this administrative regulation is to be terminated and has not been replaced by another bond or insurance policy within thirty (30) days, any and all licenses held by the administrator are immediately suspended and shall be promptly surrendered to the commissioner without demand. If any cash deposit is reduced through levy of execution and not replaced by necessary additional deposit within thirty (30) days, any and all licenses held by the administrator are immediately suspended and shall be promptly surrendered to the commissioner without demand.

(6) Nothing in this section shall be construed to prohibit agreements between administrators and insurers providing for additional bond requirements.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: April 4, 1995
FILED WITH LRC: April 5, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 1995 at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on May 22, 1995, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032 Ext. 239.

REGULATORY IMPACT ANALYSIS

Contact person: Carla H. Montgomery, Counsel

(1) Type and number of entities affected: 641 administrators licensed pursuant to KRS 304.9-052.

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

(a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments were received, and the department sees no effect on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments were received. Administrators will have to post a bond or have an insurance policy before doing business in Kentucky. This may increase 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: Administrators must provide proof of competency, trustworthiness, reliability, and good reputation through a certificate or letters. Also, administrators must demonstrate financial responsibility through a bond or insurance policy. Both of these requirements would require additional paperwork and reporting.

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: The licensing division will have more responsibilities when licensing administrators The costs will be the time of the employees of the licensing division.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will be required to examine documents verifying the administrators competency and financial responsibility.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The current budget used by the department will be used in implementing this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation allows the commissioner to obtain all necessary information before issuing licenses to administrators. However most importantly, when administrators are required to display financial responsibility through a bond or insurance, the public will be better protected. The bond or insurance policy will insure protection for consumers whose money has been mishandled by administrators.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Insureds whose claims or premiums are handled by administrators would be better protected.

(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: Policyholders whose moneys are handled by administrators would continue to be without protection. If administrators mishandle claims or premiums, consumers need some insurance that there will be money to pay medical bills and other insurance claims.

(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: This administration regulation would be applied to all administrators equally.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:560. Medicaid hearings and appeals for recipients.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.025, 194.050, 205.231, 205.237, 42 CFR 431 Subpart E, 42 USC 1396

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 Medicaid hearings and appeals process.

Section 1. Definitions. (1) "Applicant" means an individual applying for Medicaid.

(2) "Authorized representative" means an individual acting on behalf of an applicant or recipient.

(3) "Department for Medicaid Services designated hearing agency" means the Department for Social Insurance.

(4) "Medicaid coverage" means items or services a Medicaid recipient may receive through the Medicaid Program.

(5) "Recipient" means an individual who receives Medicaid.

Section 2. Informing the Applicant or Recipient of His Rights. (1) Each applicant or recipient shall be informed of his right to a hearing, orally and in writing when application is made and in writing when any action is taken affecting his eligibility.

(2) Each applicant or recipient shall be informed of the method by which he may obtain a hearing and that he may be represented by legal counsel, a relative, a friend, other spokesperson or himself.

Section 3. Request for a Hearing. (1) Any applicant or recipient or an authorized representative may request a hearing by filing a request with the Department for Medicaid Services designated hearing agency at either the local office or central office.

(2) The applicant or recipient shall clearly indicate a desire for a hearing by submitting a statement in written form or orally and later followed up in writing.

Section 4. Time Limitation for Request. (1) To be considered timely, a written or oral request from an applicant or recipient shall be received by the Department for Medicaid Services designated hearing agency within:

(a) Forty (40) days of the date of the advance notice of adverse action; or

(b) Thirty (30) days of the notice of:

1. Denial of an application;

2. Discontinuance of an active case;

3. Increase in patient liability;

4. Reduction of Medicaid coverage; or

5. If the hearing issue is delayed in action, the time period the action is pending.

(2) An additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(a) The applicant or recipient was away from home during the entire filing period;

(b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the notice of adverse action or the

notice of discontinuance, increase in patient liability or reduction of Medicaid coverage.

(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the notice of adverse action or the notice of discontinuance, increase in patient liability or reduction of Medicaid coverage;

(d) Serious illness of the applicant or recipient; or

(e) The delay was no fault of the applicant or recipient.

Section 5. Continuation of Medicaid. (1) Medicaid shall be continued through the month in which the hearing officer's decision is rendered if the request results from dissatisfaction regarding a proposed discontinuance, proposed increase in patient liability or proposed reduction of Medicaid coverage and is received within ten (10) days of the date of the advance notice of adverse action or notice of decrease or discontinuance.

(2) Medicaid shall be reinstated and continued through the month in which the hearing officer's decision is rendered if the request is received within twenty (20) days of the date of the advance notice of adverse action or notice of discontinuance, increase in patient liability or reduction of Medicaid coverage and the reason for delay meets the good-cause criteria contained in Section 4 of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant or recipient requests the discontinuance, increase in patient liability or reduction of Medicaid coverage be in effect pending the hearing decision.

(4) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law, administrative regulation, or policy of the cabinet.

(5) Continued or reinstated benefits shall be considered overpayments if the agency decision is upheld.

(6) Time limited benefits shall not be extended based on a request for an appeal or hearing.

Section 6. Acknowledgement of the Request. (1) A hearing request shall be acknowledged by the Department for Medicaid Services designated hearing agency. The acknowledgement letter shall contain information regarding the hearing process, including the right to case record review prior to the hearing, the right to representation and, a statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community. Subsequent notification shall include the date, time and place the hearing will be held.

(2) All parties to the hearing shall be provided at least ten (10) days timely notice of the hearing to permit adequate preparation of the case. Less timely notice may be requested by the applicant or recipient to expedite the scheduling of the hearing.

(3) A hearing shall be scheduled on a timely basis to assure no more than ninety (90) days shall elapse from the date of the request to the date of the decision, with the exception that any hearing determination regarding a community spouse income or resource allowance shall be held within thirty (30) days of the hearing request date.

Section 7. Withdrawal or Abandonment of Request. (1) The applicant or recipient may withdraw his request for a hearing prior to release of the hearing officer's decision, but he shall be granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action.

(2) A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification to report for the hearing. No hearing request shall be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with good-cause criteria contained in Section 4 of this administrative regulation.

Section 8. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient shall be informed of his right to legal counsel or other representation, the right to case record review relating to the issue, and the right to submit additional information in support of his claim.

(2) When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet expense if the hearing officer considers it necessary. If a medical assessment at cabinet expense is requested by the applicant or recipient and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 9. Postponement of a Hearing. (1) The applicant or recipient may request and shall be entitled to a postponement of a hearing if the request is made before the hearing and, the request is for an essential reason beyond the control of the applicant or recipient in accordance with good-cause criteria contained in Section 4 of this administrative regulation.

(2) The decision to grant the postponement shall be made by the hearing officer. The postponement of the hearing shall not exceed thirty (30) days from the date of the request. The time limit for action on the decision shall be extended for as many days as the hearing is postponed.

Section 10. Corrective Action for Medicaid. If after a review of the case record but prior to scheduling a hearing, the hearing officer determines that action taken or proposed to be taken by the agency is incorrect, he shall authorize corrective action in the form of eligibility or coverage to which the applicant or recipient would have been entitled or to continuing eligibility or coverage if the issue was a proposed action, but for the incorrect decision of the agency. The applicant or recipient shall then be given the opportunity to withdraw the hearing request, but the hearing shall be scheduled if the applicant or recipient wishes to pursue the request.

Section 11. Conduct of a Hearing. (1) The hearing shall be conducted by a hearing officer whose impartiality is assured in that he shall not have been involved in the initial determination on the issue or to the extent possible, previous hearings on behalf of the applicant or recipient. A hearing officer may disqualify himself due to personal knowledge of circumstances of the applicant or recipient. The applicant or recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria are not met.

(2) The hearing shall be conducted in-state where the applicant or recipient may attend without undue inconvenience.

(3) The applicant or recipient, his authorized representative and any other party to the hearing may present evidence pertinent to the issue on which the adverse action was or is proposed to be taken and, advance any arguments without undue interference.

(4) The hearing officer shall, if necessary to secure full information on the issue, examine each party who appears and his witnesses. The hearing officer may take any additional evidence which he deems necessary. If additional evidence is taken, all interested parties shall be afforded the opportunity of examining or rebutting the additional evidence.

(5) The parties to the hearing, with the consent of the hearing officer, may stipulate the facts involved, in writing. The hearing officer may decide the issue on the basis of the stipulation or schedule a hearing and take additional evidence as is deemed necessary.

(6) All hearings shall be conducted informally and in a manner as to determine the substantial rights of the parties.

(7) If the applicant or recipient consents, telephonic hearings may be conducted to include all of the parties and their witnesses who shall testify under oath or affirmation.

(a) All facts relevant to the issue appealed shall be considered

and passed upon.

(b) Parties to a telephonic hearing who wish to introduce documents or written materials into the record at the hearing shall immediately mail copies of the documents to the hearing officer and to the opposing party.

(c) Failure to provide both the hearing officer and the opposing party with copies of evidence referenced in paragraph (b) of this subsection may result in its being excluded from the record.

(8) A subpoena may be issued by the hearing officer to compel attendance of any witness or to produce records and if requested by the applicant or recipient shall be issued only on a sworn statement of need by the applicant or recipient.

(9) The hearing officer may direct or grant a continuance of a hearing to secure necessary evidence.

Section 12. The Decision. (1) After the hearing is concluded, the hearing officer shall set forth in writing his finding of facts and issues specifying the reasons for the decision and identifying the supporting evidence and regulations.

(2) Decisions with regard to a community spouse's income allowance shall be subject to downward adjustments as deemed necessary by the agency as circumstances causing financial duress change or no longer exist. The resource allowance shall be subject to this adjustment only with regard to resources attributed to the community spouse but not transferred in the six (6) months. This adjustment is appealable pursuant to Section 5 of this administrative regulation.

(3) A copy of the decision shall be mailed to the applicant or recipient and his representative.

(4) The decision, with respect to the issues considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 13. Appeal from Decision of Hearing Officer for Applicants and Recipients. Any applicant or recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appointed appeal board.

(1) The appeal request shall be considered timely, when it is received in a local office or the central office of the Department for Medicaid Services designated hearing agency within twenty (20) days of the date on which the hearing officer's decision was mailed;

(2) If the good-cause criteria in Section 4 of this administrative regulation is met, an appeal request received within thirty (30) days of the hearing officer's decision shall be considered timely. The request shall be filed in writing or orally, and later followed up in writing and considered filed on the day it is received.

(3) Medicaid eligibility shall continue to be denied, discontinued, patient liability increased, or Medicaid coverage reduced if the agency's action is upheld by the hearing officer.

Section 14. Applicant's or Recipient's Rights Prior to Appeal Board Consideration. All appeals shall be acknowledged in writing to the applicant or recipient and his authorized representative. The acknowledgment shall offer the opportunity to file a brief or submit new and additional proof and state the tentative date on which the board shall consider the appeal.

Section 15. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the hearing officer unless the applicant or recipient specifically requests permission to file additional proof.

(2) When an appeal is being considered on the record, the parties may present written arguments and at the board's discretion, be allowed to present oral arguments.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the board after seven (7) days notice to the parties, giving them the opportunity to object to introduction of additional evidence or to rebut or refute any additional evidence.

Section 16. The Appeal Board Decision. The decision of the appeal board, duly signed by members of the board, shall set forth in writing the facts on which the decision is based and unless set aside through the judicial review process, shall be irrevocable in respect to the issues in the individual case.

Section 17. Medicaid Case Actions Following a Decision. (1) Medicaid case actions following a decision of a hearing officer or the appeal board shall be made promptly and shall include the month of application or, providing it is established that the applicant or recipient was eligible during an entire period, the month in which incorrect action of the cabinet adversely affected the applicant or recipient.

(2) For reversals involving reduction of Medicaid coverage or an increase in patient liability, action shall be taken to restore benefits within ten (10) days of the receipt of the hearing or appeal board decision.

Section 18. Special Procedures Relating to Nursing Facility, Hospital and Psychiatric Residential Treatment Facility Level of Care Determinations. The cabinet contracts with peer review organizations to provide level of care determinations for those individuals in nursing facilities. For those individuals appealing a peer review organization's determination, the following special provisions shall be applicable:

(1) If the peer review organization's decision is adverse to the recipient, a written notice of the decision shall be given to the recipient, the physician of record, the facility (if any) and the cabinet. The notice shall comply with the requirements of Section 2 of this administrative regulation.

(2) The recipient may appeal the determination of the peer review organization by filing a written request for reconsideration with the utilization review agency. The request for reconsideration shall be made within thirty (30) days of the date on the notice of the adverse decision. If the request for reconsideration is made within ten (10) days, benefits shall continue (as appropriate) until the reconsideration decision has been made. Reconsideration hearings shall be held within ten (10) working days of the request when the recipient is in the facility; if the request for reconsideration is received after the recipient has left the facility, the hearing shall be held within thirty (30) days.

(3) The hearing shall be conducted by a hearing officer whose impartiality is assured. He shall not have been involved in the initial determination on the issue, or, to the extent possible in previous hearings on behalf of the recipient. The recipient, his representative, and any other party to the proceeding may present evidence as shall be pertinent to the issue on which the adverse action is proposed to be taken, examine and rebut other evidence, and advance any arguments without undue influence.

(4) After the hearing is concluded, the hearing officer shall set forth in writing his findings of facts and issues specifying the reasons for the decision and identifying the supporting evidence and administrative regulations. The decision shall be based solely on evidence adduced at the hearing. A copy of the decision shall be mailed to the recipient and his representative.

(5) When the reconsideration decision is adverse to the recipient, he may then appeal to the cabinet for a hearing in accordance with this administrative regulation. The appeal shall be filed within fifteen (15) days of the date the recipient is notified of the reconsideration decision, any request may be filed with the utilization review agency or directly with the department. If filed with the utilization review agency, they shall forward the request with appropriate medical records and any other necessary documentation to the cabinet.

(6) When a negative decision has been appealed to the cabinet,

the appeal shall be processed as set forth in Sections 3, 4, 5, and 6 of this administrative regulation.

Section 19. Limitation of Fees. (1) Although the cabinet and its officers and employees, either in their official or personal capacity, are not liable for payment of any attorney fees, the cabinet shall in accordance with KRS 205.237, set the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid as follows:

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (briefs included) of appeals to the appeal board;

(c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court;

(d) $300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted, either in whole or in part, from public assistance payments otherwise due and payable to the recipient.

Section 20. Hearings and Appeals Relating to Decisions to Reclassify or Transfer Persons with Mental Retardation in State Institutions. Hearings and appeals relating to decisions to reclassify or transfer persons with mental retardation in state institutions shall be in accordance with the requirement of KRS 210.270.

Section 21. Burden of Proof. In all proceedings conducted pursuant to this administrative regulation, the burden of proving eligibility or coverage shall be born by the applicant or recipient.

Section 22. Material Incorporated by Reference. (1) The form necessary for hearings and appeals in the Medicaid Program is being incorporated effective April 1, 1995. The form is the PAFS-78, revised January 1, 1994.

(2) Material incorporated by reference 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 from the Department upon payment of the appropriate fee allowed by 200 KAR 1:020.

MASTEN CHILDERS II, Secretary/Commissioner

APPROVED BY AGENCY: April 14, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 hearings 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 Department for Social Insurance regulation, 904 KAR 2:055. 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.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:600. Medicaid adverse action and conditions for recipients.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 CFR 431.210, 431.211, 431.213, 431.214, 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 the conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

Section 1. Definitions. (1) "Applicant" means an individual applying for Medicaid.

(2) "Application" means the process set forth in 907 KAR 1:610.

(3) "Medicaid coverage" means items or services a Medicaid recipient may receive through the Medicaid Program.

(4) "Recipient" means an individual who receives Medicaid.

Section 2. Reasons for Adverse Action. (1) An application for Medicaid eligibility shall be denied if:

(a) Income or resources exceed the standards as set forth in 907 KAR 1:004;

(b) The applicant does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 907 KAR 1:011;

(c) Despite receipt of written notice detailing the additional information needed for a determination, the applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility;

(d) The applicant fails to keep the appointment for an interview;

(e) The applicant requests in writing voluntary withdrawal of the application;

(f) Staff are unable to locate the applicant; or

(g) The applicant is no longer domiciled in Kentucky.

(2) Medicaid eligibility shall be discontinued if:

(a) Income or resources of the recipient exceed the standards set forth in 907 KAR 1:004;

(b) Deductions decease resulting in income exceeding the standards set forth in 907 KAR 1:004;

(c) The recipient does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 907 KAR 1:011;

(d) Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;

(e) The recipient fails to keep the appointment for an interview;

(f) Staff are unable to locate the recipient;

(g) The recipient is no longer domiciled in Kentucky; or

(h) A change in program policy that adversely affects the recipient.

(3) Patient liability shall be increased if:

(a) Income of the recipient increases; or

(b) Deductions decrease.

(4) Medicaid eligibility may be redetermined in another category resulting in a reduction of Medicaid coverage if:

(a) Income or resources exceed the standards as set forth in 907 KAR 1:004; or

(b) The recipient does not meet technical eligibility requirements as set forth in 907 KAR 1:011.

(5) Medicaid coverage may be reduced due to a change in Medicaid coverage policy.

Section 3. Notification of Denial of Applications. If a Medicaid application is denied, the applicant shall be given written notification of the denial which shall include:

(1) The reason for the denial;

(2) The cites of the applicable state administrative regulation; and

(3) The right to a fair hearing as set forth in 907 KAR 1:560.

Section 4. Advance Notice of a Discontinuance, Increase in Patient Liability or a Reduction of Medicaid Coverage. (1) The recipient shall be given ten (10) days advance notice of the proposed action if a change in circumstances indicates:

(a) A discontinuance of Medicaid coverage;

(b) An increase in patient liability; or

(c) A reduction of Medicaid coverage.

(2) The recipient shall be given five (5) days advance notice of the proposed action if a change in circumstance indicates:

(a) Facts that action should be taken because of probable fraud by the recipient; and

(b) The facts have been verified through secondary sources.

(3) The ten (10) days advance notice and the five (5) days advance notice of proposed action shall:

(a) Be in writing;

(b) Explain the reason for the proposed action;

(c) Cite the applicable state administrative regulation;

(d) Explain the individual's right to request a fair hearing;

(e) Provide an explanation of the circumstances under which Medicaid is continued if a hearing is requested; and

(f) Include that the applicant or recipient may be represented by an attorney or other if he so desires.

(4) A hearing request received during the advance notice period may result in a delay of the discontinuance of Medicaid coverage, a delay in an increase in patient liability or delay of a reduction of Medicaid coverage pending the hearing officer's decision, as set forth in 907 KAR 1:560.

Section 5. Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be required, but written notice of action taken shall be given, if discontinuance of Medicaid coverage or an increase in patient liability resulted from:

(1) Information reported by the recipient if the recipient signs a waiver of the notice requirement indicating understanding of the consequences;

(2) A clear written statement, signed by the recipient, that he no longer wishes to receive Medicaid;

(3) Factual information is received that the recipient has died;

(4) Whereabouts of the recipient are unknown and mail addressed to him is returned indicating no known forwarding address;

(5) Establishment by the agency that Medicaid has been accepted in another state;

(6) The recipient enters:

(a) A penal institution; or

(b) If between twenty-one (21) and sixty-five (65), a mental hospital or an institution for mental disease (IMD); or

(7) A change in the level of medical care is prescribed by the

recipient's physician.

Section 6. Expiration of an approved time-limited hospital or psychiatric residential treatment facility stay shall not constitute termination, suspension, or reduction of benefits.

Section 7. Material Incorporated by Reference. (1) The forms necessary for adverse action in the Medicaid Program are being incorporated effective April 1, 1995. These forms include the MA 105, revised July 1992 and the KIM 105, revised September 1992.

(2) Material incorporated by reference 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 from that office upon payment of the appropriate fee allowed by 200 KAR 1:020.

MASTEN CHILDERS II, Secretary/Commissioner

APPROVED BY AGENCY: April 14, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 hearings 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 Department for Social Insurance regulation, 904 KAR 2:046. 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.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:640. Income standards for Medicaid.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 42 USC 1396 a, 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 provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth

the income standards by which eligibility is determined.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, and disabled.

(2) "AFDC" means aid to families with dependent children.

(3) "Dependent child" means a child who is deprived of parental support due to death, incapacity, or absence of a parent and is under the age of eighteen (18) or under age nineteen (19) if in high school or the same level of vocational or training school and expected to graduate before or during the month of their 19th birthday.

(4) "Incapacity" means any condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(5) "Income" means money received from statutory benefits (Social Security, Veteran's Administration pension, black lung benefits, railroad retirement benefits, etc.), pension plans, rental property, investments, or wages for labor or services.

(6) "Minor parent" means a parent under the age of twenty-one (21).

(7) "Lump sum income" means money received at one (1) time which is normally considered as income, e.g., accumulated back payments from Social Security, unemployment insurance and workman's compensation, backpay from employment, money received from insurance settlements, gifts, inheritances, lottery winnings, noncontinuing proceeds from bankruptcy proceedings, monies withdrawn from IRA's, KEOGH plans, deferred compensation, tax deferred retirement plans, and other tax deferred assets.

(8) "SSI" means supplemental security income program.

Section 2. Income Limitations. (1) For the medically needy as described in 907 KAR 1:011, income shall be determined by comparing adjusted income as defined in Section 3 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$ 2,600	$ 217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional member, $720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) The following special factors shall be applicable for pregnant women, infants and children eligible pursuant to 42 USC 1396a(e):

(a) Pregnant women and children under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines.

(b) Children age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines.

(c) Children born after September 30, 1983, who have attained six (6) years of age but have not attained nineteen (19) years of age shall have family income not exceeding 100 percent of the official poverty income guidelines.

(d) Pregnant women, infants and children who would be eligible under provisions of 42 USC 1396a(1) of the Social Security Act except for income in excess of the allowable standard shall not become eligible by spending down (described in Section 9 of this administrative regulation) to the official poverty guidelines;

(e) Changes of income that occur after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) The following special income limits and provisions shall be applicable for determinations of eligibility of qualified Medicare beneficiaries, specified low-income Medicare beneficiaries, and qualified disabled working individuals.

(a) Qualified Medicare beneficiaries shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) Specified low-income Medicare beneficiaries shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) Qualified disabled working individuals shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) The official poverty income guidelines as referenced in this section shall be those promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year shall be the latest poverty guidelines available as of March 1 of the particular state fiscal year.

Section 3. Income Disregards. In comparing income with the scale as contained in Section 2 of this administrative regulation, gross income shall be adjusted as follows:

(1) In AFDC related Medicaid cases, the standard work related expenses of adult members and out-of-school youth shall be deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction shall be ninety (90) dollars per month. All earnings of an in-school child shall be disregarded.

(2) In AFDC related Medicaid cases, child care as a work expense shall be allowed for child(ren) who are living in the home of the caretaker and is related to the caretaker in the appropriate degree as defined by the AFDC Program for full-time and part-time employment. The dependent child care work expense shall be deducted after all other disregards have been applied. The child care work expense allowed shall not exceed, per month, $200 for full-time or part-time employment per child under age two (2), and $175 for full-time employment or $150 for part-time employment per child age two (2) and above and for each incapacitated adult.

(3) In ABD Medicaid cases, income disregards shall be those applicable in the federal SSI program.

Section 4. Income of the Stepparent or Parent of a Minor Parent referred to as a "Grandparent". An incapacitated stepparent's income, or a grandparent's income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be considered available to the spouse or the grandparent's gross income shall be considered available to the minor parent in accordance with the policies set forth in this section. The following disregards and exclusions from income shall be applied:

(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time.

(2) An amount equal to the appropriate income limitations scale as described in Section 2 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the Medicaid eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability.

(3) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him as dependents for purposes of determining his personal income tax

liability.

(4) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(5) Income of a stepparent or grandparent receiving SSI.

(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

Section 5. Lump Sum Income. (1) For AFDC related Medicaid cases, lump sum income shall be divided by the medically needy income level and prorated over the resultant number of months; deductions from the lump sum may be allowed for related or extraordinary expenses.

(2) For individuals eligible under the federal poverty level standards specified in Section 2(2)(a), (b) and (c) of this administrative regulation, lump sum income shall be divided by the appropriate standard for the eligible group and prorated over the resultant number of months; deductions from the lump sum may be allowed for related or extraordinary expenses.

(3) For ABD Medicaid cases, lump sum income shall be considered as income in the month received.

Section 6. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan for achieving self-support (PASS), impairment related work expense (IRWE) deduction, or the blind work expense (BWE) deduction shall be excluded from consideration.

(2) Payments or benefits from federal statutes, other than SSI benefits, shall be excluded from consideration (as income) if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) Cash payments intended specifically to enable applicants or recipients to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) Federal Republic of Germany reparation payments shall not be considered available in the eligibility and posteligibility treatment of income of individuals in nursing facilities or hospitals or who are receiving home and community based services under a waiver.

(5) Social Security cost of living adjustments on January 1 of each year shall not be considered as available income for qualified Medicare beneficiaries, specified low-income Medicare beneficiaries and qualified disabled working individuals until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services U.S. Government, is published.

(6) Any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) Veterans in a nursing facility who are receiving the reduced ninety (90) dollars Veterans Administration (VA) benefit shall have the ninety (90) dollars excluded as income in the Medicaid eligibility determination but the ninety (90) dollar payment shall be considered as income in the posteligibility determination process.

(8) Austrian Social Insurance payments based, in whole or in part, on wage credits granted under paragraphs 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(9) Individual Retirement Accounts, Keogh plans and other tax deferred assets shall be excluded as income until withdrawn.

(10) Disaster relief assistance shall be excluded as income.

(11) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC and SSI) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) shall not be allowed in determining eligibility for Medicaid only.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard (contained in Section 2(1) of this administrative regulation) shall be applied to the special need which results in the supplementary payment.

Section 8. Pass-through Cases. Increases in Sscial Security payments due to cost of living increases but for which the individual would be eligible for SSI benefits or state supplementary payments shall be disregarded in determining eligibility for Medicaid benefits; these individuals shall remain eligible for the full scope of program benefits with no spend-down requirements (described in Section 9 of this administrative regulation). For individuals who applied by July 1, 1988, the additional amount specified in 42 USC 1383c(b) shall be disregarded, i.e., that amount of Social Security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) these individuals would be eligible for federal SSI benefits.

Section 9. Spend-Down Provisions. No technically eligible individual or family shall be required to utilize protected income for medical expenses before qualifying for Medicaid. Individuals with income in excess of the basic maintenance scale as contained in Section 2(1) of this administrative regulation may qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period; medical expenses incurred in periods prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses. The incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

MASTEN CHILDERS II, Secretary/Commissioner

APPROVED BY AGENCY: April 14, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 hearings 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 Medicaid applicants and 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: No hearing was requested as a result of the Notice of Intent being published and no written 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 hearing was requested as a result of the Notice of Intent being published and no written 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: 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: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The administrative regulation is being promulgated to create an individual subject matter regulation. The subject matter was previously included in 907 KAR 1:004. The regulation does include a policy change which revises the manner in which child care as a work expense is determined.

(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.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:650. Trust and transferred resource requirements for Medicaid.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.6322, 42 CFR 435, 42 USC 1396a, p

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 provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth trust and transferred resource requirements for Medicaid eligibility determinations.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Baseline date" means the date the institutionalized individual was institutionalized and applied for Medicaid.

(2) "Fair market value" means an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred.

(3) "Income" means money received from statutory benefits (Social Security, Veterans Administration pension, black lung benefits, railroad retirement benefits) pension plans, rental property, investments or wages for labor or services.

(4) "Institutionalized individual" means an individual who is an inpatient in a nursing facility (NF), intermediate care facility for the mentally retarded (ICF-MR), or who is an inpatient in a medical institution and with respect to whom payment is based on a level of care provided in a NF, or who is a home and community-based services (HCBS) recipient or an alternative intermediate services for individuals with mental retardation (AIS-MR) recipient.

(5) "Resources" mean money and any other personal property or real property that an institutionalized individual or institutionalized individual's spouse owns; has the right, authority or power to convert to cash; and is not legally restricted from using for support and maintenance.

(6) "Trust" means any arrangement in which a grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee(s) for the benefit of the grantor or certain designated individuals (beneficiaries). The trust must be valid under state law and manifested by a valid trust instrument or agreement. A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries. The term "trust" also includes any legal instrument or device that is similar to a trust.

(7) "Uncompensated value" means the difference between the fair market value at the time of transfer (less any outstanding loans, mortgages, or other encumbrances on the asset) and the amount received for the asset.

Section 2. Transferred Resources. (1) Transfer of resources on or before August 10, 1993.

(a) If an institutionalized individual applies for Medicaid, a period of ineligibility shall be computed if during the thirty (30) month period immediately preceding the application (but on or before August 10, 1993) the individual or the spouse disposed of property for less than fair market value.

(b) The period of ineligibility shall begin with the month of the transfer and shall be equal to:

1. The lesser of thirty (30) months; or

2. The number of months derived by dividing the total uncompensated value of the resources transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state.

(2) Transfer of resources after August 10, 1993.

(a) If an institutionalized individual applies for Medicaid, a period of ineligibility for NF or ICF-MR services, HCBS, or AIS-MR, shall be computed if during the thirty-six (36) month period immediately preceding the baseline date (but after August 10, 1993) assets were transferred, or if during the sixty (60) month period immediately preceding the baseline date (but after August 10, 1993) a trust was created whereby the individual or the spouse disposed of property for less than fair market value.

(b) The period of ineligibility shall begin with the month of the transfer and shall be equal to the number of months derived by dividing the total uncompensated value of the resources transferred by the average cost to a private patient at the time of the application for nursing facility services in the state.

(c) Jointly held resources shall be considered pursuant to 42 USC 1396p(c)(3).

(d) If a spouse transfers resources that results in an ineligibility period for the institutionalized spouse, the ineligibility period shall be apportioned between the spouses if the spouse is subsequently institutionalized and a portion of the ineligibility period against the institutionalized spouse remains. If one (1) spouse is no longer subject to the ineligibility period, the remaining ineligibility period applicable to both spouses shall be served by the remaining spouse.

(e) The following policies shall be applicable with regard to annuities. A determination shall be completed with regard to the purpose of the purchase of an annuity in order to determine whether resources were transferred for less than fair market value.

1. If the expected return on the annuity is commensurate with the life expectancy of the beneficiary, the annuity shall be actuarially sound and shall not be considered a transfer or resources for less than fair market value.

2. If the expected return on the annuity is not commensurate with the life expectancy of the beneficiary, the annuity shall not be actuarially sound and shall be considered a transfer of resources for less than fair market value. An ineligibility period shall be assessed retroactive to the date the annuity was purchased.

(f) The following policies shall be applicable with regard to the transfer of home property:

1. Transfer of home property to the following individuals shall not constitute a transfer of resources for less than fair market value. Home property may be transferred:

a. To the spouse;

b. To a child who is under age twenty-one (21) or to a child who is blind or disabled;

c. To a sibling who has equity interest in the home who lived with the institutionalized individual one (1) year prior to institutionalization; and

d. To a child (other than above) who resided with the institutionalized individual two (2) years prior to institutionalization and provided care to the individual to prevent institutionalization.

2. Transfer of home property to any individual not listed in subsection (1) of this section shall constitute a transfer of resources for less than fair market value.

(3) For multiple or incremental transfers, the ineligibility periods shall accrue and run consecutively beginning with the month of the initial transfer.

(4) An individual shall not be ineligible for Medicaid or an institutional type of service by virtue of subsection (1) or (2) of this section to the extent that the conditions specified in 42 USC 1396p(c)(2)(B), (C) and (D) or 907 KAR 1:655 are met, nor shall an individual be ineligible for Medicaid or an institutional type of service due to transfer of resources for less than fair market value except in accordance with this section.

(5) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with 42 USC 1396p(c)2(B) or (C) or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with 42 USC 1396p(c)(2)(B) or (C) or is for some reason other than to qualify for Medicaid or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource shall be disregarded. If the resource was transferred for an amount equal to the assessed value for tax purposes, the resource shall be considered as being disposed of for fair market value. If the assessed agricultural value is used for tax purposes the transfer shall be required to be for an amount equal to the fair market value.

(6) After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property shall be counted against the permissible amount for nonhomestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource shall be disregarded.

(7) If retention would result in ineligibility, the cabinet shall compute a period of ineligibility for Medicaid or an institutional type of service as provided for in subsections (1) and (2) of this section.

(8) The uncompensated value may be excluded from consideration when good cause or undue hardship exists. A waiver of consideration of the uncompensated amount shall be granted subject to the following criteria:

(a) Good cause shall be determined to exist if an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death of a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) Undue hardship shall be determined to exist if application of transferred resource penalties:

1. Deprive an individual of medical care which shall result in an endangerment to the individual's health and life; or

2. Deprive an individual of food, clothing, shelter, or other necessities of life.

(c) The exclusions shall not exceed the amount of the incurred expense or loss; the amount of the uncompensated value to be excluded shall not include any amount which is payable by Medicaid, Medicare, or other insurance.

Section 3. Treatment of Trusts. (1) Effective October 1, 1993 with regard to Medicaid qualifying trusts created on or before August 10, 1993, if an individual (or the spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, the trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance

with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

(2) Effective October 1, 1993 with regard to trusts created after August 10, 1993, for purposes of determining eligibility in accordance with Section 2(2) of this administrative regulation with regard to trust agreements, the rules provided for under 42 USC 1396p(d)(3) shall be met and shall apply to a trust established by an individual subject to 42 USC 1396p(d)(4).

(a) An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the individuals described under 42 USC 1396p(d)(2)(A)(i), (ii), (iii), and (iv) established the trust other than by a will.

(b) If the corpus of a trust includes income or resources of any other person or persons, the trust rules shall apply to the portion of the trust attributable to the income or resources of the individual. In determining countable income and resources, income and resources shall be prorated based on the proportion of the individual's share of income or resources.

(c) Subject to 42 USC 1396p(d)(4), the trust provisions in 42 USC 1396p(d) shall be applied in a manner consistent with 42 USC 1396p(d)(2)(C).

(d) Payments made from revocable or irrevocable trusts to or on behalf of an individual shall be considered as income to the individual with the exception of payments for medical costs. Payments for medical care or medical expenses shall be excluded as income.

(e) A trust which is considered to be irrevocable and terminates if action is taken by the grantor shall be considered a revocable trust.

(f) An irrevocable trust which may be modified or terminated by a court shall be considered a revocable trust.

(g) If payment from a revocable or irrevocable trust may be made under any circumstance, the amount of the full payment (even through not disbursed) shall be considered as income including amounts that may be disbursed in the distant future.

(h) Placement of an excluded resource into an irrevocable trust shall not change the excluded nature of the resource.

(i) Placement of a countable resource into an irrevocable trust shall constitute a transfer of resources for less than fair market value.

(3) The treatment of trusts set forth in this section of this administrative regulation shall be waived if undue hardship criteria is met as set forth in Section 2(8)(b) of this administrative regulation.

(4) With regard to subsection (1) or (2) of this section, for trusts created on or prior to August 10, 1993, any resources transferred into a previously established trust after August 10, 1993 shall be considered a transfer of resources and subject to an ineligibility period as provided for under Section 2 of this administrative regulation using the thirty-six (36) month transfer rules.

MASTEN CHILDERS II, Secretary/Commissioner

APPROVED BY AGENCY: April 14, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 hearings 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 Medicaid applicants and 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: No hearing was requested as a result of the Notice of Intent being published and no written 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 hearing was requested as a result of the Notice of Intent being published and no written 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: $100,000 (savings)
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The administrative regulation is being promulgated to create an individual subject matter regulation. The subject matter was previously included in 907 KAR 1:004. The administrative regulation does include the following policy changes based on Federal State Medicaid Manual material that was received in November 1994 and KRS 205.6322.

1. Extends transfer of resource policy to intermediate care facility for the mentally retarded (ICF/MR) recipients and alternative intermediate services for the mentally retarded (AIS/MR) recipients.
2. Defines the look back date for transfers and trusts to begin with

the date an individual was institutionalized and applied for Medicaid.

3. Provides for penalty periods to be applied to ineligible spouses who transfer resources and are subsequently institutionalized.

4. Considers the purchase of an annuity to be a transfer of resources if the annuity is not actuarially sound.

5. Limits the transfer of home property to a spouse and children who meet special criteria.

6. Defines undue hardship for transfers of resources and trusts.

7. Clarifies specific treatment of trusts with regard to joint owners, payments from trusts, limitation, termination and use clauses, and placement of resources into a trust.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:660. Relative responsibility requirements for Medicaid.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435 Subpart G, H, I

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 provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth resource and income considerations by which Medicaid eligibility is determined.

Section 1. Definitions. (1) "ABD" means a person who is aged, blind, or disabled.

(2) "AFDC" means aid to families with dependent children.

(3) "After the month of separation" means the first day of the month that follows the month in which an individual ceases living in the same household of the Medicaid budget unit.

(4) "Month of separation" means the month in which an individual ceases living in the same household of the Medicaid budget unit.

(5) SSI means supplemental security income.

Section 2. Treatment of Income and Resources for a Parent, Dependent Children, ABD Applicants or Recipients. For purposes of the Medicaid Program, spouses shall be considered responsible for spouses and parents shall be considered responsible for dependent minor children. Children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) shall be considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if these children are emancipated under state law. This responsibility, with regard to income and resources, shall be determined as follows:

(1) ABD applicants or recipients living with their eligible spouse, total resources and adjusted income of the couple shall be considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(2) ABD applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the medically needy income level (MNIL) for one (1) as shown in 907 KAR 1:640, Section 2(1).

(b) Allocate to other dependents in the household from the ineligible spouse's income in an amount equal to one-half (½) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than the difference between the MNIL for one (1) and MNIL two (2), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for one (1) to determine continuing eligibility or the spend-down amount. If the ineligible spouse's income is less than the difference between MNIL for one (1) and MNIL for two (2), the income shall be disregarded and the income of the eligible individual shall be compared with the MNIL for a family size of one (1).

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(3) For ABD couples, living apart for any reason, both of whom are concurrently applying for or receiving Medicaid (MA) only, income and resources shall be considered in relation to resource and income limitations for a family size of one (1) after the month of separation, or if other dependents live with either spouse, the family size including the dependents in the month following the month of separation. Eligibility shall be determined on a couple basis for the month of separation.

(4) For an ABD individual living apart from a spouse who is not a recipient of Medicaid only, eligibility shall be determined on a couple basis for the month of separation and as a single individual after the month of separation.

(5) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in subsections (3) and (4) of this section, who has jointly held resources with his spouse, one-half (1/2) of the jointly held resource shall be considered a resource; except that the entire amount of a jointly held checking or savings account shall be considered a resource if the resource may be accessed independently of the spouse.

(6) For AFDC-related Medicaid, total resources and adjusted income of parent(s) and children for whom application is made shall be considered in relation to limitations for family size, except that the

income and resources of an SSI parent and the SSI essential person spouse whose Medicaid eligibility is based on inclusion in the SSI case shall be excluded. Resources and income of an SSI essential person, spouse or nonspouse, whose Medicaid eligibility is not based on inclusion in the SSI case shall be considered.

(7) For a child who is blind or disabled and under eighteen (18) living with his parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) shall be related to limitations for family size, including the applicant or recipient child and other dependent children of the parent using the adult scale.

(8) For AFDC-related Medicaid, income and resources of parent(s) shall not be considered available to a child living apart from the parent(s), but any continuing contribution actually made shall be considered as income. For comparison with the resource and income limitations, the child's individual resources and income shall be considered in relation to family size of one (1). The following criteria shall be used to determine whether an AFDC or AFDC-related Medicaid child who has been living with his parents and is institutionalized in a psychiatric facility (mental hospital or psychiatric residential treatment facility) shall be considered as living apart from his parents:

(a) A child shall be considered as living with his parents unless he has been in the facility for thirty (30) or more days or a physician specifies that it is anticipated he will remain in the facility for thirty (30) or more days (regardless of whether the child actually does so).

(b) A child who is institutionalized in a psychiatric facility but is legally committed to or in the custody of the Cabinet for Human Resources shall not be considered as living with his parents.

(9) If an AFDC or AFDC-related Medicaid recipient (but not including a child) has income and resources considered in relation to family size and enters a nursing facility, his income and resources shall be considered in the case for up to one (1) year with the individual allowed the basic maintenance standard as shown in 907 KAR 1:655, Section 4(2).

(10) If a child in an AFDC or AFDC-related Medicaid case is in the nursing facility, eligibility of the child shall continue in the case for up to a year but his liability for the cost of care shall be determined by allowing to the child from his own income the basic maintenance standard as shown in 907 KAR 1:655 Section 4(2), and considering the remainder available for the cost of care. (Note: In this situation any welfare payment made to the child shall be disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, shall be determined on the basis of living apart from the other family members if it becomes apparent that the separation will last for more than one (1) year.

Section 3. Treatment of Income and Resources of the Stepparent or Parent of a Minor Parent Referred to as a "Grandparent". (1) An incapacitated stepparent's income, or a grandparent's income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be considered available to the spouse or the grandparent's gross income shall be considered available to the minor parent in accordance with the policies set forth in 907 KAR 1:640, Section 4.

(2) Determining eligibility of the grandchild(ren) and stepchildren(ren). If a stepparent or grandparent has available income remaining after disregards and exclusions are applied, the income shall be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) shall be determined in the following manner:

(a) Consider only the income of the grandchild(ren) and minor parent, or stepchild(ren) and parent (spouse of the stepparent) as appropriate.

(b) The budget size shall include the child(ren) and parent.

(c) If there is no excess income, the child(ren) shall be eligible.

(d) If there is excess income, the excess amount may be spent down in accordance with 907 KAR 1:640, Section 9.

(3)(a) To determine separate eligibility of the minor parent (of the grandchild) or spouse (of a stepparent) if the eligibility of the grandparent or stepparent is not to be determined, consider the income of the child(ren) and his parent, and the actual amount available for deeming from the grandparent or stepparent. The budget size shall include the child(ren) and parent (but not the grandparent or stepparent). If there is no excess income, the minor parent or spouse (of a stepparent) shall be eligible. If there is excess income, the excess amount may be spent down.

(b) If the grandparent (of a minor parent) or the stepparent (spouse of the parent with children) are to be included in the case, eligibility of the minor parent or spouse shall not be determined separately but shall be determined in combination with that of the grandparent or stepparent. The combined eligibility of the minor parent and grandparent, or spouse and incapacitated stepparent, shall be determined using the available income of the grandparent or stepparent, the minor parent or spouse of the stepparent, and the grandchild(ren) or stepchild(ren) as appropriate. If the grandparent or incapacitated stepparent is included in the case, the amount excluded for the needs of the grandparent or stepparent in the determination of available income in subsection (1) of this section shall be considered as available income for purposes of this determination of eligibility. If there is no excess income, the minor parent and grandparent or spouse and incapacitated stepparent shall be eligible; if there is excess income, the excess amount may be spent down.

(4) If eligibility is being determined for individuals or family groups with excess income, uncovered incurred medical expenses of the individual, family group or financially responsible relative shall be used to meet the spend-down amount(s).

(5) An incapacitated stepparent's resources, or a grandparent's resources, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not included in the family case, the stepparent's resources shall be considered available to the spouse (of the stepparent) or the grandparent's resources shall be considered available to the minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Resource eligibility of the stepchild(ren) or grandchild(ren) shall be determined in the following manner. Consider only the resources of the grandchild(ren) and minor parent, or stepchild(ren) and parent (spouse of the stepparent) as appropriate.

Section 4. Companion Cases. If spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility shall be taken into consideration.

(1) For a dependent child(ren) application, the income, resources and needs of the parent(s) shall be included in the determination of need of the child(ren) even if the parent(s) applies for assistance for himself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) For a spouse, income and resources of both spouses shall be combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility shall be made for each individual.

(3) For families with children with a parent eligible for SSI, neither the income, resources, nor needs of the (SSI) eligible individual shall be included in the determination of eligibility of the children.

(4) A parent in an AFDC-related Medicaid case may request that one (1) or more children be technically excluded from the determination of eligibility due to income while a regular application for Medicaid eligibility is processed for other children in the family group. In this circumstance, the income and resources of the technically excluded child(ren) and the technically excluded child(ren)'s needs shall be excluded in the budgeting process when determining eligibility of the family group. A separate spend-down case(s) may then be estab-

lished for the technically excluded child(ren). The income, resources and needs of the responsible relative or parent shall be included in the budget process. Income disregards, and needs of siblings in the other case may also be included in budgeting for the spend-down case if that works to the advantage of the technically excluded child(ren) for whom eligibility is being determined in the spend-down case. Excess income in the spend-down case may be spent down using uncovered incurred medical care costs of a financially responsible relative or any member of the family.

(5) The needs of a sibling living in the household under the age of twenty-one (21) not requesting assistance, may be included in an AFDC-related Medicaid case if it works to the advantage of the family group.

MASTEN CHILDERS II, Secretary/Commissioner

APPROVED BY AGENCY: April 14, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 17, 1995 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 hearings 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 Medicaid applicants and 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: No hearing was requested as a result of the Notice of Intent being published and no written 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 hearing was requested as a result of the Notice of Intent being published and no written 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: 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: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

(8) Assessment of expected benefits:

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

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

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

(9) Identify any statute, administrative regulation or 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: The administrative regulation is being promulgated to create an individual subject matter regulation. The subject matter was previously included in 907 KAR 1:004. The administrative regulation does include the following policy changes.

1. For aged, blind and disabled Medicaid cases, the ineligible spouse's income is now deemed to the eligible spouse if the ineligible spouse's income is greater than $50.

2. For AFDC related Medicaid cases, the needs of a sibling living in the household under the age of 21 not requesting assistance may be included in the budget unit.

(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 of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the April 3, 1995

The April meeting of the Administrative Regulation Review Subcommittee was held on Monday, April 3, 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 March 6, 1995 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman; Senators John David Preston, Nick Kafoglis, Fred Bradley; Representatives Woody Alllen, Jim Bruce and Tommy Lee.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines, Doug Terry.

Guests: Senator Tom Buford; Joyce Bryan, Richard Casey, Kentucky Higher Education Assistance Authority; Gail Prewitt, Michael J. Denney, Angela Robinson, Finance and Administration Cabinet; James Daniels, John Grant, Real Estate Appraisers Board; Vicki Searcy, Alan Hamilton, Don L. Notter, Danny Willis, Donna Dutton, Ed Logsdon, Department of Agriculture; Hank Wiseman, John E. Hornback, Ken Hines, Millie Ellis, Natural Resources and Environmental Protection Cabinet; Michael O'Connor, Parole Board; Robert Powell, Susan Alley, Department of Corrections; Sandra G. Pullen, Transportation Cabinet; Kenneth Warlick, Mark Ryles, Johnnie Grissom, Preston Lewis, Robert A. Kennoy, Kevin Noland, Department of Education; Clara DeMoss, Education Professional Standards Board; Sue G. Simon, Workforce Development Cabinet; Bill Ralston, Valerie Salven, Anna K. May, Kembra S. Taylor, Erin Foley, Labor Cabinet; Sharron Burton, Department of Insurance; Bernard J. Hettel, James C. Robke, Kentucky Racing Commission; John A. Volpe, Anne Hager, John M. Sammons, Barbara Allen Howard, Karen Doyle, Cabinet for Human Resources; Sherry M. Cooper, Kentucky Health Policy Board; John P. Cooper, Bill Doll, Kentucky Medical Association; J. Ronald Pryor, J. K. Henshaw, Sam Crawford, Laura Knoth, Kentucky Farm Bureau Federation; Darelene Eakin, Kentucky Optometric Association; James Carloss, Kentucky Academy for Eye Surgeons; Jim Scoggins, Interpreter; Jim Carter, Livestock Marketing Association; Bobby Freeman, Kentucky Cattlemen's Association; Dr. Harvey Corson; Glen Massengale, Kentucky Marketing Association; John R. Nichols, Jr., Associated Industries of Kentucky; Carl Breeding, Breeding, McIntyre & Cunningham; John W. Frazer, CIKCU; James M. See, Kentucky Power Company; Garyl M. Pfeiffer, Kentucky Utilities; Nancy Galvagni, Sara S. Nicholson, Kentucky Hospital Association.

The Subcommittee determined that the following administrative regulation, as amended by the promulgating agency and the Subcommittee, did not comply with statutory requirements:

Transportation Cabinet: Department of Vehicle Regulation: Motor Vehicle Tax

601 KAR 9:200 & E. Registration of titling of rebuilt motor vehicles. Sandy Pullen from the Office of the Secretary appeared before the Subcommittee representing the Cabinet. Several problems concerning the branding of automobile titles, relating to statutory compliance were mentioned concerning this administrative regulation. It was pointed out that an amendment was being offered to correct some grammatical and other problems, but the amendment did not address the major substantive problems. One example is that the definition of "brand" in the statute requires that a brand remain with subsequent titles; the administrative regulation allows instances where a brand will not be carried over in a subsequent title. One problem mentioned concerns vehicles that have been rebuilt and water damaged, where the administrative regulation requires that only the "rebuilt" brand will continue with that vehicle in that situation even though KRS 186A requires that "water damaged" brands shall carry over with the words "water damaged" printed on the face of the title.

Another problem cited is that there are many different brands that will come in from other states, that will not show up because they are not contained within the administrative regulation.

The statutory authority of the Cabinet to reject issuing a branded title if a lien is still recorded in AVIS was raised, and it was pointed out that these administrative regulations should have been promulgated by the agency by 90 days from July 15, 1994. (October 13, 1994) and there are cars in the system that should be, but aren't covered by this because they have been issued a clear title.

Representative Bruce pointed out that these administrative regulations might not be perfect but they are better than having none.

Chairman Crenshaw stated that what he thinks is being desired is that we clear up the matters that we are worried about at this juncture so that it gets implemented and protects the consumer.

Representative Bruce suggested passing this administrative regulation with the promise the agency would bring back another administrative regulation with the rest of it. Chairman Crenshaw said this administrative regulation would go into effect anyway until the 96 Session.

Ms. Pullen stated that the Cabinet recognizes the problem. She stated that the Automated Vehicle Information System (AVIS) is a Christmas tree type of computer program. She stated that AVIS started as a simple system and has been continually added to and now is being used extensively by PVAs and County Clerks. She stated that the Cabinet is redoing the program, that it will cost $3 to $6 million, and that just getting the existing program to accommodate the brands in this method took many months and a lot of extra time. She stated that the present system has only the capability of listing one brand and the "rebuilt vehicle" is a much more serious brand than the "water damaged". She said as far as the prior use of a vehicle is concerned, other states have many various brands. She mentioned such prior use brands as "taxi", "ambulance" and "enforcement vehicle". She said that if the General Assembly desires, they will address those other brands with the redesign of AVIS. Ms. Pullen said if a vehicle has a "salvage" title and a lien, they cannot issue a "rebuilt" title because the Transportation Cabinet does not have the authority to place liens in the computer system.

She said there are very few of these because usually an insurance company satisfies the lien by paying off the loan. She said they had not seen any instances of both "water damage" and "rebuilt vehicle" since they started branding titles.

Chairman Crenshaw read KRS 186A.500 to Ms. Pullen and the Subcommittee, commenting on the intent of the legislation. It states that: "The General Assembly finds that purchasers when buying vehicles are entitled to know if the vehicle has sustained prior severe damage. The most feasible mechanism for conveying that information is a designation on the title that the vehicle has previously sustained severe damage or has been rebuilt after being declared "junk," "salvage," or "water damaged.""

He then read KRS 186A.530(10) which states: "The Transportation Cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A, regarding the administration of the title branding procedure within ninety (90) days from July 15, 1994. The administrative regulations may include designation of additional brands which provide significant information to the owner."

Chairman Crenshaw then stated that the intent seemed to be that if there were severe damage it would be made known to the consumer. He added that when it is eluded that other states have multiple brands, it appears that those states are doing everything they can to make sure that the citizens there find out that the car is not severely damaged. He said he would like to see the administrative regulations

be more protective. Ms. Pullen replied that the severely damaged vehicles have the "rebuilt" brand and that the Cabinet is thrilled that something is in place and that they are allowed to carry forward the brands. She said if Kentucky wanted to get into the "use" brands it needs to wait until they have a new AVIS program.

Chairman Crenshaw asked when AVIS would be ready. Ms. Pullen said that it would take ninety days to bid the contract. She said that this would not be a reprogramming, but would be a new program and that it would take many months to complete the new program.

At this point Representative Lee made a motion to find the administrative regulation deficient for failure to conform to statutory authority, and that this administrative regulation be referred to the Legislative Research Commission with a request that they refer it to the appropriate committee for study.

Chairman Crenshaw then opened the floor for discussion. Senator Kafoglis asked Ms. Pullen what the problem is. Ms. Pullen stated that there is a lack of room in the AVIS system for this information. She said they could use a code but that may be confusing and they couldn't do it today. She said that would take months. Senator Kafoglis asked why it has taken so long. Ms. Pullen said they had to find out what the computer would handle. Senator Kafoglis stated that they were faced with a situation where the regulation is not satisfactory but it does some things that the law calls for.

Chairman Crenshaw asked why they didn't use a rubber stamp. Ms. Pullen said it might work but it wouldn't enter the record in the computer. Chairman Crenshaw asked if the seller had to produce that title to sell the car. Ms. Pullen said that was correct but that would only occur when the buyer was at home after the purchase. Representative Lee commented that a finding of deficiency will allow the Cabinet and the Transportation Committee to work together on this. He stated that he thought the best solution would be to find this regulation deficient and work toward addressing these problems.

Procedural motions were made seconded and approved to amend this administrative regulation to do the following: (1) Section 1(1) is amended by adding "," in front of "the Kentucky title"; (2) Section 1(2) is amended by adding "(1)" after "subsection"; (3) Section 3(1) is amended by adding ", TC 96-182 effective in July, 1994, is incorporated by reference as part of this administrative regulation and" after "This form"; (4) Section 4(3) is amended by inserting "TC 96-182" after "form"; (5) Section 7(2)(a) is amended by deleting "from" and replacing with "form TC 96-182"; (6) Section 8 (3) is amended by deleting "similar to" and replacing with "required for" and inserting "the" between "under" and "procedures"; and (7) Section 8 is amended by inserting "," after "copied".

The motion was then made by Representative Lee, seconded by Senator Preston, to find this administrative regulation, as amended, deficient, and to request the Legislative Research Commission to refer this to the appropriate committee for study and possible legislation for the 1996 Regular Session of the General Assembly. The motion passed.

Ms. Pullen requested direction from the Subcommittee concerning the deficiency. Chairman Crenshaw said that the purpose of this legislation is to protect the consumer. He stated that most citizens are not skilled at detecting problems that would cause a car to never operate properly although the car would appear normal. He added that he would like for the Cabinet to add other brands to protect the consumer. Ms. Pullen said that is one of the things the Cabinet is doing in the new AVIS system.

Representative Lee said that this would allow the Cabinet to work with the Transportation Committee and address the deficiencies in the administrative regulation, and further added that the only reason we are here is to see if the administrative regulation complies with KRS Chapter 13A.

Chairman Crenshaw again asked how long this would take. Ms. Pullen said that it definitely would not be in 1995, but probably sometime in 1996. Chairman Crenshaw asked if the Cabinet in October, 1995 is going to know that what is in the contract is what they want. Ms. Pullen replied that they would, that AVIS would have the capability.

Chairman Crenshaw called on Senator Tom Buford for comments. Senator Buford said that he had worked on this legislation in the Senate and Representative Ron Cyrus had worked on it in the House. He suggested that the Cabinet could use an index for abbreviations, and then have room for this information in the computer and on the title by using abbreviations. He stated that with the use of abbreviations, that would at least help car dealers know what to disclose.

Chairman Crenshaw told Ms. Pullen that everybody is saying for the Cabinet to improve the administrative regulation and to bring it back. Ms. Pullen said she would take the concept of abbreviations back for consideration. He stated that this Subcommittee wants progress reports on what is being done. Ms. Pullen stated that she was usually before this Subcommittee every month, and would report on the progress of the Cabinet in this endeavor.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Kentucky Higher Education Assistance Authority: KHEAA Grant Programs

11 KAR 5:130. Student applications. Richard Casey, General Counsel, and Joyce Bryan appeared before the Subcommittee representing the Kentucky Higher Education Assistance Authority. This administrative regulation was amended to correct two typographical errors. Mr. Casey stated that these errors occurred in the preparation of the document that was filed on February 15, 1995, and are not in fact amendments to the administrative regulation in effect as of August 1994, and published in the Kentucky Administrative Regulations Service. The amendments are as follows. (1) On page 2, in Section 1, Line 3, delete "his" and replace with "he"; and (2) On page 2 in Section 1, Line 4, delete the word "the" and replace with the word "he".

Kentucky Real Estate Appraisers Board

201 KAR 30:040. Standards of practice administrative regulation. In response to questions by Senator Preston: (1) agency staff stated that an example of a "federal transaction" was a real estate loan at a nationally chartered bank; (2) this administrative regulation incorporates the latest edition of the federally required "Uniform Standards of Professional Practice" that govern appraisals in federally related transactions; (3) Subcommittee staff stated that the: (a) initial review had determined that the Board did not have the authority to exempt appraisers of non-federally related transactions from the continuing education requirements; (b) it did not appear that KRS 324A.035 was intended to require appraisers of non-federally related transactions to meet the continuing education requirements imposed on appraisers of federally related transactions; (c) since the Board has the authority to establish continuing education requirements, it would have the authority to exempt appraisers of non-federally related transactions from the continuing education requirements imposed on appraisers of federally related transactions; and (d) Subcommittee staff would meet with agency personnel to determine: 1. if some type of continuing education should or could be required of appraisers of nonfederally related transactions; and 2. whether any one administrative regulation contained more than one topic and should be amended to comply with the requirement of KRS Chapter 13A that each administrative regulation govern one topic; and 3. the effect of copyright law on the general incorporation by reference provisions in state administrative regulations.

This administrative regulation was amended to: (a) incorporate the latest edition of the "Uniform Standards of Professional Practice", and (b) inform public and regulated entities where they may obtain the material incorporated by reference.

Department of Agriculture: Livestock Sanitation

302 KAR 20:075 & E. Identification of "farm fresh" cattle. Commissioner Ed Logsdon, State Veterinarian Don Notter, and Donna Dutton, General Counsel, appeared before the Subcommittee representing the Department. Glenn Massengale of the Kentucky Marketing Associating, and Ronnie Pryor and J.K. Henshaw of the Kentucky Farm Bureau were also present. This administrative regulation was amended as follows: In Section 1, Line 6, after the word "delivery" insert a period and delete "by use of a form approved by the Kentucky State Board of Agriculture". In Section 2, Line 2, delete "said" and insert "the" in lieu thereof.

Representative Bruce asked to what extent this administrative regulation applied. Commissioner Logsdon replied that it applies only to the sale of cattle at stockyards. Representative Allen asked how it worked. Commissioner Logsdon said that it is basically an honor system approach, that they will not look behind the statement made by the seller that these are farm fresh cattle. Representative Allen said that is not going to stop the problem. Commissioner Logsdon said that unless they catch a person violating this they can't prove the cattle are not farm fresh. He added that the Department wanted to be able to identify all the cattle but that 600,000 to 700,000 cattle are sold a year at stockyards in Kentucky, and as a result they have come up with an abbreviated system.

Representative Allen asked what the penalty is for violating this. Donna Dutton stated that, for a farmer, it is a fine, and for a livestock dealer there is a possible revocation of the license to be a livestock dealer. Representative Allen stated that this administrative regulation has no teeth to stop the person who would do this. He then asked who makes the decision as to violations. Commissioner Logsdon stated that department personnel are the ones who make that decision.

Representative Allen then asked how they identified these cattle. He stated that he can't see that it will work, asked what is a farmer going to do if accused, and if the burden of proof is on the Department. Commissioner Logsdon said that the burden of proof is on the Department.

Mr. Massengale stated that stockyard owners are concerned from a point of view of liability. He said a buyer rejects cattle that he has purchased, the seller has already gotten his money and gone, so who feeds and cares for these cattle. Commissioner Logsdon said that all the farmer is saying under this administrative regulation requirement is that these cattle were loaded that morning from his farm. He added that the Department is trying to help 48,000 farmers, not 300 or 400 traders.

Representative Lee asked what happens when cattle are left at a stockyard after they are sold. Mr. Massengale said that the intent of this administrative regulation is good. He added that currently at a sale there is a change of ownership without any guarantee. Representative Lee asked if terms of purchase were announced at his stockyard. Mr. Massengale said that they were not announced, but they did have a poster which stated terms.

On a motion by Representative Bruce, and seconded by Senator Preston this administrative as amended was approved.

Weight and Measures; Motor Fuel

302 KAR 79:010. Testing and inspection program. This administrative regulation had been found deficient by the Subcommittee at its January 9, 1995 meeting for the following reasons: (1) the Subcommittee determined that the Department's imposition of "warning letters" and "administrative penalties" for violations of the motor fuel law violated KRS 13A.120(2)(h), which provides that an administrative body shall not promulgate administrative regulations on any matter which is beyond the statutory authority of the body to promulgate; and (2) the Department acknowledged application of a formula used to assess administrative fines and penalties that had not been set out, or incorporated by reference, in the administrative regulation, in violation of KRS 13A.100(1) which provides that each statement of general applicability, policy, procedure, memorandum or other form of action that implements; interprets, prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body; or affects private rights or procedures available to the public shall be prescribed by administrative regulation.

Commissioner Logsdon stated that: (1) the administrative penalties and warning letters had been deleted from the administrative regulation; (2) only the civil penalties mandated by the statute would be imposed; and (3) the formula, "Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995", had been incorporated by reference in the administrative regulation. He requested that the Subcommittee finding of deficiency be removed, since this administrative regulation now complied with statutory authority.

The Subcommittee approved motions to: (1) remove the finding of deficiency; (2) amend Section 3(1)(b) to make it clear that, in Section 3(1)(a), the waiver, during the summer months, for ethanol blends containing 9 to 10% alcohol applies to the "increased vapor pressure allowance".

Justice Cabinet: Department of Corrections: Kentucky Parole Board

501 KAR 1:030. Determining parole eligibility. This administrative regulation was amended as follows: (1) Various subsections of Sections 1, 2, 3, 4, 5, 6, and 7 were amended to comply with the drafting requirements of KRS 13A.222(4)(b); and (2) in Section 7(1)(h), the statement summarizing federal law relating to the purchase of a firearm by a person who has been convicted of a felony was deleted because it: (a) was not a subject matter governed by the state administrative regulation; and (b) did not adequately reflect federal law.

501 KAR 1:040. Conducting parole revocation hearings. This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222(4)(b).

Youth Alternative Centers

501 KAR 12:010. Definitions. In response to a question by Senator Preston, agency personnel agreed to amend this administrative regulation to: (a) delete Section 1(1) and (2), because these subsections contain definitions of terms defined in a statute in violation of KRS 13A.222(4)(d); and (b) renumber the remaining subsections accordingly.

501 KAR 12:020. Administration; management. This administrative regulation was amended as follows: (1) Section 2(3)(a) and (4) were deleted because they were inconsistent with the state Open Records law; and (2) Section 4, subsections (1) and (2), was amended to add a cross reference to a specific administrative regulation, and to delete the cross reference to the KAR Title.

501 KAR 12:030. Fiscal management. Section 2 of this administrative regulation was amended to delete the reference to KRS 441.135, because it governs jails, not Youth Alternative Centers which is the subject matter governed by this administrative regulation.

501 KAR 12:070. Safety; emergency procedures. Subcommittee staff stated that: (a) Department personnel had agreed to meet with Subcommittee to review a number of administrative regulations relating to Youth Alternative Centers to determine whether they should be amended to provide more definite guidelines for the development of policies governing Youth Alternative Centers to insure consistency; and (b).with Subcommittee staff, report recommendations for amendments to the Subcommittee.

This administrative regulation was amended to make it clear that policies relating to smoking will apply to staff and residents.

501 KAR 12:080. Sanitation; hygiene. Section 1 subsections (10) and (10)(e), were amended to make it clear that all the hygienic items specified in this Section will be furnished to indigents.

501 KAR 12:120. Admission; release. This administrative regulation was amended as follows: (1) Section 4(5) was amended to require notification of the county of the out-of-state jurisdiction in which the jail is located; and (2) Section 4(8) was amended to comply with the drafting requirements of KRS 13A.222(4)(b).

501 KAR 12:150. Hearings, procedures, disposition. In response to questions raised in the initial review, Subcommittee staff stated that Section 21 required that a hearing be transcribed because many hearing officers preferred a transcript to a recording. In response to a question by Chairman Crenshaw, Subcommittee staff stated that "tape" referred to audio tape.

This administrative regulation was amended as follows: (1) Section 1(9), containing a definition of "youth alternative centers", was deleted, pursuant to KRS 13A.222(40(d) that prohibits the definition of a term in an administrative regulation if it is defined by statute; and (2) Section 21 was amended to require that a hearing be tape recorded, unless the hearing officer requested a transcript.

Transportation Cabinet: Property Acquisition and Uniform Relocation

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet. This administrative regulation was amended to comply with: (1) KRS 13A.222(4)(b) to delete prohibited language; and (2) KRS 13A.010(2) to insert the word "administrative" before the word "regulation".

Department of Education: Office of District Support Services: General Administration

702 KAR 1:001. Implementation guidelines - Kentucky School Facilities Planning Manual. Kevin Noland, General Counsel, appeared before the Subcommittee representing the Cabinet. This administrative regulation was amended to change a citation in the NECESSITY AND FUNCTION section. KRS 157.420(3) was amended to correctly read KRS 157.420(4).

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

781 KAR 1:010. Department of Vocational Rehabilitation appeal procedures. This administrative regulation was amended as follows: (1) Section 1 was amended to place the definitions in alphabetical order; (2) various sections were amended to comply with the drafting and format requirements of KRS 13A.220(4) and 13A.222(4); (3) Section 8 was amended to provide applicants and eligible individuals adequate notice of their right to, and the procedure for, appeals of hearings; (4) Sections 6, 7, and 8 were amended to more clearly establish the: (a) rights and duties of hearing officers, applicants, and eligible individuals; and (b) hearing procedures; and (5) to delete language permitting the use of policies or guidelines that were not set out, or incorporated by reference, in the administrative regulation.

Department for the Blind

782 KAR 1:040. Appeal procedures for applicants and clients. This administrative regulation was amended as follows: (1) The name of the administrative was amended to delete "for applicants and clients"; (2)Section 1 was amended to place the definitions in alphabetical order; (3) various sections were amended to comply with the drafting and format requirements of KRS 13A.220(4) and 13A.222(4); (4) Sections 4 and 5 were amended to provide applicants and eligible individuals adequate notice of their right to, and the procedure for, appeals of hearings; (4) various sections were amended to more clearly establish the: (a) rights and duties of hearing officers, applicants, and eligible individuals; and (b) hearing procedures; and (5) to delete language permitting the use of policies or guidelines that were not set out, or incorporated by reference, in the administrative regulation.

Labor Cabinet: Occupational Safety and Health

The Cabinet has agreed to meet with Subcommittee staff to determine amendments that may be required to comply with the provisions of KRS Chapter 13A relating to format, language, and incorporation by reference.

Each of the following administrative regulations were amended to: (1) Delete the reference to "KRS Chapter 13A" in the STATUTORY AUTHORITY paragraph and insert "KRS 338.051, KRS 338.061"; and (2) insert the correct material incorporated by reference.

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. Valerie Salven, General Counsel, Department of Workers' Claims, and Anna May of the Special Fund, appeared before the Subcommittee representing the Cabinet. This administrative regulation was amended in Section 2(f) to change the addition sign to a division sign in the computation and in Section 2(h) to change the first equals sign to a minus sign in that part of the computation, both relating to calculating the lump sum credit for an attorney's fee in cases involving injuries occurring and disabilities arising on or after April 4, 1995.

Senator Preston asked what the formula is now. Anna May responded that there is a pre-April, 1994, formula for lump sum payments, but this administrative regulation is complying with 1994 legislation for a percentage of the fee being subtracted from each payment, so in this aspect, that portion is new.

Chairman Crenshaw asked if there had been any complaints. Ms. May replied that there have not been any complaints, and that attorneys are being paid the same way, in a lump sum from the award. She explained that instead of a portion of the award being reduced off the end, a percentage is taken from each payment check to cover that fee. She added that if there is any disagreement, it goes before an administrative law judge.

Kentucky Racing Commission

810 KAR 1:017. Objections and complaints. This administrative regulation was amended to: (1) Correct a citation in the STATUTORY AUTHORITY paragraph; and (2) require that objections to interference or fouls be reported to the stewards "orally or by telephone".

In response to a question by Senator Bradley, Mr. Hettel stated that the proposed amendment to this administrative regulation requires that objections to interference or fouls be made to the stewards orally or by telephone so that there can be a quick payoff.

Cabinet for Human Resources: Department for Social Insurance: Public Assistance

904 KAR 2:370. Technical requirements, job opportunities and basic skills. The Subcommittee approved an amendment requested by the Cabinet to: (1) delete language in Section 6(2) and insert "Enrollments in post secondary programs shall be full-time as defined by the education or training institution."; and (2) make other technical changes in Section 6(4)(c), (d), Section 8(2)(c)2. and 3.

Kentucky Health Policy Board: Administration

909 KAR 1:200 & E. Twenty-four (24) hour pilot insurance program. This administrative regulation was amended to: (1) comply with the drafting and format requirements of KRS 13A.220(4) and

13A.222(4); and (2) incorporate the application form by reference.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Kentucky Higher Education Assistance Authority: KHEAA Grant Programs

11 KAR 5:140 & E. KTG award determination procedure.

11 KAR 5:160. Disbursement procedures.

Finance and Administration Cabinet: Personnel Pilot Programs

200 KAR 22:020E. Guideline for Comprehensive Employment Manuals required by pilot agencies under KRS 18A.430. The initial staff review of this administrative regulation indicated that there was no statutory authority for the Finance Cabinet to promulgate guidelines for pilot personnel employment manuals.

Subcommittee staff stated that: (1) KRS 18A.430(1)(a) requires pilot agencies to develop a comprehensive employment manual establishing conditions of employment for employees; (2) KRS 18A.430(1)(c) requires that these manuals be submitted to the Secretary of the Finance Cabinet for promulgation as administrative regulations pursuant to KRS Chapter 13A; (3) KRS 18A.430(1)(a) provides that the Personnel Steering Committee shall approve each manual prior to the implementation of an agency's pilot personnel program; (4) for administrative purposes only, KRS 18A.405(1) attaches the Personnel Steering Committee to the Finance Cabinet; (5) the Personnel Steering Committee must provide some objective standard for the approval or rejection of the manuals or face the allegation of arbitrary action; (6) KRS 13A.100(1) requires an agency to promulgate all policies or guidance documents as administrative regulations; (7) it appears there is statutory authority for the promulgation of a manual to assist pilot agencies in drafting their personnel manuals; and (8)the General Assembly may need to clarify who should promulgate this administrative regulation.

In response to questions by Senator Bradley relating to the various conflicting LRC staff reviews of this administrative regulation, Subcommittee staff stated that the: (1) initial staff review was made by staff of the appropriate interim joint committee; (2) a second, independent review was made by Subcommittee staff; (3) neither Subcommittee staff nor the Subcommittee were bound by the initial review; (4) in this case, LRC staff were not in agreement on the issues raised by this administrative regulation; and (5) while an administrative regulation establishing guidelines for the manuals was authorized by statute, the issue of which agency had been granted statutory authority to promulgate an administrative regulation establishing the standards was unclear and, perhaps, should be resolved by the General Assembly at its next Regular Session..

The Subcommittee approved a motion to refer the issues raised by this administrative regulation to the Legislative Research Commission and request it to assign the issues to the appropriate interim joint committee for consideration and recommendations for legislation to the General Assembly at its 1996 Regular Session.

Kentucky Real Estate Appraisers Board

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

201 KAR 30:130. Standards for education approval - fees.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Air Quality - General Administrative Procedures

401 KAR 50:038 (& E). Air emissions fee. Cabinet personnel stated that this administrative regulation was promulgated to implement legislation adopted during the 1994 Kentucky General Assembly.

Justice Cabinet: Department of Corrections: Kentucky Parole Board

501 KAR 1:050. Granting final discharge from parole.

Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:150. Eastern Kentucky Correctional Complex. In response to a question by Representative Lee, Department personnel stated that, with regard to access by news media, although the reference to the "speaker's bureau", a program designed to inform the public about programs and services, was deleted, access by the media was not altered and the same policies relating to media access that were previously in effect remain in effect.

Youth Alternative Centers

501 KAR 12:040. Personnel.

501 KAR 12:050. Physical plant.

501 KAR 12:060. Security; control.

501 KAR 12:090. Medical services.

501 KAR 12:100. Food services.

501 KAR 12:110. Classification.

501 KAR 12:130. Resident programs; services.

501 KAR 12:140. Resident rights.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:112. Annual permits for moving utility equipment, poles, or pipes.

603 KAR 5:230. Bridge weight limits on the extended weight coal or coal by-products haul road system.

Department of Education: 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.

Department of Insurance: Motor Vehicle Reparations (No-fault)

806 KAR 39:080. Reporting requirements of automobile insurers regarding payment of personal injury benefits. In response to questions from Representative Bruce, Cabinet personnel stated that: (1) insurance companies were required to file payments of personal injury benefits pursuant to KRS 304.39-350, adopted by the General Assembly in 1994; and (2) if the companies fail to file the information, it is a violation of applicable administrative regulation.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:009. Jockeys and apprentices. Senator Bradley stated that the section of this administrative regulation that prohibited advertising on a jockey's silks that is "not in keeping with the traditions of the turf" gives too much discretion to the Commission.

Mr. Hettel responded that: (1) this prohibition: (a) is identical to the prohibition against owners advertising or having promotional devices on their silks; and (b) extends to all apparel worn by the jockey, including boots and pants; and (2) the Commission will determine whether the advertising standard is met.

Senator Bradley stated he would not object if advertising was completely banned, but was concerned about giving this kind of discretion to anyone.

Mr. Hettel responded that: (1) this prohibition has the effect of prohibiting advertising on the pants; (2) advertising of this type is being done in some other states; (3) the Commission would not want someone riding the Jim Beam Stakes with Budweiser written on their silks.

Senator Preston stated that this prohibition may be a violation of Commercial Free Speech. Mr. Hettel stated that: (1) the Commission believes that the prohibition is a limitation of advertising space on a jockey's clothes, rather than a prohibition of free speech; (2) profes-

sional sports teams prohibit what may be warn on uniforms; and (3) silks are purchased by the owner, under strict limitations on what can be worn.

Senator Kafoglis pointed out that if the Racing Commission becomes arbitrary in its enforcement it will likely be challenged.

810 KAR 1:014. Weights. Senator Bradley stated that: (1) previously, if a jockey weighed in with less than the assigned weight by 2 pounds or more, the horse would be disqualified; (2) the amendment to this administrative regulation would not disqualify the horse as it relates to pari-mutual betting, but could disqualify it if the weight reduction was an intentional act to make the horse run faster; (3) jockeys do not run short of the weight today, but if this administrative regulation is passed, the potential for it is greater; (4) a 2 or 3 pound reduction can make a big difference in racing; (5) people will enter races at a reduced claiming price so they can get a weight reduction for their horse; and (6) if this administrative regulation is passed there may be some in the industry who will take advantage of any potential weight reduction.

Mr. Hettel stated that: (1) he shared Senator Bradley's concerns; (2) however, to get fast race results which the industry wants, there was not enough time to weigh everyone individually; and (3) the racing public has responded very well to this kind of change in other jurisdictions; (4) the only other measure to prohibit fraudulent weight reductions is to severely punish the individual who violates them; and (5) there has simply not been a problem with incorrect weights in Kentucky.

810 KAR 1:016. Running of the race.

810 KAR 1:025. Licensing thoroughbred racing. Senator Bradley stated that: (1) this administrative regulation provides that a thoroughbred license in Kentucky can be revoked if the licensee has an outstanding and unpaid judgment in California; (2) there would be no problem if the judgment was rendered in Kentucky; (3) however, a person may choose not to defend an action in another state because of the expense, and then find his racing license in jeopardy in Kentucky for failure to pay the judgment in another state.

Mr. Hettel stated that: (1) these kinds of cases are referred to a hearing officer; (2) the committee appointed by the Commission to study this issue had decided that any judgment in another jurisdiction must be given full faith and credit in Kentucky before it can be collected; and (3) a hearing will not be held until the foreign judgment is made a Kentucky judgment.

Senator Bradley requested the Commission to clarify that the license refers to a thoroughbred racing license, the next time the administrative regulation is filed.

Mr. Hettel agreed with Senator Bradley that the Commission should not be used as a collection agency.

810 KAR 1:027. Entries, subscriptions, and declarations. Senator Bradley stated: (1) he did not understand why exotic betting was prohibited when there is more than one mutual entry by a trainer; and (2) perhaps there should be no exacta betting when a trainer is running two horses, but that should not affect the daily double.

Commission personnel stated that: (1) this change was made to help an owner with the same type of animal and classification; (2) any other exception would lend itself to fraud; (3) the daily double has been changed to 8 in this administrative regulation; (4) most racing secretaries would not card a small numbered race; (5) this change would come into play when there are 6 horses; (6) horse owners and trainers requested this change; (7) the change truly helps those with higher quality horses maintain improved purses; and (8) the intent of this change is to restrict trifecta wagering on smaller races.

Cabinet for Human Resources: Department for Health 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.

Department for Social Services: Day Care

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

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 1:120E. 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. Pursuant to KRS 13A.290(4), this administrative regulation was deferred to the May, 1995 meeting because a representative of the agency with authority to amend was not present.

In response to a question by Senator Bradley, Chairman Crenshaw stated that the Subcommittee had not been notified that a representative of the agency would not be present.

Department of Agriculture: Pesticides

302 KAR 31:015. Certification.

Department of Education: Bureau of Learning Results Services

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

Cabinet for Human Resources: Department for Health Services: Emergency Medical Services and Ambulance Service Providers

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

Department for Social Insurance: 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 2:440. Discount Option Program. Because agency personnel with authority to amend this administrative regulation were not present, Chairman Crenshaw stated that this administrative regulation would be deferred to the May, 1995 meeting of the Subcommittee, pursuant to KRS 13A.290(4).

In response to Representative Bruce's question why the Cabinet had requesting deferral, Chairman Crenshaw stated that: (1) Secretary Childers informed him that the Cabinet and Medicaid providers were attempting to resolve the issues raised by this administrative regulation; (2) he has: (a) spoken with numerous physicians who have expressed their views and asked that their objections be noted; and (b) invited all interested parties to offer testimony before the Subcommittee.

Food Stamp Program

904 KAR 3:030E. Application process.

Department for Medicaid Services

907 KAR 1:009 (& E). Physicians' services.

907 KAR 1:010 (& E). Payments for physicians' services. Because agency personnel with authority to amend this administrative regulation were not present, Chairman Crenshaw stated that this administrative regulation would be deferred to the May, 1995 meeting of the Subcommittee, pursuant to KRS 13A.290(4.

Representative Bruce asked: (1) if KRS Chapter 13A provided a limit on the number of times an agency may request deferral of an administrative regulation; and (2) whether the agency had stated a reason for deferral.

Subcommittee staff stated that: (1) an agency may request deferral as often as it wants; (2) if the Subcommittee agrees to the request for deferral, an administrative regulation may be deferred; (3) there is not statutory limit to the number of times an administrative

regulation may be deferred; and (4) KRS 13A.290(4) requires: (a) a representative of the administrative body promulgating the administrative regulation under consideration to be present to explain the administrative regulation and to answer questions thereon; and (b) deferral of an administrative regulation to the next regularly scheduled Subcommittee meeting, if a representative of the administrative body with authority to amend is not present.

Chairman Crenshaw stated that: (1) KRS 13A.290(4) requires deferral of an administrative regulation to the next regularly scheduled Subcommittee meeting, if a representative of the administrative body with authority to amend is not present; (2) since an agency representative was not present with authority to amend the administrative regulation, KRS 13A.290(4) required deferral of this administrative regulation to the May, 1995 Subcommittee meeting; (3) he had received a call last week from Secretary Childers office requesting deferral, in order to continue negotiations with Medicaid physician providers in an attempt to resolve conflicts; (4) he felt confident the Cabinet would be present at the May meeting and not request deferral again; and (5) he has: (a) had discussions with a number of physicians on the issues; (b) invited each of them to appear before the Subcommittee to testify, if an agreement was not reached prior to the May meeting; and (c) assured physicians that, if they were unable to attend, their positions on the issues would be relayed to Subcommittee.

907 KAR 1:016E. Psychiatric hospital services.

The Subcommittee adjourned at 1:15 p.m. until May 1, 1995 at 10 a.m. in Room 149 of the State Capitol.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of March 22, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on State Government during its meeting of March 22, 1995, having been referred to the Committee on March 7, 1995, pursuant to KRS 13A.290(6):

200 KAR 21:010 & E
200 KAR 21:020 & E
200 KAR 21:030 & E
200 KAR 21:040 & E
200 KAR 21:050 & E
200 KAR 22:010

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 22, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of March 15, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of March 15, 1995, having been referred to the Committee on March 7, 1995, pursuant to KRS 13A.290(6):

201 KAR 25:011
904 KAR 3:041

The following administrative regulation was found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): 904 KAR 3:041.

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 15, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of March 22, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Local Government during its meeting of March 22, 1995, having been referred to the Committee on March 7, 1995, pursuant to KRS 13A.290(6):

815 KAR 7:100
815 KAR 20:120
815 KAR 20:130

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 22, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

Interim Joint Committee on Education
Meeting of April 7, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of April 6, 1995, having been referred to the Committee on March 7, 1995, pursuant to KRS 13A.290(6):

11 KAR 3:015
11 KAR 4:050
702 KAR 5:030
702 KAR 5:040
702 KAR 5:080
703 KAR 3:060
781 KAR 2:011

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 April 6, 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 K2

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 K16

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 K32

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

VOLUME 20

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 170 days from publication or upon replacement or repeal, whichever occurs first)

Regulation Number	21 Ky.R Page No.	Effective Date
12 KAR 1:115E	3166	5-13-94
Replaced	3322	8-24-94
12 KAR 1:120E	3166	5-13-94
Replaced	3323	8-24-94
12 KAR 1:125E	3166	5-13-94
Replaced	3324	8-24-94
12 KAR 1:130E	3167	5-13-94
Replaced	3324	8-24-94
12 KAR 1:135E	3167	5-13-94
Replaced	3325	8-24-94
12 KAR 1:140E	3168	5-13-94
Replaced	3326	8-24-94
12 KAR 1:145E	3169	5-13-94
Replaced	3327	8-24-94
12 KAR 1:150E	3169	5-13-94
Replaced	3328	8-24-94
12 KAR 1:155E	3170	5-13-94
Replaced	3329	8-24-94
12 KAR 1:160E	3170	5-13-94
Replaced	3330	8-24-94
12 KAR 1:165E	3171	5-13-94
Replaced	3331	8-24-94
12 KAR 1:170E	3171	5-13-94
Replaced	3332	8-24-94
12 KAR 1:175E	3173	5-13-94
Replaced	3334	8-24-94
12 KAR 6:010E	3174	5-13-94
Replaced	3335	8-24-94
12 KAR 6:015E	3174	5-13-94
Replaced	3336	8-24-94
12 KAR 6:020E	3175	5-13-94
Replaced	3337	8-24-94
12 KAR 6:025E	3175	5-13-94
Replaced	3338	8-24-94
401 KAR 42:060E	2530	2-15-94
401 KAR 42:070E	2530	2-15-94
401 KAR 42:080E	2531	2-15-94
907 KAR 1:023E	3185	4-29-94
Replaced	3395	8-17-94

ORDINARY REGULATIONS:

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12 KAR 1:111	3322	8-24-94
12 KAR 1:115	3322	8-24-94
12 KAR 1:120	3323	8-24-94
12 KAR 1:125	3324	8-24-94
12 KAR 1:130	3324	8-24-94
12 KAR 1:135	3325	8-24-94
12 KAR 1:140	3326	8-24-94
12 KAR 1:145	3327	8-24-94
12 KAR 1:150	3328	8-24-94
12 KAR 1:155	3329	8-24-94
12 KAR 1:160	3330	8-24-94
12 KAR 1:165	3331	8-24-94
12 KAR 1:170	3332	8-24-94
12 KAR 1:175	3334	8-24-94
12 KAR 6:010	3335	8-24-94
12 KAR 6:015	3336	8-24-94
12 KAR 6:020	3337	8-24-94
12 KAR 6:025	3338	8-24-94
301 KAR 1:085		
Amended	3223	(See Volume 21)
401 KAR 5:001	3348	(See Volume 21)
401 KAR 5:037	3128	(See Volume 21)
401 KAR 5:050		
Amended	3228	(See Volume 21)
401 KAR 5:055		
Amended	3231	(See Volume 21)
401 KAR 5:057	3358	(See Volume 21)
401 KAR 5:060		
Amended	3246	(See Volume 21)
401 KAR 5:065		
Amended	3272	(See Volume 21)
401 KAR 5:070		
Amended	3282	(See Volume 21)
401 KAR 5:075		
Amended	3285	(See Volume 21)
401 KAR 5:080		
Amended	3290	(See Volume 21)
401 KAR 8:010		
Amended	3010	(See Volume 21)
401 KAR 8:020		
Amended	3015	(See Volume 21)
401 KAR 8:150		
Amended	3041	(See Volume 21)
401 KAR 8:200		
Amended	3045	(See Volume 21)
405 KAR 7:080		
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702 KAR 3:270	3378	(See Volume 21)

ADMINISTRATIVE REGISTER - K3

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VOLUME 21

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 170 days from publication or upon replacement or repeal, whichever occurs first)

9 KAR 1:050E	879	8-15-94
Replaced	1719	12-14-94
11 KAR 5:140E	2645	3-23-95
31 KAR 4:090E	1448	10-17-94
Replaced	2090	2-8-95
32 KAR 1:100E	242	7-14-94
Replaced	687	10-10-94
Withdrawn		3-22-95
32 KAR 1:110E	1863	12-20-94
Expires		7-21-95
32 KAR 1:120E	1864	12-20-94
Expires		7-21-95
32 KAR 1:130E	1865	12-20-94
32 KAR 1:140E	1866	12-21-94
32 KAR 1:150E	2646	3-22-95
40 KAR 2:061E	242	7-14-94
Replaced	1283	10-12-94
40 KAR 2:070E	243	7-14-94
Replaced	1283	10-12-94
40 KAR 2:080E	243	7-14-94
Replaced	1284	10-12-94
40 KAR 2:090E	245	7-14-94
Replaced	1285	10-12-94
40 KAR 2:100E	246	7-14-94
Replaced	1286	10-12-94
40 KAR 2:110E	247	7-14-94
Replaced	1287	10-12-94
40 KAR 2:120E	247	7-14-94
Replaced	1287	10-12-94
40 KAR 2:130E	247	7-14-94
Replaced	1288	10-12-94
40 KAR 2:140E	249	7-14-94
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40 KAR 2:150E	250	7-14-94
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40 KAR 2:160E	251	7-14-94
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40 KAR 2:170E	251	7-14-94
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40 KAR 2:180E	251	7-14-94
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40 KAR 2:190E	251	7-14-94
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40 KAR 2:200E	252	7-14-94
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40 KAR 2:230E	253	7-14-94
Replaced	1294	10-12-94
40 KAR 2:240E	254	7-14-94
Replaced	1295	10-12-94
101 KAR 2:100E	256	7-14-94
Replaced	465	9-14-94
101 KAR 3:010E	260	7-14-94
Replaced	470	9-14-94
101 KAR 4:010E	1696	12-13-94
200 KAR 20:010E	264	7-15-94
Replaced	710	9-14-94
200 KAR 21:010E	1250	9-29-94
Replaced	1985	3-22-95
200 KAR 21:020E	1252	9-29-94
Replaced	1987	3-22-95
200 KAR 21:030E	1253	9-29-94
Replaced	1988	3-22-95
200 KAR 21:040E	1255	9-29-94
Replaced	1990	3-22-95
200 KAR 21:050E	1256	9-29-94
Replaced	1991	3-22-95
200 KAR 21:060E	1258	9-29-94
Expires		4-20-95
200 KAR 22:020E	2051	2-14-95
200 KAR 22:030E	2648	3-24-95
301 KAR 2:044E	995	8-15-94
Expires		3-20-95
301 KAR 2:221E	1449	11-11-94
Replaced	1797	2-22-95
301 KAR 2:222E	1451	11-11-94
Replaced	1799	2-22-95
301 KAR 2:223E	1454	11-15-94
Replaced	1802	2-22-95
301 KAR 2:224E	1456	11-11-94
Replaced	1804	2-22-95
301 KAR 2:260E	997	8-15-94
Replaced	1365	1-9-95
301 KAR 4:200E	265	7-14-94
Replaced	716	9-28-94
301 KAR 6:001E	2649	3-16-95
301 KAR 6:010E	2650	3-16-95
301 KAR 6:020E	2651	3-16-95
301 KAR 6:030E	2653	3-16-95
301 KAR 6:040E	2655	3-16-95
302 KAR 20:075E	2430	2-22-95
302 KAR 79:010E	871	7-25-94
Replaced	1883	1-25-95
401 KAR 50:038E	1259	10-14-94
405 KAR 7:080E	5	5-27-94
Replaced	1314	9-28-94
415 KAR 1:050E	999	9-13-94
Replaced	1500	1-9-95
415 KAR 1:060E	1000	9-13-94
Replaced	1720	1-9-95
415 KAR 1:070E	1002	9-13-94
Replaced	1503	1-9-95
415 KAR 1:080E	1005	9-13-94
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415 KAR 1:090E	1007	9-13-94
Replaced	1508	1-9-95
415 KAR 1:100E	1009	9-13-94
Replaced	1183	1-9-95
415 KAR 1:120E	1010	9-13-94
Replaced	1510	1-9-95
416 KAR 1:010E	2657	3-24-95
500 KAR 11:001E	2430	3-15-95
500 KAR 11:010E	873	8-15-94
Replaced	1402	1-9-95

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500 KAR 11:015E	1263	10-13-94
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500 KAR 11:020E	874	8-15-94
Replaced	1403	1-9-95
500 KAR 11:025E	1265	10-13-94
Replaced	2500	3-10-95
500 KAR 11:030E	2431	3-15-95
500 KAR 11:040E	2434	3-15-95
500 KAR 11:050E	2436	2-28-95
500 KAR 11:060E	2437	2-28-95
500 KAR 11:070E	2438	3-15-95
500 KAR 11:080E	2439	2-28-95
500 KAR 11:090E	2440	2-28-95
500 KAR 11:100E	2441	2-28-95
501 KAR 6:020E	1458	11-7-94
Replaced	1777	3-6-95
501 KAR 6:050E	8	5-27-94
Replaced	98	9-12-94
501 KAR 6:070E	1460	11-7-94
Replaced	1779	3-6-95
501 KAR 6:130E	875	7-18-94
Replaced	547	10-10-94
502 KAR 10:035E	1011	9-1-94
Replaced	1602	1-24-95
502 KAR 45:015E	267	7-11-94
Replaced	548	10-10-94
502 KAR 45:035E	268	7-11-94
Replaced	549	10-10-94
502 KAR 45:055E	268	7-11-94
Replaced	550	10-10-94
502 KAR 45:065E	269	7-11-94
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600 KAR 4:010E	1012	8-31-94
Expired		12-6-94
600 KAR 4:020E	1017	8-31-94
Expired		12-6-94
601 KAR 9:200E	1866	12-19-94
601 KAR 15:010E	876	7-15-94
Replaced	1317	11-7-94
700 KAR 2:010E	1699	12-12-94
Replaced	2129	2-8-95
702 KAR 5:030E	2052	1-18-95
Replaced	1945	4-6-95
702 KAR 5:040E	2053	1-18-95
Replaced	1947	4-6-95
702 KAR 5:080E	2054	1-18-95
Replaced	1948	4-6-95
703 KAR 3:060E	2057	1-18-95
Replaced	2500	4-6-95
704 KAR 3:455E	883	7-15-94
Replaced	785	1-9-95
735 KAR 1:010E	2661	4-4-95
735 KAR 1:020E	2663	4-4-95
803 KAR 25:035E	10	5-23-94
Replaced	213	9-12-94
803 KAR 25:089E	886	7-15-94
Replaced	1603	2-9-95
803 KAR 25:091E	888	7-15-94
Replaced	2130	2-9-95
803 KAR 25:110E	890	7-15-94
Replaced	1886	2-9-95
902 KAR 8:040E	893	7-15-94
Replaced	580	9-21-94
902 KAR 8:051E	269	7-15-94
Replaced	885	9-21-94
902 KAR 8:060E	894	7-15-94
Replaced	1324	10-19-94
902 KAR 8:070E	897	7-15-94
Replaced	1053	9-21-94
902 KAR 8:080E	899	7-15-94
Replaced	587	9-21-94
902 KAR 8:090E	901	7-15-94
Replaced	589	9-21-94
902 KAR 8:100E	902	7-15-94
Replaced	590	9-21-94
902 KAR 8:110E	903	7-15-94
Replaced	592	9-21-94
902 KAR 8:120E	270	7-15-94
Replaced	593	9-21-94
902 KAR 8:130E	273	7-15-94
Replaced	597	9-21-94
902 KAR 8:140E	273	7-15-94
Replaced	1055	9-21-94
902 KAR 14:030E	1266	10-14-94
Expired		2-7-95
902 KAR 14:040E	1268	10-14-94
Expired		2-7-95
902 KAR 14:050E	1274	10-14-94
Expired		2-7-95
902 KAR 14:060E	2058	1-18-95
902 KAR 14:070E	2442	3-1-95
902 KAR 14:080E	2444	3-1-95
902 KAR 14:090E	2450	3-1-95
902 KAR 115:010E	904	7-15-94
Replaced	816	9-21-94
903 KAR 5:270E	274	6-23-94
Replaced	130	9-12-94
903 KAR 5:290E	2453	3-15-95
904 KAR 2:015E	2061	1-18-95
904 KAR 2:017E	2065	1-18-95
904 KAR 2:035E	2075	1-18-95
904 KAR 2:361E	275	7-15-94
Replaced	818	9-21-94
904 KAR 3:030E	2077	1-18-95
904 KAR 3:050E	2454	2-17-95
904 KAR 3:060E	2458	2-17-95
905 KAR 1:010E	905	7-15-94
Replaced	1072	9-21-94
905 KAR 1:330E	275	7-15-94
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