

ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION FRANKFORT, KENTUCKY

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on August 7, 1995.
See tentative agenda on pages 175-176 of this Administrative Register.

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

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - August 7, 1995, 10 a.m.
Room 149, Capitol Annex**

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Higher Education Assistance Authority

11 KAR 4:040. Educational institution participation requirements.

Kentucky Higher Education Student Loan Corporation

15 KAR 1:040. Eligibility for insured student loans made directly by the corporation.

REVENUE CABINET

Income Tax; Corporation

103 KAR 16:190. The unitary method of reporting for corporation income tax purposes.

FINANCE AND ADMINISTRATION CABINET

Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010. Formula for allocation of private activity bonds.

Kentucky Infrastructure Authority

200 KAR 17:050. Guidelines for federally assisted wastewater revolving fund.

Personnel Pilot Program

200 KAR 22:030E. Comprehensive Employment Manual of Department of Vocational Rehabilitation for Use in the Pilot Personnel Program. (Deferred from June) (Agency Requests Deferral to September)

200 KAR 22:060E. Comprehensive employment manual of the Department of Personnel for use in the Pilot Personnel Program.

GENERAL GOVERNMENT CABINET

Board of Dentistry

201 KAR 8:220. Clinical examination for licensure of dentists.

201 KAR 8:277. Examination for licensure of dental hygienists.

Real Estate Commission

201 KAR 11:400. Agency disclosure requirements. (Public Hearing in June)

Board of Nursing

201 KAR 20:240. Fees for applications and services.

Kentucky Board of Certification of Marriage and Family Therapists (Deferred from July)

201 KAR 32:010E. Definitions.

201 KAR 32:020E. Equivalent course of study.

201 KAR 32:030E. Fees.

DEPARTMENT OF AGRICULTURE

Livestock Sanitation

302 KAR 20:076E. Identification of "farm fresh" cattle. (Deferred from July)

ECONOMIC DEVELOPMENT CABINET

Kentucky Economic Development Finance Authority

307 KAR 1:030. Kentucky Rural Economic Development Act Tax Credit Program.

KEDFA

307 KAR 4:010. Kentucky Industrial Development Act Tax Credit Program.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Environmental Protection

401 KAR 100:050. Site characterization, risk assessment, and remedial options.

SOIL AND WATER CONSERVATION COMMISSION

Administration

416 KAR 1:010 (& E). Administration of Kentucky soil and water quality cost-share fund.

JUSTICE CABINET

Charitable Gaming

500 KAR 11:001 & E. Definitions.

500 KAR 11:030E. Charity game ticket standards. (Deferred from May)

500 KAR 11:040E. Bingo standards. (Deferred from May)

500 KAR 11:050E. Raffle standards. (Deferred from May)

500 KAR 11:060E. Tipping prohibited. (Deferred from May)

500 KAR 11:070 & E. Exempt activities.

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- 500 KAR 11:080 & E. Special charity fundraising event.
- 500 KAR 11:090 & E. Special limited charitable games.
- 500 KAR 11:100 & E. Division employees prohibited from playing charitable games.

TRANSPORTATION CABINET

Nonpublic School Transportation

- 600 KAR 5:010 & E. Transportation of nonpublic school students. (Amended After Hearing)

EDUCATION, ARTS, AND HUMANITIES CABINET

Office of District Support Services

School Terms, Attendance and Operation

- 702 KAR 7:081. Repeal of 702 KAR 7:080, Recruiting of student athletes prohibited.
- 702 KAR 7:091. Repeal of 702 KAR 7:090, Requirements for coaches and other personnel staffing interscholastic programs.

Office of Learning Programs Development

Office of Instruction

- 704 KAR 3:470. Ranking of certified school personnel.

Education Professional Standards Board

- 704 KAR 20:056. Dating of certification. (Repeals 704 KAR 20:055)

WORKFORCE DEVELOPMENT CABINET

Department of Vocational Rehabilitation

Administration

- 781 KAR 1:040. Rehabilitation technology services.

LABOR CABINET

Department of Workers' Claims

- 803 KAR 25:190. Utilization review and audit. (Amended After Hearing)

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

Insurance Fraud

- 806 KAR 47:010. Designation of a contact person.
- 806 KAR 47:020. Reporting fraudulent insurance
- 806 KAR 47:030. Requirements for special investigative units.

Department of Housing, Buildings and Construction

Kentucky Building Code

- 815 KAR 7:100. The Kentucky Building Code.

Heating, Ventilation, and Air Conditioning Requirements

- 815 KAR 8:040E. Heating, ventilation, and air conditioning (HVAC) contractor application reviews.

Plumbing

- 815 KAR 20:110. Traps and cleanouts.

Electrical Inspectors

- 815 KAR 35:015. Certification of electrical inspectors.

CABINET FOR HUMAN RESOURCES

Department for Social Insurance

Public Assistance

- 904 KAR 2:046. Adverse action; conditions.
- 904 KAR 2:050. Time and manner of payments.

Food Stamp Program

- 904 KAR 3:050E. Claims and additional administrative provisions. (Deferred from May)
- 904 KAR 3:060E. Administrative disqualification hearings and penalties. (Deferred from May)

Department for Social Services

Children's Residential Services

- 905 KAR 7:250E. Kentucky educational collaborative for state agency children. (Deferred from May)

Department for Medicaid Services

Medicaid Services

- 907 KAR 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from July)
- 907 KAR 1:560. Medicaid hearings and appeals for recipients. (Deferred from June)

KENTUCKY HEALTH POLICY BOARD

Administration

- 909 KAR 1:021E. Updated 1992-1995 State Health Plan.
- 909 KAR 1:055E. Certificate of need expenditure minimums.
- 909 KAR 1:080 (& E). Accountable health plan certification.
- 909 KAR 1:090 (& E). Risk assessment and risk adjustment system.

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.

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NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Date: June 23, 1995

Kentucky Higher Education Assistance Authority

(1) The subject matter of the administrative regulation is **11 KAR 8:030**, Teacher scholarships.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 2(2)(a) of the administrative regulation governing the subject matter listed above, particularly, to authorize 1994-95 academic year Paul Douglas Teacher Scholarship recipients to apply for and, if eligible, to be offered a Kentucky Higher Education Assistance Authority Teacher Scholarship.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Wednesday, August 30, 1995, at 10 a.m., at 1050 U.S. 127 South, Suite 101, 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 August 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 101, 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 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 pertaining to the selection of recipients of teacher scholarships is KRS 164.769(6)(f).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 8:030, as follows: Section 2(2)(a) of the above cited administrative regulation currently provides that applicants shall be considered and teacher scholarships shall first be awarded to qualified renewal applicants who have made satisfactory progress toward completion of the eligible program of study. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that, to the extent that federal funds are not appropriated for the Paul Douglas Teacher Scholarship Program for the 1995-96 academic year, 1994-95 Paul Douglas Teacher Scholarship recipients who have not completed their eligible program of study may apply for and, if eligible, be offered a Kentucky Higher Education Assistance Authority Teacher Scholarship with priority in the selection process as a renewal applicant.

(c) The necessity and function of the proposed administrative regulation is as follows: The Paul Douglas Teacher Scholarship Program for the 1995-1996 academic year beginning July 1, 1995, has not been funded by Congress. In Kentucky, this could amount to approximately \$200,000 in lost funding, which would be sufficient to fund scholarships for up to 40 students. This administrative regulation would enable 1994-95 academic year Paul Douglas Teacher Scholarship recipients to apply for and, if eligible, to be offered a Kentucky Higher Education Assistance Authority Teacher Scholarship with the same priority in the selection process as a renewal applicant. If \$200,000 is transferred from the Special Trust Fund pertaining to funds previously collected from Kentucky Higher Education Assistance Authority Teacher Scholarship recipients, no potential Kentucky Higher Education Assistance Authority Teacher Scholarship applicant will be denied opportunity to receive aid.

(d) The benefits expected from the administrative regulation are: It assures continuation funding for approximately 40 students that would otherwise lose funding under the federally funded Paul Douglas Teacher Scholarship program.

(e) The administrative regulation will be implemented as follows: 1994-95 academic year Paul Douglas Teacher Scholarship recipients may apply for and, if eligible, be offered a Kentucky Higher Education Assistance Authority Teacher Scholarship with the same priority in the selection process as a renewal applicant.

UNIVERSITY OF KENTUCKY
College of Agriculture
Division of Regulatory Services

Date: June 29, 1995

University of Kentucky

College of Agriculture

Division of Regulatory Services

(1) Regulation Number and Title: **12 KAR 1:115**, Sampling, analyzing, testing, and tolerances.

(2) The University of Kentucky, College of Agriculture, Division of Regulatory Services intends to amend the administrative regulation cited above.

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

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August 31, 1995, at 10 a.m. in Room 109 at the University of Kentucky, 103 Regulatory Services Building, 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 five 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 Thursday, August 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: 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 authority for the promulgation of an administrative regulation relating to sampling, analyzing, testing, and tolerances of seed is KRS 250.081.

(b) The administrative regulation that the University of Kentucky, College of Agriculture, Division of Regulatory Services intends to promulgate will amend 12 KAR 1:115, as follows: Section 3(1) will be amended to include changes in "Rules for Testing Seeds" made by the Association of Official Seed Analysts in 1994 and 1995. The words "revised 1994, revised 1995" will be added to the administrative regulation immediately after "vol. 16, no. 3, 1993".

(c) The necessity and function of the proposed administrative regulation is to prescribe the methods of sampling, analyzing, and testing seed, and to establish the tolerances to be applied in the administration of the Kentucky Seed Law and administrative regulations and to update the referenced "Rules for Testing Seeds" to include changes made by the Association of Official Seed Analysts during 1994 and 1995.

(d) The benefits expected from administrative regulation are to incorporate those changes made to "Rules for Testing Seeds" into the procedures for testing seeds used by the seed laboratory at the University of Kentucky, Division of Regulatory Services. The procedures specified in "Rules for Testing Seeds" are recognized by state and federal seed control officials as the official procedures for testing regulatory samples.

(e) The administrative regulation will be implemented as follows: Changes made by the Association of Official Seed Analysts to "Rules for Testing Seeds" will be implemented by seed laboratory personnel when testing official seed samples for regulatory purposes.

DEPARTMENT OF STATE Registry of Election Finance

Date: July 14, 1995

Department of State

Registry of Election Finance

(1) **32 KAR 2:210**, Three (3) judge panel procedures.

(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 August 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 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 August 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 three (3) judge panel hearings is KRS 121.120(1)(g).

(b) The administrative regulation that the Registry of Election Finance intends to promulgate will not amend an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows:

(d) The benefits expected from this administrative regulation are: This administrative regulation will provide guidelines for the initiation of three (3) judge panel hearings, selection of judges, and payment of per diem compensation and expenses of the judges.

(e) The administrative regulation will be implemented as follows: The General Counsel for the Registry of Election Finance will

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coordinate the implementation of this administrative regulation.

DEPARTMENT OF PERSONNEL

Date: July 14, 1995

Department of Personnel

- (1) Leave administrative regulations, **101 KAR 2:100**.
- (2) The Department of Personnel intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995, at 10 a.m., at 200 Fair Oaks Lane, 5th Floor, Conference Room 508, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or 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, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 30, 1995, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Personnel, Office of the Commissioner, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, (502) 564-4460.
 - (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that person who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request from the Department of Personnel at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to leave is KRS 18A.110.
 - (b) The administrative regulation that the Department of Personnel intends to promulgate will amend existing administrative regulation **101 KAR 2:100, Leave administrative regulations**.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 18A.110 requires the Department of Personnel to adopt rules with regard to the administration of state employee benefits, including leave of absence and overtime.
 - (d) The benefits expected from the administrative regulation amendment are:
 1. Bringing current state leave and overtime administrative regulations into compliance with recent federal regulations and interpretations of the Family and Medical Leave Act and the Fair Labor Standards Act.
 2. Allowing unreported absence without leave to be treated as a resignation.
 - (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will replace the emergency administrative regulation that was promulgated on July 14, 1995 and ratify the Commonwealth's intention to fully comply with recent federal regulations and court decisions concerning the use of compensatory time under the Fair Labor Standards Act and the Family and Medical Leave Act. The Department of Personnel and the executive branch agencies will implement this administrative regulation for classified employees in state government.

Date: July 14, 1995

Department of Personnel

- (1) Leave administrative regulations, **101 KAR 3:010**.
- (2) The Department of Personnel intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995, at 10 a.m., at 200 Fair Oaks Lane, 5th Floor, Conference Room 508, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or 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, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 30, 1995, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Personnel, Office of the Commissioner, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, (502) 564-4460.
 - (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that person who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
 - (b) Persons who wish to file this request may obtain a request from the Department of Personnel at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to leave is KRS 18A.110.
 - (b) The administrative regulation that the Department of Personnel intends to promulgate will amend existing administrative regulation **101 KAR 3:010, Leave administrative regulations**.

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(c) The necessity and function of the proposed administrative regulation is as follows: KRS 18A.110 requires the Department of Personnel to adopt rules with regard to the administration of state employee benefits, including leave of absence and overtime.

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

1. Bringing current state leave and overtime administrative regulations into compliance with recent federal regulations and interpretations of the Family and Medical Leave Act and the Fair Labor Standards Act.

2. Allowing unreported absence without leave to be treated as a resignation.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will replace the emergency administrative regulation that was promulgated on July 14, 1995 and ratify the Commonwealth's intention to fully comply with recent federal regulations and court decisions concerning the use of compensatory time under the Fair Labor Standards Act and the Family and Medical Leave Act. The Department of Personnel and the executive branch agencies will implement this administrative regulation for unclassified employees in state government.

FINANCE AND ADMINISTRATION CABINET

Date: July 14, 1995

Finance and Administration Cabinet

(1) **200 KAR 2:006**, Employees' reimbursement for travel.

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

(3) The proposed amendment will increase the reimbursement rate for mileage and per diem expenses.

(4) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for August 30, 1995, at 10 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

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

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

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

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

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

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

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

(8)(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 44.060 and 45.101.

(b) A summary of the existing regulation is as follows: The purpose of this regulation is to specify eligibility, requirements, rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury. The proposed amendment will increase the reimbursement rate for mileage and per diem expenses.

(c) The necessity and function of the proposed amendment is as follows: The Finance and Administration Cabinet is directed by law to coordinate and supervise the fiscal affairs and procedures of the state and is authorized to adopt regulations for that purpose. Having found that state reimbursement rates for mileage have remained at \$.22 per mile since February 1990 whereas the actual cost of operating a motor vehicle has risen considerably since that time, the cabinet proposes to amend the current regulation to increase the reimbursement rate for mileage and per diem expenses in order to more fairly compensate employees.

(d) The benefit to be expected from the amendment is fair reimbursement of mileage and per diem expenses for state employees.

(e) The regulation will be implemented by payment of the increased rates.

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

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 50:012**, General application, will upon adoption, amend the existing regulation. The subject matter of this amendment is a revision to clarify the reasonably available control technology requirements to assure compatibility with the Clean Air Act requirements for major sources of volatile organic compounds in ozone nonattainment areas.

(2) The Division for Air Quality intends to promulgate an amendment governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 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

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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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

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

(a) The statutory authority for the promulgation of an administrative regulation relating to reasonably available control technology in ozone nonattainment areas is KRS 224.10-100.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend 401 KAR 50:012, General application. It will provide added clarification of guidelines for air pollution control for all air quality regulations in Title 401, Chapters 50 to 65.

(c) The necessity and function of the proposed amendment to the administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality. The Division for Air Quality proposes this amendment to clarify the requirement for reasonably available control technology to assure compatibility with the Clean Air Act requirement.

(d) The benefit expected from the amended regulation is that the reasonably available control technology requirement will clearly satisfy the Clean Air Act requirement and be approvable by the United States Environmental Protection Agency as part of the state implementation plan.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, affected sources shall comply with the provisions of 401 KAR 50:012, as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 50:031**, Inherent physical limitations. The subject matter of this proposed administrative regulation will establish new criteria for calculating potential to emit when determining major source status under Title V of the Clean Air Act Amendments (CAAA). The proposed administrative regulation will not exempt any source from compliance with air quality requirements or from having to obtain a state-origin permit if the source is otherwise required to do so. Neither will it exempt any source from the Title V program if that source is subject to Title V under the CAAA. It will, however, defer a large number of affected sources in Kentucky from having to obtain a federally enforceable permit for up to 5 years following U.S. EPA approval of the state's Title V Operating Permits Program.

(2) The Division for Air Quality intends to promulgate an administrative regulation governing the subject matter listed above unless a similar interpretation of potential to emit is published as U.S. EPA Guidance or contained in the revised 40 CFR Part 70 rule, which is expected to become final in early 1996. If either of these events should occur, this administrative regulation may be withdrawn or repealed.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the determination of major source status under Title V of the CAAA is 42 USC 7661-7661f (Title V of the CAAA), KRS 224.10-100 and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. It will state that any source whose actual emissions are less than some specified percent of the major source threshold (the division is considering 20% to 50%) is presumed to have inherent physical limitations which prevent it from being a major source and is, therefore, a minor source. It will also include monitoring, recordkeeping, and reporting requirements with which the source must comply in order to ensure it remains at or below the specified threshold.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-120 requires that the Cabinet, when setting standards, give due recognition and consideration to such factors as existing physical conditions. 42 USC 7661-7661f requires the state to promulgate regulations which implement an operating permits program. There are more than 2700 air contaminant sources either permitted or registered with the Division for Air Quality and contained in the Kentucky Emissions

Inventory System (KyEIS). The Division estimates that unless this or a similar rule is adopted, hundreds of small sources in Kentucky will be classified as "major" under Title V of the CAAA and will, therefore, be required to submit their applications for a Title V permit or a federally-enforceable state operating permit (FESOP) within one year after program approval. The Division for Air Quality proposes this administrative regulation to clarify that sources whose actual emissions remain relatively low will not be required to obtain a federally-enforceable operating permit unless required to do so by the U.S. EPA at some future date.

(d) The expected benefits from the proposed administrative regulation will accrue to both the affected sources and the Division for Air Quality. Affected sources will be deferred from having to submit lengthy applications and complying thereafter with Title V requirements, and the division will be deferred from having to review and process the resulting permits and permit revisions. This deferral will extend for up to five years, or until the U.S. EPA rules that the source is required to obtain a permit, or is exempt from Title V altogether.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, affected sources shall comply with the provisions of 401 KAR 50:031 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 50:032**, Exclusionary rules. The subject matter of this administrative regulation will establish new criteria for specific categories of sources when calculating their potential to emit for major source determination under Title V of the Clean Air Act Amendments (CAAA). The proposed administrative regulation will not exempt any source from compliance with air quality requirements or from having to obtain a state-origin permit if the source is otherwise required to do so. Neither will it exempt any source from the Title V program if that source is subject to Title V under the CAAA. It will, however, defer certain specified categories of air contaminant sources in Kentucky from having to obtain a federally enforceable permit following U.S. EPA approval of the state's Title V Operating Permits Program.

(2) The Division for Air Quality intends to promulgate an administrative regulation governing the subject matter listed above unless a similar interpretation of potential to emit which achieves the same benefit is published as U.S. EPA Guidance or is contained in final revisions to the 40 CFR Part 70 rule, or unless the Cabinet determines the same benefit can be better achieved through promulgation of 401 KAR 50:031, Inherent physical limitations, which is also being proposed at this time. If either of these events should occur this administrative regulation may be withdrawn or repealed.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the determination of potential to emit under Title V of the CAAA is 42 USC 7661-7661f (Title V of the CAAA), KRS 224.10-100 and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. It will state that any source in one of the categories specified could not exceed the throughput stated for that category unless the source obtains a permit from the Division for Air Quality. For example, filling stations could not exceed a designated amount of throughput, where the amount would be calculated to ensure that the source's maximum emissions could not exceed some specified percent of the major source threshold (the division is considering 20% to 50%). The regulation would also include monitoring, recordkeeping, and reporting requirements with which the source must comply in order to ensure it remains at or below the specified throughput.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. KRS 224.20-120 requires that the Cabinet, when setting standards, give due recognition and consideration to such factors as existing physical conditions. 42 USC 7661-7661f requires the state to promulgate regulations which implement an operating permits program. There are more than 2700 air contaminant sources either permitted or registered with the Division for Air Quality and contained in the Kentucky Emissions Inventory System (KyEIS). The Division estimates that unless this or a similar rule is adopted, hundreds of small sources in Kentucky will be classified as "major" under Title V of the CAAA and will, therefore, be required to submit their applications for a Title V permit or a federally-enforceable state operating permit (FESOP) within one year after program approval. The Division for Air Quality proposes this administrative regulation to clarify that sources whose actual emissions remain relatively low will not be required to obtain a federally-enforceable operating permit unless required to do so by the U.S. EPA at some future date.

(d) The expected benefits from the proposed regulation will accrue to both the affected sources and the Division for Air Quality. Affected sources will be deferred from having to submit lengthy applications and complying thereafter with Title V requirements, and the division will be deferred from having to review and process the resulting permits and permit revisions. This deferral will extend for up to five years, or until the U.S. EPA rules that the source is required to obtain a permit, or is exempt from Title V altogether.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, affected sources shall comply with the provisions of 401 KAR 50:032 as part of the existing regulatory program.

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Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 50:033**, Acid rain phase II application forms. The subject matter of this proposed administrative regulation relates to the necessity of the Division for Air Quality to adopt for phase II of the acid rain program the forms designed by the U.S. Environmental Protection Agency (U.S. EPA) as follow up to phase I, which was implemented at the federal level. The adoption of this rule is required for approval of Kentucky's Title IV acid rain program by the U.S. EPA.

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal acid rain phase II application forms.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to acid rain phase II application forms is 42 USC 7651-7651o, KRS 224.10-100, and 224.20-100.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The Division for Air Quality, in 401 KAR 50:072, incorporated by reference the federal acid rain program. The new administrative regulation will incorporate by reference the federal acid rain phase II application forms corresponding to 401 KAR 50:072. This administrative regulation will establish the following: four forms addressing a phase II permit application, new unit exemption, retired unit exemption, and repowering extension plan; and three forms addressing opt-in permit application, opt-in permit application worksheet, and thermal energy plan.

(c) The necessity and function of the proposed administrative regulations is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The Acid Rain Program has been deemed essential for the protection of the public health and the environment by the United States Congress and the Kentucky General Assembly. The adoption of this administrative regulation is a necessary requirement for Kentucky to obtain approval of its Title IV acid rain program and the Title V permitting program.

(d) The benefit expected from the administrative regulation is that the adoption of this administrative regulation will fulfill one of the requirements for federal approval of Kentucky's Title IV acid rain program and Title V permitting program. Implementation of the acid rain program will result in enhanced protection of the Commonwealth's citizens and environment.

(e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program and Title IV acid rain program, and on and after the effective date of this administrative regulation, the forms incorporated by reference in this administrative regulation will be required to be submitted with a source's Title IV phase II permit application.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 50:035**, Permits, will upon adoption, amend the existing regulation. The subject matter of this amendment will incorporate changes contained in the U.S. EPA's July 10, 1995 guidance memorandum entitled "White Paper for Streamlined Development of Part 70 Permit Applications" into the state permitting regulation. These amendments will remove or revise certain requirements for a complete application contained in the original 40 CFR Part 70 rule which the U.S. EPA has determined are more burdensome than necessary.

(2) The Division for Air Quality intends to promulgate one amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the amended administrative regulation has been scheduled for August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. While the cabinet welcomes any comments regarding the proposed amendments, we specifically request those which address whether any or all of the proposed changes will be effective in reducing the burden of preparing and submitting Title V permit applications, and whether any or all of the proposed changes will reduce the effectiveness of Title V permits in protecting Kentucky's air quality. A complete copy of the "White Paper" can be found on the U.S. EPA's TTN Bulletin Board, or by contacting Hank Wiseman at the Frankfort office of the Division for Air Quality, phone (502) 573-3382.

(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 an agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 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: Division for Air Quality,

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Attention John E. Hornback, 803 Schenkel Lane, 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 amended administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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

(7) Information relating to this proposed amended administrative regulation.

(a) The statutory authority for the promulgation of this amended administrative regulation is KRS 224.10-100, 224.20-120, and 42 USC 7661-7661f (Title V of the CAAA).

(b) The proposed regulation that the Division for Air Quality intends to promulgate will amend an existing administrative regulation, 401 KAR 50:035. A brief summary of the proposed amendments follows: provide emission descriptions, not emission estimates, for emissions not regulated at the source unless such estimates are needed for other purposes, such as for fee calculation; submit checklists, not emission descriptions, for insignificant activities based on size/production rate and for risk management plans submitted under Section 112(r); provide citations for applicable requirements, with qualitative descriptions for each emissions unit, and for prior new source review permits; exclude certain trivial and short-term activities from the application; provide group treatment for activities subject to certain generally-applicable requirements; certify compliance status without requiring reconsideration of previous applicability decisions; use the permitting process to identify environmentally significant terms of new source review (NSR) permits which should be incorporated into the Part 70 permit as federally-enforceable terms; and submit tons per year estimates only where meaningful to do so, i.e., not for Section 112(r)-only pollutants.

(c) The necessity and function of this proposed amended administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. 42 USC 7661-7661f requires the state to promulgate regulations which implement an operating permits program. KRS 224.20-120 requires that the Cabinet, when promulgating standards, recognize all factors found to be proper and just, and give reasonable consideration to the interests of all parties concerned. The Division for Air Quality proposes this amendment to incorporate those changes contained in EPA's "White Paper" into its Title V permitting process.

(d) The benefit expected from this proposed amendment will be to reduce the workload for sources in preparing applications and for the division when reviewing applications and issuing permits.

(e) The administrative regulation will be implemented as follows: on and after the effective date of this amended administrative regulation, affected sources shall comply with the provisions of 401 KAR 50:035 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 58:001**, Definitions and abbreviations of terms used in 401 KAR Chapter 58. The subject matter of this administrative regulation is definitions and abbreviations of terms used in 401 KAR Chapter 58, Asbestos.

(2) The Division for Air Quality intends to promulgate an administrative regulation, 401 KAR 58:001, 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 an agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions and abbreviations of terms used in 401 KAR Chapter 58 is 42 USC 2641-2654, KRS 224.10-100 and 224.20.100.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. It will create a source for standardized definitions and abbreviations of terms related to asbestos. It will provide for a uniform understanding of the terminology used in 401 KAR Chapter 58.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This proposed administrative regulation will provide for the defining of terms to be used in 401 KAR Chapter 58. The Division for Air Quality proposes this administrative regulation to provide clarification of terminology for all air quality regulations in 401 KAR Chapter 58.

(d) The benefit expected from the proposed administrative regulation is that definitions for asbestos control will be compatible with the federal definitions and, therefore, approvable by the United States Environmental Protection Agency. The proposed administrative regulation will provide clarification of terminology for all air quality regulations in 401 KAR Chapter 58.

(e) The proposed administrative regulation will be implemented as follows: on and after the effective date of this proposed

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administrative regulation, the regulations in 401 KAR Chapter 58 will use the standard definitions contained in this proposed administrative regulation.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 58:005**, Accreditation of asbestos professionals. The subject matter of this amended administrative regulation is incorporating commercial and public buildings into the existing regulation 401 KAR 58:005, School asbestos abatement accreditation. The subject matter of this amendment expands Kentucky's accreditation requirements for school asbestos abatement to include asbestos professionals involved with other commercial and public buildings.

(2) The Division for Air Quality intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the amended administrative regulation has been scheduled for August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 an agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 amended administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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

(7) Information relating to this proposed amended administrative regulation.

(a) The statutory authority for the promulgation of this amended administrative regulation relating to asbestos accreditation is 42 USC 2641-2654, KRS 224.10-100, 224.20-100, 224.20-300, and 224.20-310.

(b) The amended administrative regulation that the Division for Air Quality intends to promulgate will amend existing administrative regulation 401 KAR 58:005. It will expand the accreditation of asbestos professionals and approval of asbestos training courses to include asbestos abatement accreditation for commercial and public buildings as well as schools.

(c) The necessity and function of this proposed amended administrative regulation is as follows: Section 206 of Title II of the Toxic Substances Control Act (also known as the Asbestos Hazard Emergency Response Act, or AHERA) requires accreditation of schools' asbestos professionals. It also requires states to develop their own accreditation programs based upon U.S. EPA's Model Accreditation Plan, or MAP (Appendix C to AHERA). Public Law 101-637 (the Asbestos School Hazard Abatement Reauthorization Act of 1990, or ASHARA) expanded these accreditation requirements to include asbestos professionals in public and commercial buildings, required U.S. EPA to revise its MAP accordingly, and mandated states to update their accreditation programs to be as stringent as the revised MAP within 180 days after the commencement of the first regular legislative session following the revised MAP's promulgation.

(d) The benefit expected from this proposed amended administrative regulation is that it will enable Kentucky to have a U.S. EPA-approved accreditation program as mandated by federal law. This also will give Kentucky primacy for overseeing accreditation requirements. Additionally, it will help training course providers and their graduates by decentralizing their accreditation requirements from the federal to the state level. It will further the protection of Kentucky's citizens from a hazardous air pollutant.

(e) The amended administrative regulation will be implemented as follows: on and after the effective date, the Division for Air Quality will approve qualified training providers in five disciplines and accredit their qualified graduates, including renewals of accreditation.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 58:020**, Asbestos standards for sources other than renovation and demolition operations. The subject matter of the proposed administrative regulation relates to the necessity of the Division for Air Quality to adopt the asbestos national emissions standards for hazardous air pollutants (NESHAP) required by the U.S. Environmental Protection Agency (U.S. EPA). Adoption of the proposed administrative regulation is required in order for the Commonwealth to continue to have the delegated authority to enforce the federal Asbestos NESHAP regulation, 40 CFR 61.140 through 61.144 and 61.146 through 61.157 (Subpart M), except as those sections apply to demolition and renovation activities. The proposed administrative regulation will provide for the control of asbestos emissions from sources other than renovation and demolition operations.

(2) The Division for Air Quality 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 an agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 31, 1995, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality,

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Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the proposed administrative regulation relating to asbestos abatement is KRS 224.10-100 and 224.20-100, 224.20-110, and 224.20-120. The proposed administrative regulation will adopt the federal NESHAP standards for asbestos as required by the U.S. EPA.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing regulation. It will repeal 401 KAR 57:011, which addresses asbestos control from the sources covered by this regulation, and will provide for the control of asbestos emissions from sources other than renovation and demolition operations, as required by the U.S. Environmental Protection Agency in the asbestos national emissions standard for hazardous air pollutants (NESHAP).

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for sources of hazardous air pollutants. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will continue to have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: on and after the effective date of this administrative regulation, those sources subject to the federal NESHAP and 401 KAR 57:011 shall comply with the provisions of 401 KAR 58:020 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 58:030**, Asbestos demolition and renovation. The subject matter of this administrative regulation is as follows: work practice standards for asbestos renovation and demolition are required for Kentucky to be granted delegation of authority for the federal asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP). The administrative regulation will provide for the control of asbestos emissions and for work practice standards to protect public health and the environment from asbestos hazards caused by demolition or renovation activities.

(2) The Division for Air Quality 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 an agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601, and phone number (502) 573-3382.

(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 for Air Quality at the address listed above.

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation relating to asbestos demolition and renovation is KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, and 224.99-010; and 224.20-300 and 224.20-310, which relate to this administrative regulation only in as much as they govern accreditation of schools' asbestos supervisors and building inspectors and the trainers of these asbestos professionals. This administrative regulation will provide specific work practice standards when handling asbestos for demolition or renovation.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. It will repeal 401 KAR 63:042 and will provide added clarification of guidelines for asbestos demolition and renovation in conjunction with 401 KAR 58:020, Asbestos standards for sources other than demolition and renovation operations.

(c) The necessity and function of this administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The Division for Air Quality proposes this administrative regulation to clarify the requirements for asbestos demolition and renovation operations, and to achieve consistency with demolition and renovation requirements of the federal NESHAP regulation, 40 CFR 61.145.

(d) The benefit expected from this administrative regulation is that it will assure the protection of public health and the environment during asbestos demolition and renovation operations. Also, it will enable sources subject to the federal NESHAP to work with the state rather than the federal government for demolition and renovation operations.

(e) This administrative regulation will be implemented as follows: on and after the effective date of this administrative regulation, those sources subject to 40 CFR 61.145 and to 401 KAR 63:042 shall comply with the provisions of 401 KAR 58:030, and the Division for Air Quality

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will enforce work practice standards and contractor certification requirements for asbestos demolition and renovation as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 60:670**, Standards of performance for nonmetallic mineral processing plants, will upon adoption, replace 401 KAR 59:310. The subject matter of this administrative regulation is the federal New Source Performance Standard (NSPS) for nonmetallic mineral processing plants that are subject to the corresponding federal NSPS regulation.

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NSPS regulation 40 CFR 60.670 through 60.676 (40 CFR 60, Subpart OOO), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the NSPS is KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120; 40 CFR 60, Subpart OOO, and 42 USC 7411.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will replace the existing administrative regulation, 401 KAR 59:310, New nonmetallic mineral processing plants. The new administrative regulation will update the standards of performance for affected sources from those in the existing regulation.

(c) The necessity and function of the proposed administrative regulation is as follows:

42 USC 7411(b) mandates the U.S. EPA to promulgate federal NSPS regulations which establish standards of performance for new sources in listed source categories. 42 USC 7411(c)(1) allows the U.S. EPA to delegate to states the authority for implementing and enforcing the federal NSPS regulations. The proposed administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NSPS regulation. Delegation of authority from the U.S. EPA will allow the Commonwealth to cite violations based upon visible emissions when reference Method 9 is inappropriate.

(d) The benefit expected from the administrative regulation is that sources subject to the federal NSPS regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: on and after the effective date of this administrative regulation, those sources subject to 40 CFR 60.670 through 60.676 (40 CFR 60, Subpart OOO) shall comply with the provisions of 401 KAR 60:670 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 63:101**, National emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry. The subject matter of this regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for synthetic chemical manufacturers that are subject to the corresponding federal NESHAP regulation. Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 63.100 through 63.106 (40 CFR 63, Subpart F), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S. EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.100 through 63.106 (40 CFR 63, Subpart F) shall comply with the provisions of 401 KAR 63:101 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 63:110**, National emission standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry process vents, storage vessels, transfer operations, and wastewater. The subject matter of this regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for synthetic chemical manufacturers that are subject to the corresponding federal NESHAP regulation. Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 63.110 through 63.152 (40 CFR 63, Subpart G), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S. EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.110 through 63.152 (40 CFR 63, Subpart G) shall comply with the provisions of 401 KAR 63:110 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

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Division for Air Quality

(1) **401 KAR 63:160**, National emission standards for organic hazardous air pollutants for equipment leaks. The subject matter of this regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for synthetic chemical manufacturers that are subject to the corresponding federal NESHAP regulation. Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 63.160 through 63.182 (40 CFR 63, Subpart H), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S. EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.160 through 63.182 (40 CFR 63, Subpart H) shall comply with the provisions of 401 KAR 63:160 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 63:190**, National emission standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks. The subject matter of this administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for processes which are subject to the emission standard for equipment leaks. The affected processes are those which are located at a major source of hazardous air pollutants and produce any of the following: (1) styrene-butadiene rubber; (2) polybutadiene rubber; (3) specified agricultural chemicals; (4) specified polymer/resins and chemical products; (5) pharmaceutical processes using carbon tetrachloride or methylene chloride. Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation 40 CFR 63.190 through 63.193 (40 CFR 63, Subpart I), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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.

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- (b) Persons who wish to file this request may obtain a request form from the Division for Air Quality at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.
- (b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.
- (c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish national emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.
- (d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.
- (e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S. EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.190 through 63.193 (40 CFR 63, Subpart I) shall comply with the provisions of 401 KAR 63:190 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 63:340**, National emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks. The subject matter of this administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for sources which perform hard chromium electroplating, decorative chromium electroplating, or chromium anodizing and are subject to the corresponding federal NESHAP regulation. Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation 40 CFR 63.340 through 63.347 (40 CFR 63, Subpart N), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish national emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S. EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.340 through 63.347 (40 CFR 63, Subpart N) shall comply with the provisions of 401 KAR 63:340 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 63:360**, National emission standards for hazardous air pollutants for ethylene oxide commercial sterilization and fumigation operations. The subject matter of this administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for sterilization and fumigation operations which use ethylene oxide and are subject to the corresponding federal NESHAP regulation.

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Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation 40 CFR 63.360 through 63.367 (40 CFR 63, Subpart O), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish national emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the amended regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S. EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.360 through 63.367 (40 CFR 63, Subpart O) shall comply with the provisions of 401 KAR 63:360 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 63:400**, National emission standards for hazardous air pollutants for industrial process cooling towers. The subject matter of this administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for industrial process cooling towers (IPCT) which are major sources of hazardous air pollutants, or are integral parts of facilities that are major sources of these pollutants. Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation 40 CFR 63.400 through 63.406 (40 CFR 63, Subpart Q), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to

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promulgate federal NESHAP regulations which establish standards of performance for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S. EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.400 through 63.406 (40 CFR 63, Subpart Q) shall comply with the provisions of 401 KAR 63:400 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 63:420**, National emission standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations). The subject matter of this administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for sources which are bulk gasoline terminal or pipeline breakout stations and are subject to the corresponding federal NESHAP regulation. Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 63.420 through 63.429 (40 CFR 63, Subpart R), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S. EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.420 through 63.429 (40 CFR 63, Subpart RE) shall comply with the provisions of 401 KAR 63:420 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 63:460**, National emission standards for halogenated solvent cleaning. The subject matter of this administrative regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for sources which utilize solvent cleaning machines and are subject to the corresponding federal NESHAP regulation. Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 63.460 through 63.469 (40 CFR 63, Subpart T), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.
 - (b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new regulation will incorporate by reference those national emission standards in the corresponding federal rule.
 - (c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.
 - (d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.
 - (e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S. EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.460 through 63.469 (40 CFR 63, Subpart T) shall comply with the provisions of 401 KAR 63:460 as part of the existing regulatory program.

Date: July 14, 1995

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

- (1) **401 KAR 63:520**, National emission standards for hazardous air pollutants for epoxy resins production and non-nylon polyamides production. The subject matter of this regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for epoxy resin manufacturers and non-nylon polyamide manufacturers which are located at major sources of hazardous air pollutants and use epichlorohydrin as a feedstock and are subject to the corresponding federal NESHAP regulation. Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).
- (2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 63.520 through 63.528 (40 CFR 63, Subpart W), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.
 - (b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.
 - (c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.
 - (d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.
 - (e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S.

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EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.520 through 63.528 (40 CFR 63, Subpart W) shall comply with the provisions of 401 KAR 63:520 as part of the existing regulatory program.

Date: July 14, 1995
Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

(1) **401 KAR 63:701**, National emission standards for magnetic tape manufacturing operations. The subject matter of this regulation is the federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for magnetic tape manufacturing operations which are located at major sources of hazardous air pollutant emissions and those operations which elect to seek a federally enforceable limitation of their emissions. Adoption of the proposed administrative regulation is required in order for the Commonwealth to have the delegated authority to enforce the federal NESHAP regulation upon approval of its Title V permitting program by the United States Environmental Protection Agency (U.S. EPA).

(2) The Division for Air Quality intends to promulgate an administrative regulation that incorporates by reference the federal NESHAP regulation, 40 CFR 63.701 through 63.708 (40 CFR 63, Subpart EE), 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 August 31, 1995, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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 August 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: Division for Air Quality, Attention John E. Hornback, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the NESHAP regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. The new administrative regulation will incorporate by reference those national emission standards in the corresponding federal rule.

(c) The necessity and function of the proposed administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal NESHAP regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The proposed administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NESHAP regulation.

(d) The benefit expected from the administrative regulation is that sources subject to the federal NESHAP regulation will be able to work with the state rather than the federal government to obtain necessary permits.

(e) The administrative regulation will be implemented as follows: upon approval of Kentucky's Title V permitting program by the U.S. EPA, and on and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.701 through 63.708 (40 CFR 63, Subpart EE) shall comply with the provisions of 401 KAR 63:701 as part of the existing regulatory program.

JUSTICE CABINET Department of Corrections

Date: July 14, 1995
Justice Cabinet
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: Transportation of inmates to funerals or bedside visits, transportation of inmates, special management inmates, involuntary psychotropic medication policy, inmate grievance procedure, offenses and penalties, meritorious good time, restoration of forfeited good time, assessment center operations, inmate conflicts, preparole progress reports, referral procedure for inmates adjudicated guilty but mentally ill, protective custody, inmate furloughs.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 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 August 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

1. Transportation of inmates to funerals or bedside visits (9.4) shall be amended to clarify the circumstances under which an inmate may be transported for visits due to illness or death of family members.
2. Transportation of inmates (9.9) shall be amended to streamline the procedures for transporting inmates.
3. Special management inmates (10.2) shall be amended to reflect the procedure for placing inmates in temporary holding cells.
4. Involuntary psychotropic medication policy (13.7) shall be added to provide procedures to forcibly treat an inmate with antipsychotic medication when the inmate is in danger to himself or others and when it is in his medical interest.
5. Inmate grievance procedure (14.6) shall be amended to reflect that the court may now hold in abeyance any litigation involving an issue an inmate could have pursued through the grievance system and did not. The revision shall affect the established time limits within which an inmate has to file a grievance.
6. Offenses and penalties (15.2) shall be amended to clarify and to add additional offenses.
7. Meritorious good time (15.3) shall be amended to clarify the procedure for recommendations for awards of meritorious good time.
8. Restoration of forfeited good time (15-05-01) shall be amended to provide that inmates returned to the institution as parole violators shall not be immediately eligible for restoration of forfeited good time.
9. Assessment center operations (17.2) shall be amended to reflect the current practice of reporting operational matters to the warden.
10. Inmate conflicts (18.3) shall be added to reflect the procedure for investigating and documenting conflicts between inmates.
11. Preparole progress reports (18.10) shall be amended to clarify the procedure for sending information to the Parole Board.
12. Referral procedure for inmates adjudicated guilty but mentally ill (18.12) shall be amended to reflect the procedure for referring inmates to the Kentucky Correctional Psychiatric Center for evaluation.
13. Protective custody (18.15) shall be amended to reflect current procedures for classification of inmates to protective custody.
14. Inmate furloughs (25.4) shall be amended to make this policy consistent with other policies.

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

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

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

Date: July 13, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: ~~501 KAR 6:050~~, Luther Luckett Correctional Complex: Rules and regulations of the unit, inmate dress and use of access areas, special management unit, health maintenance: sick call and pill call, pharmacy procedure, use of psychotropic medications, inmate medical screening and health evaluation, health education and special health programs, inmate packages, modification of visitation privileges, inmate canteen, canteen purchase durable items, inmate control of personal funds, on the job training assignments.

(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 August 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 August 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 6:050, as follows:

1. Rules and regulations of the unit (11-09-01) shall be amended to clarify areas of use of the walkman type radios and restrictions

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of hanging articles within the cells.

2. Inmate dress and use of access areas (11-13-01) shall be amended to direct inmate's movement with canteen purchases and to prohibit carrying tobacco products or matches on outside transportation trips.

3. Special management unit (12-01-01) shall be amended to give directives about medical psychological treatment within the unit.

4. Health maintenance services: sick call and pill call (15-01-01) shall be amended to establish sick call schedule within the inmate living units.

5. Pharmacy procedure (15-03-01) shall be amended to the schedule as posted within the institution.

6. Inmate medical screening and health evaluations (15-10-01) shall be amended to establish the return procedure for inmates out of the institution on an overnight or longer absence.

7. Use of psychotropic medications (15-03-05) shall be amended to establish the medical protocol.

8. Health education and special health programs (15-16-01) shall be amended to comply with standard language requirements.

9. Inmate packages (18-01-03) shall be amended to establish package address guidelines.

10. Modification of visitation privileges (18-02-03) shall be amended to include modification of visits in relation to inmate or visitor conduct that is detrimental to the safe, secure, and orderly operation of the institution.

11. Inmate canteen (20-04-02) shall be amended to establish the posting of the inmate canteen schedule.

12. Canteen purchases durable items (20-04-03) shall be amended to establish the purchase process for specific items.

13. Inmate control of personal funds (20-05-01) shall be amended to delete a conflicting statement allowing transfer of money between unrelated inmates.

14. On the job training assignments (22-01-01) shall be established to outline the complete program.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Luther Lockett 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: July 14, 1995

Transportation Cabinet

(1) **600 KAR 4:010**, relating to certification of disadvantaged business enterprises.

(2) The Kentucky Transportation Cabinet is considering promulgating an administrative regulation to amend a portion of the criteria necessary to become eligible as a disadvantaged business enterprise. The proposed amendment would require that if a firm intends to apply for recertification on the basis of "no change" in the preceding year, the application for recertification shall be on the form or in the format specified by the Transportation Cabinet. The second change would be to comply with the recent change in 13 CFR 121.101. Pursuant to the change, Kentucky intends to adopt the small business size of \$16.6 million as the appropriate cap for transportation-related DBE programs. The third item to be considered is the inclusion of additional parts of the federal regulations relating to small businesses. The fourth item to be considered is inclusion of a statement that if an applicant for recertification submits his application in a timely manner, his certification continues beyond the expiration date if the Transportation Cabinet has not responded by that date.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995, at 2:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 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 the certification of disadvantaged, minority, and women business enterprises is KRS 174.080 and 49 CFR Part 23.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate an amendment to an existing administrative regulation relating to the certification of disadvantaged business enterprises.

(c) The necessity and function of the proposed administrative regulation relating to disadvantaged business enterprises is as follows: Title 49 of the Code of Federal Regulations Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women, and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority, and women business enterprises. The administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program. It also sets forth the

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requirement that certified and prequalified DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.

(d) The expected benefits are: Compliance with the federal program and clarification of the existing administrative regulation.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 15, 1995. This request does not have to be in writing.

Date: June 1, 1995

Transportation Cabinet

(1) **601 KAR 1:040** and **601 KAR 1:041**, relating to application for operating authority and registration for motor carriers authorized to operate by the Intrastate Commerce Commission.

(2) The Kentucky Transportation Cabinet intends to consider splitting the existing administrative regulation **601 KAR 1:040** into two administrative regulations. The first, continued to be numbered **601 KAR 1:040**, would relate to those motor carriers which are still economically governed by the Transportation Cabinet. The second, **601 KAR 1:041** would only relate to those motor carriers which are no longer economically governed by the Transportation Cabinet.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995 at 8 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 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 application for operating authority and registration of motor carriers authorized to operate by the Interstate Commerce Commission is KRS 281.600, 281.620, 281.752, 49 CFR Part 1023, and 49 USC 11501.

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

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation describes the procedure to follow in applying for intrastate operating authority in the Commonwealth and the registration of intrastate motor carriers operating in Kentucky pursuant to authority granted by the Interstate Commerce Commission. **601 KAR 1:040** relates only to motor carriers which are economically regulated by the Commonwealth while **601 KAR 1:041** will relate to the intrastate transporters of property which is no longer economically regulated by the Commonwealth of Kentucky.

(d) The benefits expected are: A greater ease and understanding of the regulatory process since the passage of 49 USC 11501.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 15, 1995. This request does not have to be in writing.

Date: August 1, 1995

Transportation Cabinet

(1) **603 KAR 3:080**, relating to outdoor advertising devices and **603 KAR 5:150** relating to encroachment permits.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation relating to outdoor advertising devices and another relating to highway encroachment permits. At the public comment hearing, the Transportation Cabinet specifically requests comments on whether encroachment permits should/should not be issued to trim/cut down trees on state right-of-way which hide/obscure a legal billboard.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995 at 11 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

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

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

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(a) The statutory authority for the promulgation of an administrative regulation relating to outdoor advertising devices is KRS 177.860, 23 USC 131, and 23 CFR Part 750. The statutory authority for the promulgation of administrative regulation relating to scenic byways is KRS 176.050, 189.337, and Section 1047 of PL 102-240, 105 stat. 1914.

(b) The Transportation Cabinet intends to amend existing administrative regulations relating to outdoor advertising devices and encroachment permits.

(c) The necessity and function of the proposed administrative regulation relating to outdoor advertising devices is as follows: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway, and federal-aid primary highways. This administrative regulation is the means used by the Department of Highways to establish these standards. In addition, KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation states forth standards for determining when the Department of Highways shall pay just compensation. 49 USC 131 prohibits the erection of new outdoor advertising devices along the highway which has been designated as a scenic byway and is controlled by this administrative regulation. Therefore, this administrative regulation also spells out those highways along which no new billboards may be erected. The necessity and function of 603 KAR 5:150 is KRS 176.050 requires the Department of Highways to prescribe administrative regulations for the care and maintenance of roads after they have been constructed. KRS 177.047 requires that any person who intends to lay conduit, pipes, poles, or wires over or under a city street that is part of the state-maintained system of highways do so in accordance with the administrative regulations of the Department of Highways. KRS 177.106 requires any person to obtain a permit for any encroachment to the right-of-way of any state highway. This administrative regulation provides the policies and procedures in the maintenance of highways to allow encroachments onto a highway or right-of-way.

(d) The benefits expected are: An informed decision making that includes all aspects of the public.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 15, 1995. This request does not have to be in writing.

Date: July 14, 1995

Transportation Cabinet

(1) **603 KAR 5:066**, relating to truck weights.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation to establish reasonable weight limits for axle, tire, and gross weight limits for trucks using the state-maintained highway system.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995 at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 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: 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 maximum weight limits for each classification of roads is KRS 189.222 and 49 CFR Part 658.

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

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable weight limits for trucks using the state-maintained highway system. This administrative regulation prescribes the maximum weight limits for each classification of roads in accordance with state and federal laws. The primary item under consideration in this administrative regulation amendment is whether additional axle configurations need to be considered for each classification of highways.

(d) The benefits expected is that the technology and truck design has changed considerably in recent years and the axle combinations currently described in this administrative regulation, while still the most prevalent, are not the only axle combinations being used on the state-maintained system of highways. In order for the public to know what can be legally operated on each highway classification without damaging the highway, this administrative regulation must be amended. Highway safety will have to be taken into consideration in this amendment by considering turning radii as well as braking capacity.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 15, 1995. This request does not have to be in writing.

Date: August 1, 1995

Transportation Cabinet

(1) **603 KAR 5:071**, relating to bus dimension limits.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to 603 KAR 5:071 reference to the updated 603 KAR 5:070 which lists the roads eligible for use by vehicles with increased dimensions (e.g. 102" wide rather than 96").

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995 at 8 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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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 August 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: Sandra G. Pullen, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulations.

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

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

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the state primary road system. The state primary road system consists of those roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that there be reasonable access of at least one mile from the highways over which motor vehicles with increased dimensions are allowed to operate. This administrative regulation is adopted to set the maximum bus dimensions for all classes of highways.

(d) The benefits expected are: Coordination with revised 603 KAR 5:070.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 15, 1995. This request does not have to be in writing.

Date: July 14, 1995

Transportation Cabinet

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995 at 3 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 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 safety criteria for the erection of mailboxes and newspaper delivery boxes is KRS 176.050.

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

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

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

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 15, 1995. This request does not have to be in writing.

Date: July 14, 1995

Transportation Cabinet

(1) 603 KAR 5:230, relating to the extended weight coal and coal by-products haul road system.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the road segments to be included on the Extended Weight Coal and Coal By-products Haul Road System, the weight limits of the bridges on the system, the removal of road segments such as Kentucky 211 in Lee and Owsley Counties from the system for safety reasons and the annual update of the eligible

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road segments.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995 at 10 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to August 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 administrative regulations relating to the extended weight coal and coal by-products haul system is KRS 177.977, 177.9771 and 189.230.

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

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the "Extended Weight Coal or Coal By-products Haul Road System". KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the weight limits prescribed in KRS 177.9771 on a bridge which may be damaged or destroyed to the point of catastrophic failure if gross vehicle weights exceeds certain limits. This administrative regulation identifies the Extended Weight Coal or Coal By-product Haul Road System and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the Extended Weight Coal or Coal By-Products Haul Road System and establishes procedures to be followed by local governing bodies requesting this consideration. This proposed amendment to the administrative regulation specifically addresses the resolutions received by the Transportation Cabinet during the preceding year, the continuation of the resolutions received prior to the preceding year, the amount of coal transported over public roads in Kentucky during calendar year 1994 the cooperative highway maintenance/rehabilitation agreements entered into with the Transportation Cabinet, and those highways so severely damaged that it is unsafe to continue the transportation of coal at extended weights. As a result of this proposed change, there will be many roads added to and deleted from the Extended Weight Coal Haul Road System.

(d) The benefits expected from this proposed amended administrative regulation are the annual update of the Extended Weight Coal Haul Road System as required by KRS 177.9771 and improved highway safety where the cabinet is responding to local resolutions.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 15, 1995. This request does not have to be in writing.

LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health

Date: June 30, 1995

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, Bay 3 Conference Room, 1047 U.S. 127 South, Suite 4, 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 at least 20 days prior to August 30, 1995, the public hearing may be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:320, as follows: The corrections to 29 CFR 1910.1200, "Hazard Communication," as published in the Federal Register, Volume 59, Number 245, December 22, 1994, will be incorporated by reference, and the extension of start-up dates for portions of 29 CFR 1910.1001, "Asbestos," as published in the Federal Register, Volume 60, Number 34, February 21, 1995, are to be incorporated by reference. The proposed changes will also restore some referenced rules on asbestos published in the federal register which had previously been mistakenly removed.

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

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

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

Date: June 30, 1995

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, Bay 3 Conference Room, 1047 U.S. 127 South, Suite 4, 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 at least 20 days prior to be August 30, 1995, the public hearing may be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:403, as follows: The corrections to 29 CFR 1926.59, "Hazard Communication," as published in the Federal Register, Volume 59, Number 245, December 22, 1994, will be incorporated by reference. The proposed changes will also restore some referenced rules on asbestos published in the Federal Register which had previously been mistakenly removed.

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

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

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

Date: June 30, 1995

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, Bay 3, Conference Room, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

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

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

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

Date: June 30, 1995

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995, at 2 p.m. (ET), at the Kentucky Labor Cabinet, Bay 3 Conference Room, 1047 U.S. 127 South, Suite 4, 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 at least 20 days prior to be August 30, 1995, the public hearing may be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

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

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

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

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Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

Date: July 14, 1995

Kentucky Department of Workers' Claims

(1) The subject matter of the proposed administrative regulation, **803 KAR 25:130**, is procedures concerning employee's written notice of rejection of the Workers' Compensation Act.

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

(3) A public hearing has been scheduled for August 30, 1995, at 10 a.m. at the Farnham Dudgeon Civic Center, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Attn: Andrew F. Manno, Staff Attorney.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to procedures concerning employee's written notice of rejection of the Workers' Compensation Act is KRS 342.260, 342.395, 342.400 and 342.650.

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

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation will relate to clarification of the procedures concerning the filing of employee's written notices of rejection with the employer and with the Department of Workers' Claims. In addition, the administrative regulation will address issues concerning withdrawal of the employee's written notice of rejection and the voluntariness of the notices.

(d) The benefits expected from administrative regulation are: Guidance to employers, employees, and the insurance industry concerning the filing of employee's written notices of rejection and the effect of filing such notices.

(e) The administrative regulation will be implemented as follows: The purpose of the public hearing is to solicit comments and suggestions concerning the content of the proposed administrative regulation. It is anticipated that the proposed administrative regulation will contain the procedure for filing employee's written notices of rejection with the employer and with the Department of Workers' Claims and statements concerning the effect of such notices. It is also anticipated that the regulation will incorporate by reference Department of Workers' Claims Form No. 4, employee's notice of rejection of Workers' Compensation Act. The commissioner will then consider these suggestions and comments in determining the content of the administrative regulation.

KENTUCKY RACING COMMISSION

Date: July 5, 1995

Kentucky Racing Commission

(1) Regulation Number and Title: **810 KAR 1:015**, Claiming races.

(2) The Kentucky Racing Commission intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 30, 1995, at 9 a.m. at the Commission offices at 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Michael Fulkerson, c/o Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation is KRS 230.360.

(b) The administrative regulation that the commission intends to promulgate will amend 810 KAR 1:015, as follows: Section 1(5) - A claimed horse shall not run for thirty (30) days after being claimed in a race in which the determining eligibility price is less than ~~twenty-five (25) percent more than~~ the price for which the horse was claimed. The day claimed shall not count but the following calendar day shall be the first day, and the horse shall be entitled to enter whenever necessary so that it may start on the 31st calendar day following the claim. This subsection shall not apply to starter handicaps, in which the weight to be carried is assigned by the handicapper.

(c) The necessity and function of the proposed administrative regulation is: Permits owners of claimed horses to run in future races for no more than the same amount they initially claimed a horse.

(d) The benefits expected from the amendment to the administrative regulation are: Permits claimed horses to be more competitive and eases financial burden of horse owners by not requiring a twenty-five (25) percent raise of the claimed price which allows the horse to run in more competitive fields.

(e) The administrative regulation will be implemented as follows: Change will be applied as soon as the amendment is approved by all necessary legislative committees.

CABINET FOR HUMAN RESOURCES Department for Health Services Division of State and Local Health Administration Local Health Personnel Merit System Branch

Date: July 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of State and Local Health Administration

Local Health Personnel Merit System Branch

(1) **902 KAR 8:060**, Classification and compensation plans for local health departments of Kentucky.

(2) The Cabinet for Human Resources, Department for Health Services, Division of State and Local Health Administration 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 August 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 August 31, 1995, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the classification and compensation plans for local health departments is provided by KRS Chapter 211.1755(3). This statutory authority, established during the 1994 General Assembly, allows the Cabinet for Human Resources to promulgate administrative regulations that govern a personnel program for local health departments.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 060, Sections 1, 2 and 3. The amendments are primarily editorial by incorporating the statutory references as appropriate and other revisions to assist in interpretation. The amendments further provides that the annual increment will not change as a result of a promotion, and provides for a local health department to grant an across the board salary adjustment for all employees not to exceed the established annual increment rate.

(c) The necessity and function of the proposed administrative regulation is as follows: The amendments primarily are editorial to clarify language and provide for better interpretation. The amendments also provide a new type of salary adjustment that would apply to all employees but must be applied equitably.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be able to administer a uniform and

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consistent compensation and classification plan for all health departments under the merit system.

(e) The administrative regulation will be implemented as follows: The Department for Health Services has the primary responsibility for the development of both the classification and compensation plans that apply to the local health departments. The development of the respective plans is accomplished through the involvement of the local health departments and the Local Health Employment Personnel Council. Salary surveys, experience in recruitment, financial resource availability, job analysis and evaluation are tools used to maintain a current and applicable classification and compensation. The respective plans are then used to review and take appropriate action on requests for salary adjustments or changes in positions from local health departments.

Date: July 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of State and Local Health Administration

Local Health Personnel Merit System Branch

(1) **902 KAR 8:070**, Recruitment, examination, and certification of eligibles for local health departments of Kentucky.

(2) The Cabinet for Human Resources, Department for Health Services, Division of State and Local Health Administration, 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 August 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 August 31, 1995, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the recruitment, examination, and certification of qualified applicants is provided by KRS Chapter 211.1755 which establishes a merit system for local health department employees and allows the Cabinet for Human Resources to establish policies and procedures for the merit system.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 8:070. The proposed amendments are as follows:

1. Incorporates the statutory authority as approved by the 1994 General Assembly.
2. Deletes reference to specific classifications that are 100% qualifying and not required to take an examination.
3. Provides for a more comprehensive recruitment process that is developed by the Department for Health Services, the Local Health

Department Employment Personnel Council, and the local health departments. As part of the recruitment efforts appropriate testing procedures will be expanded to include structured interviewing as a tool to measure applicant knowledge, skills, and abilities to perform job requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: The Cabinet for Human Resources, under the provisions of KRS 211.1755 and through this proposed amendment have established uniform standards for recruitment of local health department employees to provide the various public health services across the state. These standards also meet the requirements of KRS 212.170, and KRS 212.870 that requires the appointment of employees according to standards established by the Cabinet for Human Resources.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will ensure that recruitment efforts by local health departments are consistent and provide the most opportunity for qualified applicants to apply.

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

Date: July 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of State and Local Health Administration

Local Health Personnel Merit System Branch

(1) **902 KAR 8:110**, Disciplinary appeal process applicable for local health departments.

(2) The Cabinet for Human Resources, Department for Health Services, Division of State and Local Health Administration 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 August 31, 1995, at 9 a.m. in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort,

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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 August 31, 1995, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to disciplinary appeal process.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend 902 KAR 8:110, Section 2(6) which will remove the Commissioner of Health from the appeal process. The Local Health Department Employment Personnel Council will then become the body that decides a final action for appeal. Other amendments incorporate the statutory authority provided by the General Assembly during the last session.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS Chapter 211.1755 requires the Cabinet to establish policies and procedures governing a personnel program for local health departments. This administrative regulation provides for an appeal process for employees who would like to have a particular disciplinary action reconsidered.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will ensure that there is an appeal process to determine that disciplinary actions taken against an employee are for cause.

(e) The administrative regulation will be implemented as follows: The administrative regulation establishes a procedure to be followed for an employee to submit an appeal to the Local Health Department Employment Personnel Council. The cabinet implements the appeal process by working with the Administrative Hearings Branch in the Office of Personnel and Budget to assign a hearing officer and scheduling a date, time, and place for the hearing to be conducted. In addition the cabinet provides for a court reporter to transcribe the hearing and submits all recommendations to the appropriate bodies for consideration.

Date: July 15, 1995

Cabinet for Human Resources

Department for Health Services

Division Of State and Local Health Administration

Local Health Personnel Merit System Branch

(1) **902 KAR 8:120**, Leave provisions applicable to employees of local health departments.

(2) The Cabinet for Human Resources, Department for Health Services, Division of State and Local Health Administration 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 August 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 August 31, 1995, the public hearing will be canceled.

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

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

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

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

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

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

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(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to leave provisions for local health departments is provided by KRS Chapter 211.1755 which was passed during the 1994 legislative session. The statutory authority provides for the cabinet to establish leave policies and procedures for a personnel program for local health departments.

(b) The administrative regulation that the Department for Health Services intends to promulgate will amend various section 902 KAR 8:120. The proposed amendments will provide for:

1. The appointing authority to establish the working hours of the agency to meet the needs of the agency.
2. Clarify the years of total service is calculated when an employee has a mixture of full time, part time, and part time 100 hour employment.
3. Eliminate the earning of compensatory time by employees determined to be nonexempt under the Fair Labor Standards Act and Kentucky Hour and Wage Law.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS chapter 211.1755 requires the cabinet to promulgate administrative regulations that govern a personnel program for local health departments. Leave policies are a major component of a personnel program and the function of this administrative regulation is to ensure consistency among all health departments.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be to establish consistent policies for all local health departments.

(e) The administrative regulation will be implemented as follows: The administrative regulation establishes the standards for the various leave provisions. Implementation will be through the respective payroll systems in the determination and accumulation of specific leave benefits.

Date: July 15, 1995

Cabinet for Human Resources

Department for Health Services

Division of State and Local Health Administration

Local Health Personnel Merit System Branch

(1) 902 KAR 8:150, Special projects in personnel management applicable to local health departments of Kentucky.

(2) The Cabinet for Human Resources, Department for Health Services, Division of State and Local Health Administration 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 August 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 August 31, 1995, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the classification and compensation plans for local health departments is provided by KRS Chapter 211.1755. This statutory authority, established during the 1994 General Assembly, allows the Cabinet for Human Resources to promulgate administrative regulations that govern a personnel program for local health departments.

(b) The administrative regulation that the Department for Health Services intends to promulgate is intended to provide an opportunity for local health department to initiate and implement special projects in personnel management to improve the personnel program for local health departments. The special projects would be submitted to the Department for Health Services and subsequently reviewed by the Local Health Department Employment Personnel Council prior to approval and implementation.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed administrative regulation would provide innovation and experimentation in improving the personnel program for local health departments. The forty-eight (48) health departments under the personnel program are diverse and constantly changing given the demands of the health care system. In order to recruit and maintain qualities the personnel program needs to appropriately respond to the changes occurring in the local health departments.

(d) The benefits expected from this proposed administrative regulation are that the cabinet will be able to provide an opportunity to improve the personnel program through the work of local health departments where implementation activities can take place at the local level where positive and negative aspects of any personnel program change can be addressed in a systematic fashion prior to regulatory implementation.

(e) The administrative regulation will be implemented as follows: The Department for Health Services will establish general guidelines for the special projects including the purpose(s), employee involvement, Board of Health commitment, reporting requirements, and the review

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process. The review process will include the Local Health Department Employment Personnel Council. The final decision on the special projects will be the Department for Health Services.

Department for Social Insurance Division of Management and Development

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

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 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 August 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

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

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

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

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

(1) **904 KAR 3:010**, Definitions.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 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 August 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."

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions in the Food Stamp Program is KRS 194.050, 7 CFR 271.2, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, PL 102-237, and 7 USC 2012(g).

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 3:010. It will add definitions for acronyms used in the Food Stamp Program and clarify the definition for "eligible foods".

(c) The necessity and function of the proposed administrative regulation is as follows: Adding definitions for acronyms will permit the agency to use acronyms throughout the food stamp regulations that have been defined. The clarification to the definition for "eligible foods" will allow for the homeless to use food stamps to purchase prepared meals from restaurants that are certified.

(d) The benefits expected from administrative regulation are: The ability to use acronyms that have been defined so that regulated entities are aware of the meaning of the acronym.

Department for Medicaid Services

Date: June 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 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 August 31, 1995, the public hearing will be cancelled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Medicaid physicians' services are KRS 194.050 and 42 CFR 440.50

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:009. This administrative regulation is being amended to revise the incorporated by reference Physician Manual to correspond with the companion administrative regulation 907 KAR 1:010, Payments for physicians' services, which contains reimbursement changes which are effective July 1, 1995.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provision relating to physicians' services for which payment shall be paid by the Medicaid Program.

(d) The benefits expected from administrative regulation are: To protect the public health by ensuring medically necessary medical services are available on a timely basis to the Medicaid eligible population.

Date: June 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:010**, Payments for physicians' services.

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

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

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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 August 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 payments for physicians' services are KRS 194.050, 42 CFR 440.50, 447 Subpart B, 42 USC 1396a-d, s.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:010. For services provided on or after July 1, 1995, the department is proposing the following amendments:

1. To reimburse physicians for delivery-related anesthesia services at the lesser of the actual billed charge or a standard fixed fee paid by the type of procedure; and

2. To reimburse physicians for the injection procedure for chemonucleolysis of intervertebral disk(s) - lumbar at the lesser of the actual billed charge or a fixed upper limit for that procedure established by the cabinet.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for establishing payments for physician services.

(d) The benefits expected from administrative regulation are: To protect the public health by ensuring medically necessary medical services are available on a timely basis to the Medicaid eligible population.

Date: July 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:014**, Hospital outpatient services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 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 August 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 outpatient hospital services are KRS 194.050, 205.520; 42 USC 1396a, b, d and 42 CFR 440.20.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:014 to incorporate by reference the Review and Approval of Hospital Emergency Room Services Manual to correspond with the companion

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administrative regulation 907 KAR 1:015E, Payments of hospital outpatient services.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to outpatient hospital services for which payment shall be made by the Medicaid Program.

(d) The benefits expected from administrative regulation are: To reduce unnecessary hospital emergency room utilization and costs.

Date: July 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:015**, Payments for hospital outpatient services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 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 August 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 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for hospital outpatient services are KRS 194.050, 205.520; 42 USC 1396a, b, d; 42 CFR Subpart 447.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:015 to establish a payment limitation for nonemergency services for individuals age 6 or older provided in the emergency room at \$22.97 plus the usual payment amount for ancillary services which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists, effective for services provided on or after July 1, 1995.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the payment methodology for hospital outpatient services component of the Medicaid Program.

(d) The benefits expected from administrative regulation are: To reduce unnecessary hospital emergency room utilization and costs.

Date: July 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:060**, Medical transportation.

(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 August 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 August 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

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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 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Medicaid covered medical transportation are 42 USC 1396(d) and 42 CFR 440.170.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:060, to require preauthorization for nonemergency ambulance services; to add definitions for medical service area, medical necessity, and household; and to clarify that Medicaid recipients shall use the most appropriate and least expensive type of medical transportation within the medical service area.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to the service of transportation for access to medical services for which payment shall be made by the Medicaid Program.

(d) The benefits expected from administrative regulation are: The agency plans to implement these changes as a program improvement in an effort to reduce the occurrence of inappropriate and unnecessary utilization of medical transportation services and to promote the use of the most appropriate and least expensive type of transportation for nonemergency medically necessary transportation of Medicaid recipients.

Date: July 15, 1995

Cabinet for Human Resources

Department for Medicaid Services

(1) **907 KAR 1:061**, Payments for medical transportation.

(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 August 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 August 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 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Medicaid Program's medical transportation are 42 USC 1396(d); 42 CFR 440.170 and 447.200 through 447.205.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:061, to require preauthorization for nonemergency ambulance services; to redefine the types of ambulance services and change their reimbursement rates; to increase the private auto medical transportation rate; to amend the meals and lodging for Medicaid recipients and attendants to a flat rate to correspond with a policy clarification on Title XIX State Plan transmittal 91-21; and clarify that Medicaid recipients shall use the most appropriate and least expensive type of medical transportation within the medical service area.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining amounts payable for medical transportation services by the Medicaid Program.

(d) The benefits expected from administrative regulation are: The agency plans to implement these changes as a program improvement in an effort to reduce the occurrence of inappropriate and unnecessary utilization of medical transportation services and to promote the use of the most appropriate and least expensive type of transportation for nonemergency medically necessary transportation of Medicaid recipients.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
9 KAR 1:021E

This administrative regulation repeals 9 KAR 1:020. This administrative regulation is necessary because the Executive Branch Ethics Commission is currently in the process of promulgating administrative regulations pertaining to investigations and adjudicatory procedures, including complaint procedures. These administrative regulations are numbered 9 KAR 1:015, 9 KAR 1:030, and 9 KAR 1:035. As part of this process, LRC staff recommended several format changes which the commission accepted. One of the changes repeals 9 KAR 1:020 and establishes a similar complaint procedure in one of the commission's new administrative regulations, 9 KAR 1:015 (Preadjudicatory proceedings). 9 KAR 1:020 (Complaints) must be repealed, on an emergency basis, to avoid the conflict which will exist when 9 KAR 1:015 becomes effective. Otherwise, there will be two administrative regulations pertaining to complaints in contravention of KRS Chapter 13A. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
LIVINGSTON TAYLOR, Chairman

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission

9 KAR 1:021E. Repeal of 9 KAR 1:020, Complaints.

RELATES TO: KRS 11A.080(1)
STATUTORY AUTHORITY: KRS 11A.110(3), (4)
EFFECTIVE: July 11, 1995

NECESSITY AND FUNCTION: This administrative regulation repeals 9 KAR 1:020. This administrative regulation is necessary because the Executive Branch Ethics Commission is currently in the process of promulgating administrative regulations pertaining to investigations and adjudicatory procedures, including complaint procedures. These administrative regulations are numbered 9 KAR 1:015, 9 KAR 1:030, and 9 KAR 1:035. As part of this process, LRC staff recommended several format changes which the commission accepted. One (1) of the changes repeals 9 KAR 1:020 and establishes a similar complaint procedure in one (1) of the commission's new administrative regulations, 9 KAR 1:015 (Preadjudicatory proceedings). 9 KAR 1:020 (Complaints) must be repealed, on an emergency basis, to avoid the conflict which will exist when 9 KAR 1:015 becomes effective. Otherwise, there will be two (2) administrative regulations pertaining to complaints in contravention of KRS Chapter 13A.

Section 1. 9 KAR 1:020, Complaints, is hereby repealed.

LIVINGSTON TAYLOR, Chairman
APPROVED BY AGENCY: April 27, 1995
FILED WITH LRC: July 11, 1995 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Lori H. Flanery

(1) Type and number of entities affected: All persons or entities against whom a complaint is filed. The commission has not received any such complaints to date.

- (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: Not applicable.
 - (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: Not applicable.
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 - 1. First year following implementation: Not applicable.
 - 2. Second and subsequent years: Not applicable.
- (3) Effects on the promulgating administrative body:
 - (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: Not applicable.
- (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 budgetary allocation.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented:
 - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is to have two administrative regulations pertaining to the same subject matter (complaints) in existence at the same time. This alternative was rejected as confusing and contrary to KRS Chapter 13A.
- (8) Assessment of expected benefits: Reduce confusion regarding applicable administrative regulation.
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: Not applicable.
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This administrative regulation is necessary to avoid duplication in the following two administrative regulations: 9 KAR 1:015 and 1:020.
 - (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: Not applicable.
- (11) TIERING: Is tiering applied? Tiering is inappropriate since this administrative regulation repeals another administrative regulation.

STATEMENT OF EMERGENCY
11 KAR 8:030E

Congress has not yet provided for any funding of the Paul Douglas Teacher Scholarship Program for the 1995-96 academic year beginning July 1, 1995, and there is no present indication whether the program will be funded. If the program is not funded, the effect will be that a number of students who have begun their college education to become certified teachers with scholarship assistance through this program may be unable to complete their program of study due to elimination of this financial assistance. This emergency administrative regulation would enable 1994-95 academic year Paul Douglas Teacher Scholarship recipients to apply for and, if eligible, to be offered a KHEAA Teacher Scholarship with the same priority in the selection process as a renewal applicant. Promulgation of this administrative regulation as an emergency administrative regulation is necessary to permit the awarding of scholarships in a timely manner so that Kentucky students and their families can adequately plan for attendance at Kentucky educational institutions in the fall semester of 1995. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
MARY JO YOUNG, Chairman

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY

11 KAR 8:030E. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3), 1994 Ky. Acts ch. 163

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 1994 Ky. Acts ch. 163

EFFECTIVE: July 12, 1995

NECESSITY AND FUNCTION: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) prescribes certain standards for scholarship programs. The General Assembly has expressed a desire, in 1994 Ky. Acts ch. 163 Section 1(6)(c) and in previous budget memoranda prepared under KRS 48.300(2) to accompany previous biennial budgets, that prior recipients of loans pursuant to KRS 156.611, 156.613, 164.768 and 164.770 should be eligible for benefits under this program. This administrative regulation delineates eligibility criteria and repayment obligations related to scholarships provided under the program. This amendment is necessary to enable 1994-95 academic year Paul Douglas Teacher Scholarship recipients to apply for and, if eligible, to be offered a KHEAA Teacher Scholarship with priority in the selection process as a renewal applicant. ~~reflect changes in the program made by 1994 Ky. Acts ch. 163.]~~

Section 1. Definitions. As used in this administrative regulation, the terms listed below shall have the following meanings:

(1) The definition of "critical shortage area" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(a).

(2) The definition of "eligible program of study" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(b).

(3) "Minority" means American Indian, Alaskan native, African-American, Hispanic (including persons of Mexican, Puerto Rican, Cuban, and South or Central American descent), Pacific Islander, or other ethnic group that constitutes eight (8) percent or less of the population of the Commonwealth.

(4) The definition of "participating institution" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(c).

(5) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, and secondary instruction.

(6) The definition of "qualified teaching service" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(d).

(7) The definition of "semester" is governed by 1994 Ky. Acts ch. 163 Sec. 1(2)(e).

(8) "Teaching" means performing classroom instruction in a position for which teacher certification is a prerequisite to perform such instruction.

Section 2. Selection Process. (1) Ineligibility of any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 may be waived by the executive director of the authority.

(2) Applicants shall be considered and teacher scholarships shall be awarded to recipients who agree to render qualified teaching service in the following descending order until funds are depleted:

(a) Qualified renewal applicants and, to the extent that federal funds are not appropriated for the Paul Douglas Teacher Scholarship Program for the 1995-96 academic year, 1994-95 Paul Douglas Teacher Scholarship recipients who have not completed their eligible program of study, who have made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution. If funds are insufficient to award full scholarships to all renewal applicants each scholarship shall be reduced by a percent necessary to prevent overexpenditure of funds;

(b) Certified teachers seeking recertification in a critical shortage area, ranked in descending order by cumulative postsecondary grade point average;

(c) Initial applicants (including currently enrolled postsecondary students and high school seniors ranked by weighted selection scores that include rank in high school class (thirty (30) percent), high school grade point average (forty (40) percent), and American College Test (ACT) Composite Standard Score (thirty (30) percent).

(3) Following the selection pursuant to subsection (2)(a) of this section, awards shall be made, pursuant to subsection (2)(b) and (c) of this section, to minority applicants, identified based upon information provided by the applicant on the application, in at least the same ratio to all awards made pursuant to subsection (2)(b) and (c) of this section as the ratio of initial applications by minority applicants bears to all initial applications.

Section 3. Award Maximums. The maximum teacher scholarship award shall be \$1,250 for a summer session, \$2,500 for a semester, and \$5,000 for an academic year (exclusive of a summer session).

Section 4. Disbursements. Disbursement of teacher scholarships shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

Section 5. Cancellation. (1) If a recipient renders qualified teaching service in a designated critical shortage area, then, as long as the recipient continues to render qualified teaching service in that area, the recipient shall continue to benefit from the designation, notwithstanding a subsequent change in the critical shortage area designation. A recipient of a teacher scholarship pursuant to Section 2(2)(b) of this administrative regulation, who obtained recertification to teach in an area designated as a critical shortage area at the time of the teacher scholarship award to that recipient, shall receive cancellation of the repayment obligation only if the recipient renders qualified teaching service in that designated area or in another area designated as a critical shortage area at the time the qualified teaching service is rendered.

(2) In the event that a recipient has received loans or scholarships from more than one (1) program administered by the authority,

FILED WITH LRC: July 12, 1995 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: The Paul Douglas Teacher Scholarship Program for the 1995-1996 academic year beginning July 1, 1995, has not been funded by Congress. In Kentucky, this could amount to approximately \$200,000 in lost funding, which would be sufficient to fund scholarships for up to 40 students. This emergency administrative regulation would enable 1994-95 academic year Paul Douglas Teacher Scholarship recipients to apply for and, if eligible, to be offered a KHEAA Teacher Scholarship with the same priority in the selection process as a renewal applicant. If \$200,000 is transferred from the Special Trust Fund pertaining to funds previously collected from KHEAA Teacher Scholarship recipients, no potential KHEAA Teacher Scholarship applicant will be denied opportunity to receive aid. Otherwise, 45-50 such applicants could be denied access to funds appropriated to Paul Douglas Teacher Scholarship Program renewals.

(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 comments were received. There is no anticipated cost or savings relevant to this category.

(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 were received. There is no anticipated cost or savings relevant to this category.

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

1. First year following implementation : Although application and award forms will be different for the prior Paul Douglas Teacher Scholarship recipients, no additional reporting or paperwork will be required. There are no additional compliance, reporting and paperwork requirements imposed by this amendment to the administrative regulation.

2. Second and subsequent years: Same as #1 above.

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: There is no additional cost or savings to the promulgating body. Additional funds will be needed to make awards, but those funds are available in the Special Trust Fund pertaining to funds previously collected from KHEAA Teacher Scholarship recipients. If allotted and transferred from that fund for the purpose of making new awards, no potential KHEAA Teacher Scholarship applicant will be denied opportunity to receive aid.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional paperwork or reporting requirements imposed on the promulgating body by this amendment to the administrative regulation.

(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: Additional funds will be needed to make awards, but those funds are available in the Special Trust Fund pertaining to funds previously collected from KHEAA Teacher Scholarship recipients. If allotted and transferred from that fund for the purpose of making new awards, no potential KHEAA Teacher Scholarship applicant will be denied opportunity to receive aid.

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

which require a period of qualified teaching service for repayment or cancellation, such teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(3) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) If a recipient ceases to be enrolled on a full-time basis in an eligible program of study at a participating institution prior to completion of the program of study or otherwise fails to attain certification after completion of the eligible program of study, he shall immediately become liable to the authority to pay the sum of all teacher scholarships received and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(2) Recipients failing to render qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all outstanding teacher scholarships and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(3) The interest rate applicable to repayment of a teacher scholarship under this section shall be twelve (12) percent per annum.

Section 7. Notifications. Recipients shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of students receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of funds hereunder. Such records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. A participating institution shall refund to the authority, within forty (40) days of a recipient's last date of attendance, any amount attributable to this program which is determined to be due under the institution's published refund policy.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. Participating institutions shall provide assurances that program information will be disseminated to students enrolled at their institutions. Participating institutions shall actively recruit students from minority population groups for participation in this program.

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: June 23, 1995

from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The Paul Douglas Teacher Scholarship Program for the 1995-1996 academic year beginning July 1, 1995, has not been funded by Congress. In Kentucky, this could amount to approximately \$200,000 in lost funding, which would be sufficient to fund scholarships for up to 40 students. Implementation of this amendment to the administrative regulation will assure awards to those students who would otherwise forego funding.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Paul Douglas Teacher Scholarship Program for the 1995-1996 academic year beginning July 1, 1995, has not been funded by Congress. In Kentucky, this could amount to approximately \$200,000 in lost funding, which would be sufficient to fund scholarships for up to 40 students. Allowing those students who previously received Paul Douglas Teacher Scholarships to be considered for awards under the KHEAA Teacher Scholarship program is the most effective means of assuring funding for those individuals to enable them to complete their program of study.

(8) Assessment of expected benefits: Assures continuation funding for approximately 40 students.

(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 environmental or 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: Was tiering applied? No. 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 statute, 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

101 KAR 2:100E

Pursuant to KRS 13A.190, the Governor of the Commonwealth does hereby declare that proposed administrative regulation 101 KAR 2:100 should be enacted on an emergency basis in order to comply with the requirements of Chapter 18A that the Department of Personnel provide regulations governing leave and overtime for state employees. KRS 18A.110 provides that the Department of Personnel shall adopt rules with regard to the administration of benefits for state employees, including leave and overtime. Recent changes to federal regulations governing the administration of the Family and Medical Leave Act and recent court decisions on the application of compensatory leave require immediate changes to this regulation to bring it into compliance with federal mandates. This emergency regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor

LOWELL W. CLARK, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 2:100E. Leave administrative regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, PL 103-3

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, PL 103-3

EFFECTIVE: July 14, 1995

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation is necessary to comply with these statutory requirements.

Section 1. Annual Leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, and each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

A full-time employee must have worked more than half of the workdays in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year, or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the

amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(10) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in paragraph (2) of this section, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency. The effective date of the separation shall be the last workday. An employee who resigns or is laid off from his position with an agency based on an approved plan of privatization of the services he performed may request, in writing, that accumulated annual leave not be paid upon resignation and that all, or any part of his accumulated annual leave, up to the maximum provided for in Section 1 of this administrative regulation be waived rather than paid, contingent upon an agreement with the successor employer to credit him with an equal amount of annual leave.

(11) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual

leave not to exceed the maximum amounts set forth in Section 2(2) of this administrative regulation.

(12) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant or require the use of accrued sick leave with pay when an employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to

three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform the essential functions of his duties with or without reasonable accommodation. When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. The employee shall inform the employer that reasonable accommodation is necessary and shall provide upon request supporting documentation from a certified professional. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority only if the appointing authority has been unable to place the employee in a vacant, budgeted position, with the same agency, for which the employee qualifies. The employee shall be given priority consideration for such vacant position, if he is capable of performing its essential functions with or without reasonable accommodation. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee in within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

(10) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon appointment and placed to their credit.

(12) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave

may be used in order to maintain regular full salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that Workers Compensation Benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Family Leave. (1) [Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked or been on paid leave at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family leave without pay. On the first day of January of each year thereafter] Every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding [calendar] year shall qualify for twelve (12) weeks of family leave [without pay]. Unused family leave shall not be carried over from year to year. This section shall be construed in a manner consistent with the Family and Medical Leave Act of 1993, 29 USC 2601, et seq., and 29 CFR Part 825.

(2)(a) A week of family leave is the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family leave shall be used for calculating the employee's normal work week.

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family leave), the hours worked under the new schedule shall be used for calculating the employee's normal work week.

(3) An employee who has requested leave under the conditions for which family leave is authorized shall be notified of the family leave designation, in writing, within two (2) business days of the date on which the request is made. [An appointing authority shall grant family leave, upon the receipt of a completed application from an employee.] The appointing authority shall require the employee to utilize accumulated sick and [] annual [and compensatory] leave prior to granting unpaid family leave, provided that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family leave shall be reduced by the amount of paid leave used. [A completed application means the request form and the medical certification required by subsection (4) of this section.] The employee shall make the request [application] as far in advance of the start of the leave as reasonable. Family leave shall be granted:

(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child under an agreement with an agency of the Commonwealth or other state government. An appointing authority may require a couple in the

employ of an agency to limit the total amount of family leave to twelve (12) weeks where leave is sought in connection with the birth, adoption or placement of a child;

(b) Within one (1) year of the birth of a child of the employee, adoption by the employee or placement with the employee of a foster child, for the care of such newborn, adopted, or foster child;

(c) To an employee to care for the employee's spouse, parent, child (including biological, adopted, step, or foster), or other family member of similarly close blood or legal relationship (who has resided with the employee for not less than thirty (30) days prior to the request [application]), if the spouse, child, parent or family member has a serious health condition. A child includes one who is over eighteen (18) years of age and who is incapable of self-care because of a mental or physical disability. A serious health condition is a condition which requires inpatient care or continuing treatment by a health provider which renders the employee incapable of performing the duties of the employee's position. ~~[Where inpatient care is not involved, the expected absence from work, or from school, or incapacity in performing other daily activities of a family member shall be for a period of more than three (3) days.]~~

(d) An appointing authority shall grant family leave because of a serious health condition, of the employee, that makes the employee temporarily unable to perform the essential functions of his position.

(4)(a) The appointing authority shall require an employee granted family leave for a serious health condition to supply a certification, on a form prescribed by the commissioner, from a health care provider that includes a statement that the employee is in need of care or needed to care for a family member, or, that the employee's presence would be beneficial to the family member. An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or family member shall be required to supply a certification from a licensed health care provider that such leave is medically necessary and the expected duration and schedule of such leave. A "health care provider" includes: doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, and nurse midwife, or certified Christian Science practitioner.

(b) If an employee submits a complete certification signed by the health care provider, the appointing authority shall not request additional information from the employee's health care provider. If the appointing authority has reason to doubt the validity of a medical certification the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(c) If the opinions of the employee's health provider and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider. An appointing authority may require recertification of the need for family leave every thirty (30) working days.

(d) All documents relating to family leave shall be maintained separate from the personnel file and shall be confidential.

(5) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill family member or for the employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave

than the employee's regular job.

(6) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave or shall have been on family leave during the previous month subject to the following conditions:

(a) Any combination of work days and paid leave and family leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively;

(c) When an employee is unable to work, and elects to use family leave as the sole qualification for the state contributions for life insurance and health benefits, he shall utilize his family leave days consecutively.

(d) An employee who has exhausted paid leave and family leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(e) An employee who uses family leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family leave is exhausted, shall reimburse the Commonwealth for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the Commonwealth if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family leave under this administrative regulation.

2. Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control are where a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of other circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or a parent's decision not to return to work to stay with a newborn child.

(f) An employee, on family leave, shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits and shall be notified by the agency, in writing, fifteen (15) calendar days before benefits expire. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(7) At the conclusion of the family leave, an employee shall be restored to the same job that the employee held before going on leave. The employee shall be returned to the same shift or equivalent schedule. If special qualifications are required for a position and said qualifications have lapsed during the employee's leave, the employee may be reassigned to different duties and given a reasonable opportunity to fulfill the requirements after returning to work.

Section 4. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work. Court leave shall not be required to be reported by an employee for attendance at a hearing or trial when attendance is a part of assigned duties.

Section 5. Compensatory Leave and Overtime. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA). An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 [200] hours.

(2) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years of employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off if the use of such time does not unduly disrupt the operations of the agency.

~~[(5) An appointing authority or his designee may direct an employee to take accumulated compensatory time off from work to maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave. Notice must be in writing specifying the number of hours to be taken and the pay period in which the hours must be used.]~~

(5) ~~[(6)]~~ An employee deemed to be "nonexempt" in relation to the FLSA shall be compensated for all hours worked in excess of forty (40) per week in accordance with the following provisions:

(a) An employee who has not accumulated the maximum amount of compensatory leave has the option to accumulate compensatory leave on an hour and one-half (1 1/2) basis for each hour worked in excess of forty (40) per week in lieu of paid overtime.

(b) The election to receive compensatory leave in lieu of paid overtime must be in writing and such election will remain in force for a minimum of six (6) months. The election can only be changed by submitting a new form. The effective date of any change will be the first day of the next workweek following receipt of the election.

(c) An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) ~~[(7)]~~ An employee deemed to be "exempt" in relation to the FLSA shall accumulate compensatory time on an hour-for-hour basis for all hours worked in excess of his normal work schedule.

(7) ~~[(8)]~~ An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, then an employee's leave balance shall be reduced accordingly.

(8) ~~[(9)]~~ All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate

of pay upon accumulating at the end of the pay period 240 [200] hours [or more] of compensatory leave. The employee's leave balance shall be reduced accordingly.

(9) ~~[(40)]~~ All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(10) ~~[(44)]~~ Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime or time and one-half (1 1/2) compensatory time.

~~[(12) This administrative regulation shall become effective on August 1, 1994.]~~

Section 6. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) federal fiscal year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 7. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 8. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. An employee placed on special leave for investigative purposes may elect to use accumulated leave during the period of the investigation. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the

investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken, including those cases where the employee voluntarily resigns in the interim.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work, and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

Section 9. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave ~~and deduction of pay may be made for each period of such absence~~. Such absence may constitute grounds for disciplinary action. An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

BRERETON C. JONES, Governor
LOWELL W. CLARK, Commissioner

APPROVED BY AGENCY: July 12, 1995
FILED WITH LRC: July 14, 1995 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: All classified employees in the Executive Branch of state government.

(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: Minor variations on current reporting.

1. First year following implementation: No significant change.

2. Second and subsequent years: No significant change.

(3) Effects on the promulgating body:

(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: No significant change.

(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 change from current sources.

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

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

(b) Kentucky: Statewide.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None available since the regulation is amended to conform to federal mandates.

(8) Assessment of expected benefits: Protection from potential liability associated with noncompliance with federal regulations.

(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 once the amendments are implemented.

(a) Necessity of proposed regulation in conflict: None

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

(10) Any additional information or comments: These regulations are necessary to conform to federal regulations and rulings on the Family and Medical Leave act and the Fair Labor Standards Act.

(11) TIERING? Is tiering applied? Yes. This regulation governs the classified service. 101 KAR 3:010 is being amended to provide parallel changes for the unclassified service.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2 CER Par 825).

2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

**STATEMENT OF EMERGENCY
101 KAR 3:010E**

Pursuant to KRS 13A.190, the Governor of the Commonwealth does hereby declare that proposed administrative regulation 101 KAR 3:010 should be enacted on an emergency basis in order to comply with the requirements of Chapter 18A that the Department of Personnel provide regulations governing leave and overtime for state employees. KRS 18A.110 provides that the Department of Personnel shall adopt rules with regard to the administration of benefits for state employees, including leave and overtime. Recent changes to federal regulations governing the administration of the Family and Medical Leave Act and recent court decisions on the application of compensatory leave require immediate changes to this regulation to bring it into compliance with federal mandates. This emergency regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
LOWELL W. CLARK, Commissioner

DEPARTMENT OF PERSONNEL

101 KAR 3:010E. Leave administrative regulations for unclassified service.

RELATES TO: KRS 18A.155, 61.394, PL 103-3
STATUTORY AUTHORITY: KRS 18A.155, 18A.195, PL 103-3
EFFECTIVE: July 14, 1995

NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for the unclassified service persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these administrative regulations shall be approved by the Governor. In practice, the leave administrative regulations (101 KAR 2:100) which apply to merit system employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

Section 1. Annual leave. (1) Each full-time employee in the state

service, except seasonal, temporary, per diem, and emergency employees, or each part-time employee who works at least 100 hours a month shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

A full-time employee must have worked more than half of the workdays in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar year, or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(5) Employees are charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(6) Annual leave shall accrue only when an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on educational leave with pay.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one (1) agency to another shall retain his accumu-

lated annual leave in the receiving agency.

(8) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(10) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 1(2) of this administrative regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated annual leave. An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave in the receiving agency. The effective date of the separation shall be the last workday. An employee who resigns his position with an agency based on an approved plan of privatization of the services he performed may request, in writing, that accumulated annual leave not be paid upon resignation and that all, or any part of his accumulated annual leave, up to the maximum provided for in Section 1 of this administrative regulation be waived rather than paid, contingent upon an agreement with the successor employer to credit him with an equal amount of annual leave.

(11) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in Section 1(2) of this administrative regulation.

(12) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except an emergency, per diem and part-time employees who work less than 100 hours a month, shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working

day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 18A.140, 18A.145, or 18A.990.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) An appointing authority shall grant accrued sick leave with pay when the employee:

(a) Receives medical, dental or optical examination or treatment;

(b) Is disabled by sickness, injury or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his/her duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement supporting the need for care;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority may return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) An appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10)

days prior to the expiration of such sick leave, shall be dismissed by the appointing authority. An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

(10) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated sick leave in the receiving agency.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon appointment and placed to their credit.

(12) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that Workers' Compensation Benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) An appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 3. Family Leave. It shall be the responsibility of the appointing authority to administer family leave in compliance with the Federal Family and Medical Leave Act of 1993 and regulations promulgated thereunder found in 29 CFR Part 825. Each employee in a nonexempt, nonpolicy making position shall be entitled to family leave as set out in 101 KAR 2:100, Section 3.

Section 4. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 5. Compensatory Leave and Overtime. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of this section and the Fair Labor Standards Act (FLSA). An employee who is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave or paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 ~~200~~ hours.

(2) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

(3) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average regular rate of pay for the final three (3) years employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off if the use of such time does not unduly disrupt the operations of the agency.

(5) An appointing authority or his designee may direct an employee to take accumulated compensatory time off from work to maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave. Notice must be in writing specifying the number of hours to be taken and the pay period in which the hours must be used.

(6) An employee deemed to be "nonexempt" in relation to the FLSA shall be compensated for all hours worked in excess of forty (40) per week in accordance with the following provisions:

(a) An employee who has not accumulated the maximum amount of compensatory leave has the option to accumulate compensatory leave on an hour and one-half (1 1/2) basis for each hour worked in excess of forty (40) per week in lieu of paid overtime.

(b) The election to receive compensatory leave in lieu of paid overtime must be in writing and such election will remain in force for a minimum of six (6) months. The election can only be changed by submitting a new form. The effective date of any change will be the first day of the next workweek following receipt of the election.

(c) An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(7) An employee deemed to be "exempt" in relation to the FLSA shall accumulate compensatory time on an hour-for-hour basis for all hours worked in excess of his normal work schedule.

(8) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request

that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, then an employee's leave balance shall be reduced accordingly.

(9)(a) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay, upon accumulating at the end of the pay period 240 [200] hours or more of compensatory leave. The employee's leave balance shall be reduced accordingly.

(b) An employee in a policy making position shall be paid for all accrued compensatory leave, not to exceed 240 [200] hours, only upon termination from the unclassified service. An employee who reverts to a position in the classified service or an employee who resigns one day and is employed the next day shall retain his accrued compensatory leave in the receiving agency.

(10) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(11) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime or time and one-half (1 1/2) compensatory time.

(12) This administrative regulation shall become effective on August 1, 1994.

Section 6. Military Leave. Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) federal fiscal year, and any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 7. Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 8. Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service, or for other purposes that are deemed to be in the best interests of the state service.

(3) An appointing authority, with approval of the commissioner, may grant an employee a leave of absence without pay for a period

not to exceed one (1) year for purposes other than specified in this administrative regulation that are deemed in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. The employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a month, subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves state government on or prior to the 15th day of the month, before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contribution for life insurance and health benefits in the following month.

Section 9. Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/or unreported absence shall be considered absence without leave. An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment. ~~[and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.]~~

BRERETON C. JONES, Governor

LOWELL W. CLARK, Commissioner

APPROVED BY AGENCY: July 12, 1995

FILED WITH LRC: July 14, 1995 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: All classified employees in the Executive Branch of state government.

(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: Minor variations on current reporting.

1. First year following implementation: No significant change.
2. Second and subsequent years: No significant change.
- (3) Effects on the promulgating body:
 - (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: No significant change.
 - (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 change from current sources.

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

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: None available since the regulation is amended to conform to federal mandates.

(8) Assessment of expected benefits: Protection from potential liability associated with noncompliance with federal regulations.

(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 once the amendments are implemented.

(a) Necessity of proposed regulation in conflict: None

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

(10) Any additional information or comments: These regulations are necessary to conform to federal regulations and rulings on the Family and Medical Leave act and the Fair Labor Standards Act.

(11) TIERING? Is tiering applied? Yes. This regulation governs the unclassified service. 101 KAR 2:100 is being amended to provide parallel changes for the classified service.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2 CER Par 825).

2. State compliance standards. The purpose of this amendment is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal

mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognizes fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

STATEMENT OF EMERGENCY

780 KAR 2:140E

This emergency administrative regulation establishes a non-refundable application fee for all students prior to enrollment in a diploma or certificate program. It sets a tuition schedule, late fee assessments, also refund policies. It is necessary to promulgate this administrative regulation as an emergency administrative regulation to provide adequate notice to students enrolling in Kentucky TECH schools of the fee increase so that they can prepare for the expenses due this fall semester, 1995. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor

J. LARRY STINSON, Chairman

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education

780 KAR 2:140E. Tuition and fees.

RELATES TO: KRS 151B.025, 151B.110, 151B.165

STATUTORY AUTHORITY: KRS 151B.165

EFFECTIVE: July 5, 1995

NECESSITY AND FUNCTION: KRS 151B.165 gives the State Board for Adult and Technical Education authority to set tuition and fees for ~~postsecondary and adult~~ students in Kentucky TECH ~~(the state-operated vocational-technical)~~ schools. This administrative

regulation implements that duty.

Section 1. A nonrefundable application fee of twenty (20) dollars for full-time and part-time students shall be paid with the completed applicant submitted prior to enrollment in a diploma or certificate program.

Section 2. [4.] Tuition for [long-term adult-] [postsecondary-] programs shall be paid at the beginning of each [ten (10)-to-eleven (11)-week] term (quarter or semester). [Tuition is due the first day of each term. A ten (10)-dollar late payment fee shall be assessed after the tenth school day.] The following tuition schedule shall apply effective July 1, 1995 [for FY 91 and FY 92]:

Per Week Contact Hours	Tuition Per Term	
	In-state Cost (Quarter)	(Semester)
24 and over	\$150	\$300
18-23	\$125	\$250
12-17	\$100	\$200
Under 12	\$75	\$150

Per Week Contact Hours	Tuition Per Term	
	Out-of-state Cost (Quarter)	(Semester)
24 and over	\$300	\$600
18-23	\$250	\$500
12-17	\$200	\$400
Under 12	\$150	\$300

[Per Week Contact Hours]	[Per Term Credit Hours]	Tuition Per Term (Quarter)	
		In-State Cost FY 91	FY 92
24 and over	12 and over	\$75	\$125
18-23	9-11	\$65	\$100
12-17	6-8	\$45	\$75
Under 12	1-5	\$30	\$50

Per Week Contact Hours	Per Term Credit Hours	Tuition Per Term (Quarter)	
		Out-of-State Cost FY 91	FY 92
24 and over	12 and over	\$150	\$250
18-23	9-11	\$130	\$200
12-17	6-8	\$90	\$150
Under 12	1-5	\$60	\$100

A nonrefundable application fee of fifteen (15) dollars for full-time and part-time students shall be paid with the completed application submitted prior to enrollment in a diploma or certificate program. Upon enrolling as a part-time or full-time student in a diploma or certificate program, a thirty-five (35) dollar registration fee for in-state and seventy (70) dollars for out-of-state is payable with tuition for the first term. The registration fee is a one (1) time charge per program. Full-time students are defined as those students enrolled for at least twenty-four (24) instructional hours or twelve (12) credit hours per term. Half-time students are enrolled for at least twelve (12) instructional hours or six (6) credit hours.

Section 2. Short-term continuing education classes for adults shall be designed to meet the needs of the labor market and for persons preparing or supplementing knowledge and skills for employment or

job advancement. For FY 91 and FY 92, the cost to the general public for these classes shall include a minimum per course charge of fifteen (15) dollars for the first fifteen (15) hours and one (1) dollar and twenty-five (25) cents per instructional hour for all hours over fifteen (15). The equivalent cost per credit hour shall be eighteen (18) dollars for these schools with courses equated to credit hours.

Section 3. Costs for classes to meet specialized industry training needs in a region may be negotiated by the region on a shared cost basis documented by a written agreement on file in the regional and state offices. Specialized training programs contracted at the state level to meet statewide training needs for industry shall be based on a minimum charge of two (2) dollars per instructional hour.]

Section 3. Tuition is due the first day of each term. A nonrefundable ten (10) dollar late payment fee shall be assessed after the fifth school day. After the 15th instructional day, students may not attend class if tuition is not paid or unless prior arrangements have been made.

Section 4. The school may establish an activity or lab fee not to exceed twenty (20) dollars per term for postsecondary and secondary students. [Charges for avocational classes shall be based on cost-recovery of instructor cost and necessary supplies and materials.]

Section 5. [Effective July 15, 1990,] A refund policy shall apply to tuition [and registration] charges for vocational-technical programs and classes in Kentucky TECH [state-operated vocational] schools. Students in certificate or diploma programs may receive a partial refund of tuition [and twenty (20) dollars of the registration fee if requested] within the first fifteen (15) school days [three (3) weeks] of the program through [official] withdrawal [and request for refund]. The refund policy applies only to program withdrawal and does not apply to a reduced course load. The application fee is nonrefundable.

Section 6. Within the first ten (10) instructional [five (5) school] days of the program, students may receive a full tuition and activity fee refund [plus twenty (20) dollars of the registration fee]. From eleven (11) [six (6)] to fifteen (15) instructional [ten (10) school] days, fifty (50) [seventy-five (75)] percent of the tuition [and twenty (20) dollars of the registration fee] is refundable. [From eleven (11) to fifteen (15) school days, fifty (50) percent of the tuition and twenty (20) dollars of the registration fee may be refunded.] There shall be no refund after the 15th instructional [school] day.

Section 7. Each school shall establish a tuition scholarship program to assist students with financial need. Financial assistance shall be available for students who lack financial resources to pay for their education but who, for special reasons, do not qualify for other financial aid.

Section 8. Continuing education classes for adults shall be designed to meet the needs of the labor market and for persons preparing or supplementing knowledge and skills for employment or job advancement. The cost for all continuing education offered in the regular curriculum shall be at the state-approved tuition rates. Specialized continuing education classes for adults may be offered on a cost recovery basis with prior approval by the regional executive director.

Section 9. [7.] Students enrolled in continuing education courses may be granted a full tuition refund if official withdrawal is [and request for refund are] completed prior to the third class session. No refunds shall be made after the third session, and tuition of fifteen (15) dollars or less shall not be refunded.

Section 10. A fifteen (15) dollar fee shall be charged for each

livework project requiring more than one (1) hour labor and accepted by the school.

Section 11. Costs for classes to meet industry training needs in a school or region may be negotiated by the school or region on a shared-cost basis documented by a written agreement on file in the school where the contract is negotiated. Any such agreement with public or private organizations shall seek to recover the instructional cost and may be for class size projects, extra services, and ancillary services as requested by the client. Training programs contracted at the state level to meet statewide training needs for industry shall establish a fee under written agreement.

Section 12. Tuition and fees shall be reviewed on or before October 30, each year by the State Board for Adult and Technical Education.

~~[Section 8. Each school shall establish a tuition scholarship program to assist students with financial need. No student shall be deprived of an educational opportunity because of inability to pay. Financial assistance shall be available for students who lack financial resources to pay for their education but who, for special reasons, do not qualify for other financial aid.]~~

J. LARRY STINSON, Chairman
APPROVED BY AGENCY: April 21, 1995
FILED WITH LRC: July 5, 1995 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Beverly Haverstock

(1) Type and number of entities affected: Kentucky TECH schools - all postsecondary schools and the secondary area centers which serve postsecondary students are 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 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: No new or additional reporting and paperwork requirement.

(4) Assessment of anticipated effect on state and local revenues: State revenues will be increased.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Tuition fees are the source of revenue to be used under 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative method to procure needed money for the Kentucky TECH System is to receive revenue from Kentucky's

General Fund. This alternative was rejected because of limited general fund dollars.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The same fees apply to everyone across the Commonwealth.

STATEMENT OF EMERGENCY 787 KAR 1:010E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:010E. Application for employer account; reports.

RELATES TO: KRS 341.190

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation requires each employing unit to make application for an employer account and to make other additional reports as required by the division.

Section 1. Each employing unit having in the state in covered employment one (1) or more workers shall request from the Division of Unemployment Insurance an "Application for Unemployment Insurance Employer Reserve Account" UI-1 (Rev. 6/91), incorporated by reference herein, and shall submit this form to the division providing all information requested in the instructions to this form.

Section 2. Each employing unit shall make additional reports as required on the forms prescribed by the division in accordance with the instructions contained on the forms. These forms include UI-1S Supplemental Application for Unemployment Insurance Employer Reserve Account (Rev. 1/93), UI-3 Employer's Quarterly Unemployment Wage and Tax Report (Rev. 4/94), UI-3R Reimbursing Employer's Quarterly Unemployment Wage Report (Rev. 4/94), UI-3S Employer's Quarterly Unemployment Wage and Tax Substitute Report (Rev. 8/93), UI-3X Employer's Quarterly Unemployment Wage and Tax Report (yellow express envelope) (Rev. 4/94), UI-3.1A Summary

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Contribution Report (Rev. 10/92), UI-3.2 Request to Place Subject Employer's Account in Inactive Status (Rev. 1/90), UI-14B Employer Schedule of Wage Report Adjustments (Rev. 1/90), UI-21 Report of Change of Ownership or Discontinuance of Business in Whole or Part (Rev. 10/93), UI-47 Claim for Refund of Contributions (Rev. 8/93), UI-74 Application for Partial Payment Agreement (Rev. 4/88), UI-412A Notice to Employer of Claim for Unemployment Insurance Benefits (Rev. 9/92), UI-203 Overpayment and Fraud Detection (Rev. 9/94), UI-414 or UI-414A Report of Hire or Return to Work (Rev. 1-95) and are incorporated by reference the same as if reproduced in full herein. These forms are on file for public inspection in the Office of the Commissioner for Employment Services, 275 E. Main Street, 2W, Frankfort, Kentucky 40621.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:020E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 1:020E. Change of status; discontinuance of business.

RELATES TO: KRS 341.115
STATUTORY AUTHORITY: KRS 151B.020, 341.115
EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation requires subject employers to notify the division of any change of ownership or control of their business.

Section 1. Subject employers shall notify the Division of Unemployment Insurance within fifteen (15) days of any change in ownership or control of their business, whether in whole or in part, or of the discontinuance of their business.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:030E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive

Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:030E. Employer contributions.

RELATES TO: KRS 341.260, 341.300
STATUTORY AUTHORITY: KRS 151B.020, 341.115
EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation sets the due dates upon which employer contributions are payable to the division.

Section 1. The initial due date for payment of contributions by an employing unit is the last day of the month following the close of the calendar quarter during which the employing unit first becomes a subject employer. Thereafter, except as provided in Section 2 of this administrative regulation, the due date for contributions is the last day of the month following the calendar quarter for which they are payable.

Section 2. The due date for payment of contributions shall be extended if a subject employer has erroneously paid contributions due under KRS Chapter 341 to another state or federal agency, or if an authorized representative of the division has misinformed an employer as to his liability or erroneously determined an employer's status on the basis of correct reports furnished to the division by the employer or his representative. In these cases, the due date shall be the 20th day following the mailing date of the first notice issued to the employer advising him of any amount due the division.

Section 3. Contributions shall be considered paid as of the date on which they are received by the Division of Unemployment Insurance as defined in 787 KAR 1:230.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:040E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

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WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:040E. Posting notice to employees.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation requires the division to promptly notify an employing unit of its liability and to furnish employers with posters informing employees of their unemployment insurance rights.

Section 1. The Division of Unemployment Insurance shall promptly notify an employing unit of any determination as to its liability as a subject employer.

Section 2. The division shall furnish each subject employer with posters (UI-5.1) informing the workers that the employer is a subject employer under the Kentucky Unemployment Insurance Law and of their potential rights to claim benefit payments for weeks of partial unemployment. The employer shall post and maintain the posters at conspicuous places on the premises at which his payroll records are maintained.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:050E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:050E. Social Security number required of employees.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation requires each worker engaged in covered employment to secure a Federal Social Security Account Number and report the number to the employing unit.

Section 1. Each worker engaged in covered employment for a

subject employer shall procure a Federal Social Security Account Number and report his number to every subject employer for whom he is engaged in covered employment.

Section 2. Each worker who is engaged in covered employment, for a subject employer, who does not have a Federal Social Security Account Number shall file an application therefor not later than three (3) days after the first day on which he is engaged in covered employment for a subject employer. It shall be the duty of each employer to procure the appropriate form for application for a Social Security Account Number and to furnish the application form to each worker engaged in covered employment in his employ who does not have such a number.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:060E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:060E. Separation for cause; reports.

RELATES TO: KRS 341.370, 341.530

STATUTORY AUTHORITY: 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation requires the employing unit to notify the division of a worker's separation from employment for cause by returning notices sent to the employer after an initial or reopened claim for benefits has been filed.

Section 1. When an initial claim for benefits is filed by a claimant or when a reopened claim for benefits is filed by a claimant who has been employed since last claiming benefits, the Division of Unemployment Insurance shall immediately notify the claimant's most recent employer of the filing on Form UI-412A. If the claimant has worked for his next most recent employer in less than ten (10) weeks, the division will also notify his next most recent employer of the claim filing on Form UI-412A. If the claimant worked for neither his most recent nor next most recent employer in each of ten (10) weeks, the most recent employer for whom the claimant worked in each of ten (10) weeks, back to the beginning of the base period, will be notified of the filing on Form UI-412A. If the claimant was separated from any notified employer's employ for a reason other than lack of work, the employer shall complete and return the "employer's notice of initial claim" or "employer's notice of reopened claim" to the local office

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indicated thereon.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:070E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:070E. Reasonable time for protesting claim.

RELATES TO: KRS 341.370(4), 341.530(3)
STATUTORY AUTHORITY: KRS 151B.020, 341.115
EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation defines the term "reasonable time" within which an employer must protest a claim by a former worker. A nonmost recent employer is now given fifteen (15) days within which to protest if he has not received Form UI-412A, "employer's notice of initial claim" or "employer's notice of reopened claim" instead of ten (10).

Section 1. Except as provided in Section 2 of this administrative regulation the reasonable time referred to in KRS 341.370(4) and 341.530(3) shall not extend beyond ten (10) days after the date of the first notice to the employer from the department that a claim has been filed. In computing this ten (10) day period, the day following the date of mailing of the notice shall be considered the first day, and the date the employer's return notice is received by the department as defined in 787 KAR 1:230 shall be considered the date it is received by the department.

Section 2. If the employer is not the worker's most recent employer and has not received Form UI-412A as provided in 787 KAR 1:060, the reasonable time referred to in KRS 341.530(3) shall not extend beyond fifteen (15) days after the date of first notice to the employer from the department that a claim has been filed. In computing the fifteen (15) day period the day following the date of mailing of the notice shall be considered the first day, and the day the employer's return notice is received by the department as defined in 787 KAR 1:230 shall be considered the date it is received by the department.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:080E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:080E. Labor dispute or strike; notification.

RELATES TO: KRS 341.360
STATUTORY AUTHORITY: KRS 151B.020, 341.115
EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation requires the employer to notify the division when a labor dispute or strike begins and ends.

Section 1. When an initial claim for benefits or a reopened claim for benefits is filed by a claimant, the Division of Unemployment Insurance shall immediately notify the claimant's most recent employer of the filing on Form UI-412A. If the claimant is unemployed because of a strike or other bona fide labor dispute, the employer, in addition to the notice required under KRS 341.360(1), shall indicate on the form the reason for such claimant's unemployment and return the form to the division within ten (10) days after the date appearing thereon as the date of mailing. In computing the ten (10) day period the day following the date of mailing of the notice shall be considered the first day, and if the tenth day falls on a day during which the division's office is closed, the next day thereafter on which the office is open shall be considered the tenth day.

Section 2. Within ten (10) days after the termination of an alleged strike or labor dispute the employer shall notify the division in writing of the termination. In computing the ten (day) period the day following the termination of the alleged strike or labor dispute shall be considered the first day, and if the tenth day falls on a day during which the division's office is closed, the next day thereafter on which the office is open shall be considered the tenth day.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:090E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the

Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

**CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance**

787 KAR 1:090E. Claimant's reporting requirements.

RELATES TO: KRS 341.350, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation sets forth the registration and reporting requirements that the claimant must meet to draw benefits and the date when the claim will be valid. It further sets out the length of time a claim may be backdated and the procedures for mail claims.

Section 1. Registration for Work. (1) A worker shall be registered for work with the state employment service before he shall be eligible to receive benefits. The procedures a claimant shall follow to meet the work registration requirement depend on the claimant's reemployment prospects. At the time a claimant completes an initial application for benefits, he is assigned a group classification code (A, B, C, or D) based upon his reemployment prospects. Group A includes claimants who definitely have depended on their work for their individual or family support and whose employment record indicates a firm attachment to the labor market. This group includes workers unemployed due to a temporary layoff with good return prospects but no definite recall date, workers with a steady employment record and unemployment due to lack of work, or workers with a highly specialized employment record. Group B includes workers unemployed as a result of a mass layoff who have positive return prospects with their last employer, workers unemployed because of a labor dispute in the establishment where they have been employed, unemployed workers of a local employer whose performance strongly indicates reemployment for such workers even though a definite recall date has not been set, claimants who are working part time with a regular employer but who are eligible for partial benefits, and claimants who are members of unions which are responsible for securing their future employment. Group C includes workers whose work record indicates continuing questions of availability or ability for work. Those claimants who provide incomplete information shall be placed temporarily in group C. Group D is the same as group C except availability or ability questions require closer and more frequent scrutiny. During any benefit year, a claimant may be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(2) The completion of an initial application for benefits shall serve as work registration for "B" claimants. "A", "C", and "D" claimants shall report to the state employment service for an in-depth interview and completion of an ES-511 form in order to receive full job placement service. The registration shall remain active during the worker's benefit year as defined in KRS 341.090(2).

Section 2. Initial and Reopened Claims for Benefits. (1) In order for a worker to file an initial or reopened claim for benefits he shall report in person with the following proof of identity: Social Security card, valid driver's license with a photograph or other acceptable photo-identification to a state employment office which serves unemployment insurance claimants to complete an initial claim form and certifications required by the secretary to make a determination

as to the worker's benefit eligibility. If any issues regarding the claimant's eligibility as defined in KRS 341.350 or a potentially disqualifying circumstance as defined in KRS 341.360 or 341.370 are detected, a fact-finding interview shall be scheduled at which the claimant may present all facts in support of his application.

(2) In areas serviced by a full-time state employment office which serves unemployment insurance claimants, the initial or reopened claim shall be dated as of the first day of the week in which the worker first reports to the state employment office for the purpose of filing a claim for benefits.

(3) In areas serviced by a part-time state employment office which serves unemployment insurance claimants, the initial or reopened claim shall be dated as of the first day of the week in which the worker becomes unemployed provided he reports to the part-time office for the purpose of filing a claim for benefits on the first day the office is open following his last day of work; otherwise the claim shall be dated as of the first day of the week in which the worker reports at a part-time or full-time state employment office which serves unemployment insurance claimants.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section the initial or reopened claim may be dated as of the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer, provided the worker reports to a state employment office which serves unemployment insurance claimants for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for that week.

(5) Upon the presentation by the worker of reasons found to constitute good cause for failure to report at an earlier date, the secretary may authorize the backdating of initial or reopened claims in an area serviced by a full-time state employment office which serves unemployment insurance claimants to the first day of a week which ended not earlier than fourteen (14) days prior to the day on which he first reported or indicated his desire to file a claim, and in an area serviced by a part-time state employment office which serves unemployment insurance claimants, to the first day of the week which ended not earlier than twenty-eight (28) days prior to the day on which he first reported.

Section 3. Continued Claims for Benefits. (1) In order for a worker, who has filed his initial claim for benefits and has established a benefit year, to file a continued claim for benefits he shall report in person, except as hereinafter provided, to a state employment office which serves unemployment insurance claimants to complete a continued claim form and certification required by the secretary to determine the worker's continued eligibility for benefits as defined in KRS 341.350, 341.360 or 341.370.

(2) Continued claims for benefits shall cover the week or the two (2) weeks of unemployment (depending on whether the worker is reporting on a weekly or biweekly basis) immediately prior to the date on which they are filed.

(3) Upon the presentation by the worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary may authorize the backdating of continued claims in an area serviced by a full-time state employment office to cover a week or weeks of unemployment ended not earlier than twenty-eight (28) days prior to the date on which they are filed and in an area serviced by a part-time state employment office which serves unemployment insurance claimants to cover a week or weeks of unemployment ended not earlier than thirty-five (35) days prior to the date on which they are filed.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, a continued claim may be dated as the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer and for which week he filed a continued claim, provided the worker reports to a state employment office which serves unemployment insurance claimants

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for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for that week.

(5) Continued claims for partial benefits shall be certified as to earnings when so required by the secretary, except that the failure of an employer to properly certify earnings shall not result in a denial of benefits otherwise due under the law.

Section 4. Mail Claims. (1) The secretary may authorize an individual to file his continued claims by mail if reporting in person would require expenditure of an unreasonable amount of travel or money. A continued claim shall cover the week or weeks indicated on the claim form.

(2) Claims filed by mail shall be considered filed on the day they are deposited in the mail and postmarked. The provisions of this administrative regulation governing the dating and backdating of continued claims filed in areas serviced by a full-time state employment office shall also apply to claims filed by mail, and unless the claims are filed within the time prescribed herein, they shall not be allowed.

Section 5. Claims by Reemployed Workers. Notwithstanding the provisions of Section 3 of this administrative regulation, a worker, who having filed his initial claim for benefits and having established a benefit year and who by reason of having returned to full-time employment is unable to report in person to a state employment office, may file a continued claim for benefits by completing a continued claim form and certifications required by the secretary to determine the worker's continued eligibility for benefits and submitting the form by mail to the Division of Unemployment Insurance. The continued claim shall cover the week of unemployment indicated on the claim form provided that the week of unemployment ended not earlier than thirty-five (35) days prior to the date on which the claim was deposited in the mail.

Section 6. Eligibility Review. An unemployed worker claiming benefits shall report in person to a state employment office, as directed, on a periodic basis for the purpose of continued benefit eligibility review.

Section 7. Failure to Comply with Administrative Regulations. Notwithstanding any other provisions of this administrative regulation, if the secretary finds that the failure of any worker to file a claim for benefits, and register for work within the specified time, was due to the failure on the part of the employer to comply with any of the provisions of these administrative regulations, or to coercion or intimidation exercised by the employer to prevent the prompt filing of a claim or to failure by the division's personnel to discharge necessary responsibilities, the worker shall have fourteen (14) days after he has received appropriate notice of the findings of the secretary, within which to file a claim, provided that no claim shall be allowed which is filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:100E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have

sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:100E. Week of unemployment defined.

RELATES TO: KRS 341.080

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation defines the term "week of unemployment."

Section 1. The term "week of unemployment" as used in KRS 341.080(3) shall mean a calendar week of seven (7) consecutive calendar days, beginning 12:01 a.m., Sunday and ending 12 midnight the following Saturday. A week of unemployment beginning in a benefit year shall be deemed to be wholly in that benefit year.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:110E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:110E. Appeals.

RELATES TO: KRS 131.570(1), 341.430(2), 341.440, 341.450(2)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation sets up the appeals process and general rules for the conduct of hearings.

Section 1. Appeals to Referee. (1) The presentation of an appeal to a referee.

(a) Any interested party wishing to appeal to a referee from a notice of determination, or from a notice of income tax refund intercept issued by the Revenue Cabinet in full or partial satisfaction

of an outstanding benefit overpayment may do so by filing with the Division of Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal within the time limits prescribed by statute.

(b) An appeal to a referee shall be considered filed at the time it is received by the department as defined in 787 KAR 1:230.

(2) Notification of hearings. All hearings shall be scheduled promptly and notices thereof shall be mailed to all interested parties at least seven (7) days before the date of hearing specifying the time and place of hearing, except that, the referee may, when the exigencies of the situation in his judgment require, set a case for hearing before the expiration of seven (7) days, only then, however, upon agreement of all interested parties. Any party may request the rescheduling of a hearing for compelling circumstances, subject to the approval or denial of the referee.

(3) Disqualification of referees. No referee shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any referee shall be heard and decided by the commission.

(4) Hearing of appeals.

(a) The claimant and any other party to the appeal may present evidence as may be pertinent and may question the opposite party and his witnesses. The referee shall, if he deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The referee may take any additional evidence which he deems necessary; but, if additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the same.

(b) The parties to an appeal, with the consent of the referee, may stipulate the facts involved, in writing. The referee may decide the appeal on the basis of this stipulation or may schedule a hearing and take further evidence as he deems necessary.

(c) The hearing shall be scheduled and held at a place where the claimant can attend without undue expense or inconvenience, giving consideration to the claimant's place of employment.

(d) The hearing may be conducted via teleconference if the residence of the claimant and his former employer's place of business are not in close geographic proximity, or if other circumstances warrant.

(e) The referee may in his discretion grant a continuance of a hearing in order to secure necessary evidence.

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing must immediately mail copies of the documents to the referee and the opposing party. Failure to provide both the referee and the opposing party with copies of the evidence may result in its being excluded from the record.

(5) Decisions.

(a) After the hearing is concluded the referee shall promptly set forth in writing his finding of facts on the issues involved, his decision and the reasons therefor; provided, however, that if the appellant fails to appear and prosecute his appeal, the referee may summarily affirm the determination.

(b) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the division's files.

(c) The mechanical recording of the hearing shall be retained in the division's files pending further appeal. If no appeal is initiated, the recording shall be destroyed sixty (60) days from the date the final administrative decision is mailed.

(d) Any referee decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(e) If the decision is such that previously awarded benefits are to be denied either retroactively or forthwith, then a stop payment directive shall be issued to the division by the referee on the date the decision is mailed to the claimant.

Section 2. Appeals to the Commission From a Referee Decision.

(1) Presentation of an appeal to the commission.

(a) Any interested party wishing to appeal to the commission from a decision of a referee may make written application with the commission, the division or its authorized representative for leave to appeal in any form which clearly indicates the party's intention to appeal. A notice of application for leave to appeal shall be mailed by the division to other interested parties.

(b) An application for leave to appeal shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230.

(c) The commission may grant or deny the application for leave to appeal without a hearing or may notify the parties to appear at a specified place and time for argument on the application.

(2) Hearing of appeals.

(a) Except in instances where the commission orders cases removed to it from a referee, all appeals to the commission may be heard upon the records of the division and the evidence and exhibits introduced before the referee. In the hearing of an appeal on the record, the parties may, if they desire, present written arguments and, at the commission's discretion be allowed to present oral arguments. The party presenting an appeal to the commission (appellant) shall have ten (10) days from the date of mailing of the commission's notification of appeal receipt within which to file written argument. The appellee shall have seven (7) days thereafter within which to file response. Written argument shall be considered filed when it is received by the department as defined in 787 KAR 1:230. The commission may extend the time for filing written argument upon a showing of good cause by either party to the appeal.

(b) The commission may, however, direct the taking of additional evidence before it, if needed, in order to determine the appeal. If, in the discretion of the commission, additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place the evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.

(c) The commission, at its discretion, may return any case or issue to a referee for the taking of additional evidence as it desires. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall thereupon return the record to the commission for its decision thereon.

(3) The hearing of appeals by the commission on cases ordered removed to it from any referee. Any case ordered by the commission to be removed to it, shall be heard and decided by the commission in the manner prescribed in Section 3 of this administrative regulation.

(4) The determination of appeals before the commission.

(a) Following the conclusion of a hearing the commission shall promptly announce its decision, which may be either an affirmation of the decision of the referee, or a separate finding of facts, decision and reasons therefor. The decision shall be in writing and shall be signed by the members of the commission who heard the appeal. At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstance. Decisions designated as precedent shall be binding on all lower levels of determination.

(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(5) Reconsideration.

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within twenty (20) days of the mailing date of the decision, file application for reconsideration of the commission's decision. The commission may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230. The commission shall

respond to requests for reconsideration by mail within three (3) working days after receipt.

(b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court, if the application is denied.

(6) Precedent decision process and digest. The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid. The manual shall be available, on request, at a fee established by the commission. Individual decisions shall be available on request without charge.

Section 3. Appeals to the Commission From an Employing Unit.

(1) Presentation of an appeal to the commission:

(a) Any employing unit wishing to make application for review of any administrative determination pursuant to KRS 341.430(2), or to appeal from a notice of income tax refund intercept issued by the Revenue Cabinet in full or partial satisfaction of any outstanding contribution, interest or penalty assessment, may do so by filing with the commission, the division or its authorized representative a written statement clearly indicating the employing unit's intention to appeal within the time limits prescribed by statute.

(b) An application or appeal shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230.

(2) Notification of hearings. Upon receipt of an appeal made under this section, unless denied as untimely, a hearing shall be scheduled promptly to gather pertinent evidence. Notices thereof shall be mailed to all interested parties at least seven (7) days before the date of hearing specifying the time and place of hearing, except that, the commission may, when the exigencies of the situation in its judgment require, set a case for hearing before the expiration of seven (7) days, only then, however, upon agreement of all interested parties. Any party may request the rescheduling of a hearing for compelling circumstances, subject to the approval or denial of the commission or its authorized representative.

(3) Appointment of commission representative. The commission may direct that any hearing be conducted on its behalf by an authorized representative, provided, however, that no representative shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any representative shall be heard and decided by the commission.

(4) Hearing of appeals.

(a) Any party to the appeal may present pertinent evidence and may question the opposite party and his witnesses. The commission shall, if it deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The commission may take any additional evidence which it deems necessary; but, if additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the same.

(b) The parties to an appeal, with the consent of the commission or its authorized representative, may stipulate the facts involved, in writing. The commission may decide the appeal on the basis of this stipulation or may schedule a hearing and take further evidence as it deems necessary.

(c) The hearing shall be scheduled and held at a place where the parties can attend without undue expense or inconvenience.

(d) The hearing may be conducted via teleconference if circumstances warrant.

(e) The commission may in its discretion grant a continuance of a hearing in order to secure necessary evidence.

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the hearing, must immediately mail copies of the documents to the commission and to the opposing party. Failure to provide both the commission and the opposing party with copies of this evidence may result in its being excluded from the record.

(5) Decisions.

(a) Following the conclusion of a hearing the commission shall promptly set forth in writing its finding of the facts, its decision and its reasons therefor; provided, however, that if the appellant fails to appear and prosecute his appeal, the commission may summarily affirm the administrative determination or notice of income tax refund intercept from which the appeal was made. The decision shall be signed by the members of the commission who considered the appeal. At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstance. Decisions designated as precedent shall be binding on all lower levels of determination.

(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) The mechanical recording of the hearing shall be retained by the commission pending further appeal. If no appeal is initiated, the recording shall be destroyed sixty (60) days from the date the final administrative decision is mailed.

(e) Any commission decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(6) Reconsideration.

(a) Any party adversely affected by a decision of the commission may, within twenty (20) days of the mailing date of the decision, file application for reconsideration of the commission's decision. The commission may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230. The commission shall respond to the requests for reconsideration by mail within three (3) working days after receipt.

(b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court, if the application is denied.

Section 4. General Rules for Referee and Commission Appeals.

(1) Issuance of subpoenas. Subpoenas requested by a claimant or an employer to compel the attendance of witnesses or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance thereof setting forth the substance of the anticipated proof to be obtained and the need therefor.

(2) Appeal record. All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the division which have been written, sent, or made in connection with an appeal shall constitute the record with respect to the appeal.

(3) Supplying information from the records of the Division of Unemployment Insurance. Information from the records of the division shall be furnished to an interested party or his representative to the extent necessary for the proper presentation of the party's case, only upon written request therefor. All requests for information shall state, as clearly as possible, the nature of the information desired. Nothing in this administrative regulation shall prevent an interested party or his representative from examining a record in the hands of a referee, the commission or its authorized representative at a hearing.

(4) Conduct of hearings. All hearings shall be conducted informally without regard to common law, statutory or technical rules or procedure and in a manner as to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All issues relevant to the appeal shall be considered and passed upon.

(5) Reopening hearings. Any party to an appeal who fails to

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appear at the scheduled hearing may, within seven (7) days from the date thereof, request a rehearing. The request shall be granted if the party has shown good cause for his failure to appear. The request shall be in writing and shall set forth the reasons for this failure to attend the scheduled hearing. The request shall be mailed or delivered to the office where the appeal was filed, to the Appeals Branch, Division of Unemployment Insurance, Frankfort, Kentucky, or to the Unemployment Insurance Commission, Frankfort, Kentucky. Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

(6) Providing a testimony (tapes) to interested parties.

(a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at a hearing by contacting the Kentucky Unemployment Insurance Commission at the address listed on the decision.

(b) There shall be no charge for this service; however, parties should forward blank cassette tapes with their request in numbers sufficient to record the requested testimony.

Section 5. Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Cabinet for Workforce Development, 275 East Main Street, Frankfort, Kentucky 40621, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the Provisions of KRS 341.450(2).

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:120E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:120E. Fees for representing claimant.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation sets the maximum fee that may be charged for representing a claimant.

Section 1. The fee to be charged for representing a claimant in any proceeding before a referee, the commission, or any court, or all three (3) shall not exceed twenty (20) percent of the maximum amount of potential benefits payable with respect to the claim under adjudication.

Section 2. The fee agreed to by the claimant and his representative, if within the maximum established in Section 1 of this administrative regulation, shall be deemed to have been approved by the commission.

Section 3. Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the claimant. The fee shall not be deducted, either in whole or in part, from the benefit checks otherwise due and payable to the claimant.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:130E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:130E. Determination defined.

RELATES TO: KRS 341.410

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation defines the term "determination" as used by the division.

Section 1. Any decision rendered by the Division of Unemployment Insurance or its duly authorized representatives in writing affecting a worker's claim for unemployment benefits or the charges to an employer's reserve account for benefits paid or payable shall be a "determination."

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:140E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal

law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance

787 KAR 1:140E. Unemployment insurance fund payments.

RELATES TO: 341.500, 341.510

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation sets the procedure to be used between the Division of Unemployment Insurance, the treasurer of the unemployment insurance fund, the Finance and Administration Cabinet and the Secretary of the Cabinet for Workforce Development for the certification of checks to be written and paid for benefits under the program.

Section 1. All transfers to the state's account in the Unemployment Trust Fund or refund payments made from the clearing account shall be made by the treasurer of the unemployment insurance fund immediately upon receipt of a written order for the action signed by the Director of the Division of Unemployment Insurance or a person designated by the commission and approved by the Secretary of the Cabinet for Workforce Development.

Section 2. Requisitions from the state's account in the unemployment trust fund shall be made by the treasurer within twenty-four (24) hours after the receipt of a written order for the requisition signed by the Director of the Division of Unemployment Insurance or a person designated by the commission and approved by the Secretary of the Cabinet for Workforce Development. Withdrawals, when effected, shall immediately be deposited in the benefit account.

Section 3. (1) A computerized tape and benefit payment register for the payment of benefits shall be prepared and presented to the treasurer and certified as correct to the Finance and Administration Cabinet on Form DOA-19 by the Director of the Division of Unemployment Insurance or a person designated by the commission and approved by the Secretary of the Cabinet for Workforce Development. The computer tape and benefit payment register shall show:

- (a) Claimant's name;
- (b) Claimant's Social Security account number;
- (c) Amount of payment to be made;
- (d) The compensable period for which payment is made;
- (e) The serial number and the date of issuance; and,
- (f) Other information that from time to time shall be deemed necessary for proper control.

(2) After approval by the Secretary of the Finance and Administration Cabinet, the secretary shall present to the treasurer of the unemployment insurance fund a warrant for the issuance of benefit payment vouchers. Upon presentation, the treasurer shall issue benefit payment vouchers with his signature affixed thereto and they shall become a demand upon the depository bank for payment of the amounts specified thereon.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
787 KAR 1:150E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance

787 KAR 1:150E. Interstate claimants.

RELATES TO: KRS 341.145, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation governs the division in its administrative cooperation with other states for the payment of benefits to interstate claimants.

Section 1. The following administrative regulation shall govern the secretary in his administrative cooperation with other states adopting a similar administrative regulation for the payment of benefits to interstate claimants.

Section 2. Definitions. As used in this administrative regulation, unless the context clearly requires otherwise:

(1) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(2) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one (1) or more liable states through the facilities of an agent state. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the secretary finds that this exclusion would create undue hardship on claimants in specified areas.

(3) "State" includes Puerto Rico and District of Columbia.

(4) "Agent state" means any state in which an individual files a claim for benefits from another state.

(5) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(6) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state.

(7) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.

Section 3. Registration for Work. (1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall duly report, to the liable state in

question, whether each interstate claimant meets the registration requirements of the agent state.

Section 4. Benefit Rights of Interstate Claimants. (1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) For the purposes of this administrative regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

(3) The benefit rights of interstate claimants established by this administrative regulation shall apply only with respect to new claims (notices of unemployment).

Section 5. Claims for Benefits. (1) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan.

(2) Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustment required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(3) Claims shall be filed in accordance with agent state administrative regulations for interstate claims in local employment offices, or at an itinerant point, or by mail.

(a) With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one (1) week, or one (1) reporting period, late. If a claimant files more than one (1) reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(b) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to the claims under the law of the agent state.

Section 6. Determinations of Claims. (1) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question the facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

Section 7. Appellate Procedure. (1) The agent state shall afford all reasonable cooperation in taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
787 KAR 1:160E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance

787 KAR 1:160E. Time extension for reports and notices.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation allows an extension of time for filing reports and paying contributions due to an act of God.

Section 1. The secretary may extend for a reasonable period of time the due date for filing reports and paying contributions as prescribed in 787 KAR 1:030, and the specified time for notifying the division of separations for cause as prescribed in 787 KAR 1:070, if, upon the presentation of sufficient facts by the employer, he finds that failure to file the reports, pay contributions, or notify the division of separations within the time specified was due to an act of God.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
787 KAR 1:170E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

ADMINISTRATIVE REGISTER - 240

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:170E. Cash value of board and lodging.

RELATES TO: KRS 341.030

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation sets forth the reasonable cash value of board and lodging when they are in lieu of wages received by the worker and are not specified under the contract of hire.

Section 1. Board, lodging, or any other payment in kind received by a worker in employment from his employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be wages paid by his employing unit.

Section 2. The commission shall determine or approve the cash value of the payments in kind, and the cash value shall be used in determining the wages paid to a worker in employment and in computing contributions due under the law.

Section 3. Where a money value for board or lodging or both furnished an individual in employment is agreed upon in a contract of hire, the amount so agreed upon shall, if more than the rate specifically determined by the commission or the rates prescribed herein, be deemed the cash value of the board and lodging. If in a given case a rate for board and lodging is determined by the commission, board and lodging furnished in addition to money wages shall be deemed to have not less than the following values:

Full board and room weekly	\$80
Meals per week	\$30
per day	\$5
per meal	\$2
Lodging per week	\$50

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

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STATEMENT OF EMERGENCY 787 KAR 1:180E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:180E. Employer's records.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation sets forth the records that must be maintained by each employing unit with respect to covered employment and the length of time that the records must be kept.

Section 1. Each employing unit shall establish, maintain and preserve for not less than six (6) years records with respect to covered employment performed in its service, which records shall show:

- (1) For each pay period:
 - (a) The beginning and ending date of the pay period.
 - (b) The total amount of wages paid for covered employment in the pay period.
 - (c) The largest number of workers in covered employment in any one (1) day of each calendar week.
- (2) For each worker:
 - (a) The name and social security account number.
 - (b) His wages paid, showing separately cash payments, the reasonable cash value of remuneration in any medium other than cash, the date on which the payments were made, and the pay period during which the services so remunerated were performed. If the remuneration is in a medium other than cash, show the nature and amount thereof.
 - (c) His total wages payable for each calendar quarter.
 - (d) The date on which he was hired, rehired, or returned to work after a temporary layoff, and the date on which he was separated from covered employment.

Section 2. Each employing unit shall establish and maintain for not less than two (2) years certain additional records for each worker in its employ.

(1) The records shall be maintained on a calendar week basis, except that, if the employing unit is operating on a seven (7) day pay period basis, the required individual records may be maintained on the basis of such employing unit's seven (7) day period. The records shall show for each seven (7) day period:

- (a) The amount of wages earned.
- (b) The number of hours worked.
- (c) The number of hours of additional work available which was not accepted.
- (d) The rate of pay for the additional work.

(2) Each employing unit shall upon request furnish to the Division of Unemployment Insurance or to a worker a certification of the wages earned and the hours worked, the number of hours of additional work available but not accepted, and the rate of pay for the additional hours of work during the week of unemployment for which the worker claims benefits. This information shall be available by the employing unit not later than seven (7) days after the last day of the seven (7) day period to which the records apply. Any employing unit failing to grant the certification within the specified time shall not be permitted to subsequently contest the amount of benefits paid for the week of unemployment.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

ADMINISTRATIVE REGISTER - 241

STATEMENT OF EMERGENCY 787 KAR 1:190E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:190E. Recoupment and recovery.

RELATES TO: KRS 341.415

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation defines the term "departmental error" for the purpose of recovery and recoupment of improperly paid unemployment insurance benefits and requires that the department shall provide a listing of overpayments with liens to credit reporting agencies. This administrative regulation shall ensure that department liens shall be considered on a parity with other liens listed in KRS 341.415(3), and to facilitate recoupment.

Section 1. "Departmental error" means:

- (1) Errors in computing benefit rate;
- (2) Incorrect weekly payment due to failure to consider deductible amount;
- (3) Payment beyond the expiration of the benefit year;
- (4) Payment in excess of maximum benefit amount;
- (5) Payment under incorrect program where no program adjustment can be made;
- (6) Retroactive nonmonetary determinations;
- (7) Monetary redeterminations;
- (8) Payment during a period of disqualification;
- (9) Payment to wrong claimant;
- (10) Erroneous payments resulting from a malfunction of automatic data processing equipment provided the malfunction is the result of human error in the data entry process.

Section 2. Filing of Liens. The department shall, on a monthly basis, compile a listing of outstanding overpayments on which a lien has been created. The listing shall be made available to credit reporting agencies. The listing shall be compiled in an electronic format if requested by the credit reporting agency. Liens are not filed on overpayments that result from departmental error, and they shall not be made available to credit reporting agencies.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 1:200E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, and to provide sufficient authority for declaring the maximum weekly unemployment insurance benefit rate for the fiscal year beginning July 1, 1995, the administrative body is required to implement this emergency regulation. An ordinary administrative regulation will not suffice because the administrative body would not have sufficient authority to declare the correct weekly benefit amount in a timely manner. This emergency administrative regulation shall be replaced by an ordinary regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:200E. Maximum weekly benefit rate.

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1995, and prior to July 1, 1996. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

- (1) The "total monthly employment" reported by subject employers for the calendar year of 1994 was 18,059,106;
- (2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,504,926;
- (3) The "total wages" reported by subject employers for the calendar year of 1994 was \$33,842,048,247;
- (4) The "average weekly wage" for the calendar year of 1994 for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was \$432.45;
- (5) Fifty-five (55) percent of the average weekly wage of \$432.45 for the calendar year of 1994 was \$237.85.

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July 1995, and prior to the first day of July 1996, is determined to be \$238.00.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

ADMINISTRATIVE REGISTER - 242

STATEMENT OF EMERGENCY 787 KAR 1:210E

Under KRS Chapter 13A, the administrative body is required to implement this regulation in order to have sufficient authority to establish 1995 contribution rates for Kentucky employers under the Unemployment Insurance Program. These rates are spelled out in 787 KAR 1:210E and per KRS 341.270, and predicated on the trust fund balance as of December 31 of any calendar year. An emergency regulation is needed because this information is necessary in assigning rates for 1995 contribution reports. These reports are due before promulgation of the administrative regulation through the normal process could occur. This emergency administrative regulation shall be replaced by an ordinary regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:210E. Employer contribution rates.

RELATES TO: KRS 341.270

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: KRS 341.270 requires the Secretary for Workforce Development to determine the rate schedule for employer's contributions. The rate schedule in effect for each calendar year is determined by the "trust fund balance" as of December 31 of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1994 was \$418,365,150.84.

(2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1994.

Section 2. Rate Schedule. On the basis of the findings in Section 1, and in accordance with KRS 341.270, Schedule A of Table A shall be in effect for calendar year 1995, because the "trust fund balance" equals or exceeds \$350,000,000 on December 31, 1994. Rates listed in Schedule A of Table A are listed below.

Employer Reserve Ratio	Rate Schedule
8.0% and over	0.30%
7.0% but under 8.0%	0.40%
6.0% but under 7.0%	0.50%
5.0% but under 6.0%	0.70%
4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%
3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%
-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%

-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than -8.0%	9.00%

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

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STATEMENT OF EMERGENCY 787 KAR 1:220E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:220E. Required reports and due dates.

RELATES TO: KRS 341.190, 341.262

STATUTORY AUTHORITY: KRS 151B.020, 341.115, Internal Revenue Procedures 93-18, 93-31

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: KRS 341.190 authorizes the Secretary of the Cabinet for Workforce Development to require the furnishing of certain information and records by employing units concerning wages paid, employment and other related matters. KRS 341.262 provides that a penalty will be assessed for failure to submit reports when due. Internal Revenue Procedures 93-18 and 93-31 require employers of more than 250 workers to report wage data for federal purposes using magnetic media, or incur penalties prescribed in Internal Revenue Code Section 6721. This administrative regulation delineates the required reports and information with attendant due dates, and adopts the federal magnetic media reporting requirements for reporting of wage information for state unemployment insurance purposes.

Section 1. Required Reports. (1) For the purpose of this administrative regulation, following are the required reports, which are incorporated by reference: Employer's Quarterly Unemployment Wage and Tax Report (UI-3), and Reimbursing Employer's Quarterly Wage and Tax Report (UI-3R).

(2) For employers with more than five (5) workers performing service in covered employment during the quarter being reported, a report shall not be considered filed unless it includes the name, social security number and wages of each worker.

(3) For employers with more than 250 workers performing service in covered employment during the quarter being reported, a report shall not be considered filed unless the name, Social Security number, and wages of each worker are reported using magnetic

media in a format approved by the department for this purpose. The secretary or his authorized representative shall waive this requirement upon a showing of a lack of automation, severe economic hardship, or other good cause. Good cause shall include proof that the employer has been exempted from reporting wage information using magnetic media under any like provision of federal law. Request for waiver from this requirement shall be made in writing specifying the reason for the request.

Section 2. Due Dates. (1) Except as provided in subsection (2) of this section, the due date for the filing of a required report shall be the last day of the month following the close of the calendar quarter in which wages are paid in covered employment.

(2) The initial due date for the filing of a required report by an employing unit newly subject under the provisions of KRS 341.070 shall be the last day of the month following the quarter in which the employing unit is first given notice by the department of its liability as a subject employer, provided that:

(a) For the purpose of this administrative regulation, no employing unit shall be deemed to be newly subject if:

1. Prior to beginning employment in Kentucky, it has previously been determined subject under the unemployment compensation law of any other state; however, it shall be deemed to be newly subject if all wages paid in covered employment in Kentucky were reported to another state unemployment compensation program by the due date specified by that state; or

2. If it has previously been determined subject under the provisions of KRS 341.070 but subsequently terminated subjectivity under the provisions of KRS 341.250(2); and

(b) This subsection shall not apply if the employing unit has failed to file a required report due to willful intent to evade filing. In this case the provisions of subsection (1) of this section shall apply.

Section 3. Reports shall be considered received by the department as defined in 787 KAR 1:230.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY

787 KAR 1:230E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services

Division of Unemployment Insurance

787 KAR 1:230E. Due dates.

RELATES TO: KRS 341.262, 341.300, 341.430, 341.450

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation defines the date received by the department as used in KRS Chapter 341 and Kentucky administrative regulations as it relates to the timely filing of reports, protests, appeals, or the payment of contributions, and extends the due date when the due date falls on a day the office of the department is closed.

Section 1. A contribution payment, report, protest, or appeal shall be considered received by the department as of the date it is delivered to any office of the department or deposited in the mail or with a commercial postal service on or before the due date, as indicated by the postmark applied by the U.S. Postal Service or official mark applied by a commercial postal service. The mark made by a privately-held postage meter shall not be considered in determining the date of receipt.

Section 2. When a due date falls on a day the office of the department is closed, the next day the office is opened shall be considered the due date.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY

787 KAR 1:240E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services

Division of Unemployment Insurance

787 KAR 1:240E. Fraud disqualifications.

RELATES TO: KRS 341.370

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: KRS 341.370(2) provides that a worker shall be disqualified from receiving benefits for any week with respect to which he knowingly made a false statement to establish his right to or the amount of his benefits, and, within the succeeding twenty-four (24) months, for the additional weeks immediately following the date of discovery, not to exceed a total of fifty-two (52), as may be determined by the secretary. This administrative regulation establishes the number of additional weeks of disqualification to be imposed.

Section 1. Unreported Earnings. If a determination is issued finding that a claimant with fraudulent intent did not report wages earned during a week of unemployment for which unemployment insurance benefits were claimed, in addition to the disqualification

imposed for each week, an additional period of disqualification will be imposed for each week of unreported earnings as follows: six (6) weeks for each week the unreported earnings are less than one and one-fourth (1¼) times the weekly benefit amount and twelve (12) weeks for each week the unreported earnings are equal to or more than one and one-fourth (1¼) times the weekly benefit amount, except that no period of additional disqualification will be less than twelve (12) weeks.

Section 2. Misrepresentation or Nondisclosure. If a determination is issued that a claimant through fraudulent misrepresentation or nondisclosure of fact, other than unreported earnings which is addressed in Section 1 of this administrative regulation, attempted to establish his right to or the amount of his unemployment insurance benefits, in addition to the disqualification imposed for that week, an additional twenty-six (26) week period of disqualification will be imposed from the date of discovery of the misrepresentation or nondisclosure.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
787 KAR 1:250E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance

787 KAR 1:250E. Release of notice of levy.

RELATES TO: KRS 341.820(1)
STATUTORY AUTHORITY: KRS 151B.020, 341.115
EFFECTIVE: June 22, 1995
NECESSITY AND FUNCTION: KRS 341.820(1) authorizes the release of levy upon all or part of the property or rights to property levied upon if it is determined that the action will facilitate collection of liability. This administrative regulation establishes the conditions under which levy may be released.

Section 1. The secretary or his designated representative may release levy when either:

- (1) The delinquent employer enters into a satisfactory arrangement placing property in escrow to secure payment of the liability, including expenses of levy;
- (2) The delinquent employer furnishes an acceptable bond conditions upon payment of the liability, including expenses of levy;
- (3) A payment is made of an amount determined to be equal to the interest of the division in the seized property or of the part of the seized property to be released. A release of levy under this section

is not to be confused with the discharge of property from the tax lien. However, the amount to be paid under this release provision would be determined in the same manner;

(4) The delinquent employer enters into a partial payment agreement; or

(5) The value of the interest of the division in the seized property to be released is insufficient to cover the expenses of the sale.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: June 15, 1995
FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
787 KAR 1:260E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance

787 KAR 1:260E. Voluntary election of coverage.

RELATES TO: KRS 341.070(9), 341.250(3)
STATUTORY AUTHORITY: KRS 151B.020, 341.115
EFFECTIVE: June 22, 1995
NECESSITY AND FUNCTION: This administrative regulation establishes the process for approval of voluntary election of coverage.

Section 1. An employing unit seeking election of coverage under KRS 341.250(3) shall include in its written election the following information:

(1) For the two (2) calendar years preceding the date of election, or for the total length of existence of the organization, whichever is less:

(a) A list of all funding sources, the revenues received from each, and duration of funding provided from each, accompanied by supporting documentation including grant applications, funding approval letters, and any other relevant material;

(b) A list of all employees along with gross salaries paid.

(2) For the two (2) calendar years following the date of election:

(a) A list of all anticipated funding sources, the revenues expected from each, and expected duration of funding from each, accompanied by any available documentation supporting these projections;

(b) The number of workers anticipated, and projected salaries for each position.

Section 2. Approval of voluntary election of coverage shall be made only if the employing unit seeking coverage satisfies each of the following:

- (1) Stability or growth of employment over the period of time specified in Section 1 of this administrative regulation;
- (2) Reliability of funding sources;

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(3) Reasonable assurance of continuity or growth of funding levels over the period of time specified in Section 1 of this administrative regulation.

Section 3. Notwithstanding the above, no approval shall be granted for voluntary election in any calendar year if, in the preceding calendar year, the revenues deposited to the Unemployment Trust Fund were less than the total benefits paid.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995
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STATEMENT OF EMERGENCY 787 KAR 1:270E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:270E. Covered employment.

RELATES TO: KRS 341.050, 341.055

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation sets forth conditions affecting certain covered and noncovered employment.

Section 1. Service by Officers, Directors, and Stockholders of Corporations. Within a corporation:

(1) An officer is presumed to be in covered employment if, under the corporation's charter, bylaws, or minutes he is required to perform some service, whether or not the service is actually performed.

(2) Stockholder, directors, or officers who received remuneration in the form of salaries or wages (that is, carried on the corporation payroll records or provided for in its bylaws or minutes) are presumed to be in covered employment whether or not services are actually performed.

(3) Directors of corporations who perform no other service for the corporation other than to attend directors' meetings are not in covered employment.

Section 2. Family Exempt Employment. In applying family exemption:

(1) Family exemption applies only in proprietorships or partnerships. In a partnership, an exempt relationship must exist with each partner in order for employment to be noncovered.

(2) Stepchildren under age twenty-one (21) who are employed by their parent(s) shall bear the same family exempt relationship as that of natural or adopted children, but only if the stepparent(s) claim them

as exemptions on federal and state income tax returns.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995
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STATEMENT OF EMERGENCY 787 KAR 1:280E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 1:280E. Limitation on pension deductions.

RELATES TO: KRS 341.390

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: Under KRS 341.390(3)(a) a pension, retirement or retired pay, annuity or other similar periodic payment received by a worker under a plan contributed to by a base period or chargeable employer is 100 percent deductible from a worker's unemployment insurance benefit amount. The statute provides the authority to limit the deduction if the worker contributed to the payment plan. The purpose of this administrative regulation is to provide for a limitation.

Section 1. If the worker contributed to a pension, retirement or retired pay, annuity or other similar periodic payment plan deductible under KRS 341.390(3)(a), the amount deducted from the worker's weekly benefit amount shall be limited to fifty (50) percent of the amount of the payment received by the worker for that week.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995
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STATEMENT OF EMERGENCY 787 KAR 1:290E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter

13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance

787 KAR 1:290E. Contract construction rates.

RELATES TO: KRS 341.070, 341.272

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation defines contract construction for the purposes of rate assignment under KRS 341.272.

Section 1. Definition. For the purpose of rate assignment, those types of service to be considered as contract construction are those listed in the Federal Standard Industrial Classification Manual, 1987, under Major Groups 15, 16, and 17, and those listed under Major Group 87 engaged in management of construction carried out by others, which are adopted by reference. Copies of these chapters are available for public inspection and copying in the office of the Tax Status and Accounting Branch, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. to 4:30 p.m. Monday through Friday, or may be obtained by writing to the above address or by telephone at (502) 564-2272.

Section 2. To be considered a contract construction employer, one-half (½) or more of the service upon which liability is established under KRS 341.070 shall be in contract construction.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

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STATEMENT OF EMERGENCY
787 KAR 1:300E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance

787 KAR 1:300E. Successorship.

RELATES TO: KRS 341.070, 341.540

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: This administrative regulation sets

forth the conditions under which one (1) employing unit shall be found to be successor to another.

Section 1. Determination of Successorship. Successorship shall be deemed to have occurred between two (2) employing units when the following conditions exist:

(1) Negotiation occurs to bring about the transfer, either directly between the parties to the transfer, or indirectly through a third party intermediary.

(2) At least two (2) of the following conditions are met, provided that this condition shall not be satisfied if only paragraphs (c) and (d) of this subsection are met:

(a) The business was a going concern when acquired. For the purpose of this administrative regulation, a going concern shall also include a business which has temporarily ceased subsequent to the date on which negotiations to transfer the business were begun.

(b) The subsequent owner or operator continued or resumed basically the same type of business in the same location.

(c) The subsequent owner employed fifty (50) percent or more of the previous owner's workers in covered employment.

(d) The previous owner employed fifty (50) percent or more of the subsequent owner's workers in covered employment.

(e) The subsequent owner acquired work contracts or commitments from the previous owner.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
787 KAR 1:310E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance

787 KAR 1:310E. Claimant profiling.

RELATES TO: KRS 194.030(9), 341.350(2)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: 42 USC 503(a)(10) and 503(j) require states to establish profiling systems to identify unemployment claimants who would be likely to exhaust regular benefits for referral to reemployment services, and to hold claimants ineligible to receive unemployment benefits if they fail to participate in reemployment services after having been so identified. KRS 341.350(2) was amended by the 1994 General Assembly to conform to this requirement, and made the Secretary of the Cabinet for Workforce Development responsible for establishing a profiling system. The purpose of this administrative regulation is to prescribe conditions, consistent with

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the provisions of 42 USC 503(a)(10), which enable a claimant to be treated as having satisfied the requirement to participate in reemployment services as a condition of receiving benefits.

Section 1. Any claimant who, pursuant to KRS 341.350(2) is required to participate in reemployment services, such as job search assistance services, as a condition of receiving unemployment insurance benefits, shall be deemed to have satisfied this requirement if:

(1) The claimant has completed the services to which he is referred; or

(2) There is justifiable cause for the claimant's failure to participate in the services. For the purpose of this administrative regulation, "justifiable cause" shall be interpreted to mean what a reasonable person would do in like circumstances.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY 787 KAR 2:010E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 2:010E. Veterans' benefits.

RELATES TO: KRS 194.030(9)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: 38 USC authorizes the states to implement veterans' employment and training programs. The Cabinet for Workforce Development is authorized by KRS 151B.020 to adopt such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this administrative regulation is to implement the veterans' training and benefit programs in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the veterans' programs as authorized by 38 USC, and as regulated in 20 CFR Parts 652 and 653, the following CFRs, federal statutes and bulletins are adopted by reference:

(1) 20 CFR Parts 652 and 653, dated March 30, 1984, which includes implementation procedures for providing veterans and eligible persons the maximum employment and training opportunities with priority given to the needs of disabled veterans and veterans of

the Vietnam era.

(2) 38 USC Chapter 41, as amended through January 14, 1983, which mandates the establishment of a job and job training counseling service program, an employment placement service program and a job training placement service program for eligible veterans and other eligible persons and the provision of maximum employment and training opportunities to veterans, with priority given to the needs of disabled veterans and veterans of the Vietnam era through existing programs, coordination and merger of programs and implementation of new programs.

(3) Veterans Employment Representative (VER) Bulletins A through 17 which contain implementation procedures for employment services provided to veterans in fulfillment of responsibilities mandated by law.

(4) Federal Contractor Job Listing (FCJL) Bulletins 1 through 4, which contain updated instructions and procedures for processing federal contractor job listing under the mandate of PL 93-50 requiring federal contractors and subcontractors to list suitable job openings with the appropriate local office of the Department for Employment Services.

(5) PL 96-466, The Veterans Rehabilitation and Education Amendments of 1980, which revised the disabled veterans vocational rehabilitation program and established the Disabled Veterans Outreach Program.

(6) PL 98-77, The Emergency Veterans' Job Training Act of 1983, which addresses problems of service and continuing unemployment among veterans by providing payments to defray the costs of training and incentives to employers to hire and train certain war time veterans who have been unemployed for long periods of time for stable and permanent positions that require significant training.

(7) PL 97-300, The Job Training Partnership Act, which establishes programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically-disadvantaged individuals and other individuals facing serious barriers to employment who are in special need of training to obtain productive employment. Title II, Part C of the Act specifically authorizes programs for veterans recently separated from military service, Vietnam-era veterans and disabled veterans.

(8) 41 CFR Parts 60-250, dated June 25, 1976, which mandates and provides procedures for ensuring compliance with Section 402 of the Vietnam-era Veterans Readjustment Act of 1974, which requires government contractors and subcontractors to take affirmative action to employ and advance the employment of qualified disabled veterans and veterans of the Vietnam era.

(9) PL 98-543, The Veterans Benefits Improvement Act of 1984, which increased various rates of compensation or benefits paid to eligible veterans in various programs administered by the Veteran Administration, extended the Veterans' Readjustment Appointment Authority to September 30, 1986, extended several provisions of PL 98-77, and established the Special Program for Veterans in Receipt of Individual Unemployability and the Special Training Program for Veterans in Receipt of Pensions, which are administered by the Veterans Administration.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621, and in local employment services office located throughout the state.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

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ADMINISTRATIVE REGISTER - 248

STATEMENT OF EMERGENCY 787 KAR 2:020E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 2:020E. Confidentiality of records of the Department for Employment Services.

RELATES TO: KRS 195.020, 195.040

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: The Cabinet for Workforce Development is authorized by KRS 151B.020 to develop and to adopt administrative regulations to protect the confidential nature of records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet. The function of this administrative regulation is to designate certain records of the cabinet's Department for Employment Services as confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

Section 1. The following documents and records pertaining to the cabinet's implementation of the Job Training Partnership Act (JTPA) in Kentucky are deemed confidential and not subject to disclosure by the Department for Employment Services.

- (1) JTPA-1, application form.
- (2) JTPA-20, verification of eligibility form and related source documents.

Section 2. Department for Employment Services records other than JTPA. The Cabinet for Workforce Development, Department for Employment Services has determined the following records to be confidential and not subject to disclosure:

- (1) ES-507, temporary application form for selected employers.
- (2) ES-508, job referral card.
- (3) ES-511, application card.
- (4) ES-514, job order form.
- (5) ES-518, test record card.
- (6) ES-519, test record card.
- (7) ES-614, counseling record and employability plan.

Section 3. Access to records of the Division of Unemployment Insurance shall be governed by the provision of KRS 341.190.

Section 4. Sharing of Information as Authorized by Law. Nothing in this administrative regulation shall prohibit the sharing of confidential information in accordance with KRS 194.060(2) and 341.190.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995
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STATEMENT OF EMERGENCY 787 KAR 2:030E

Under KRS Chapter 13A, to perfect the transition of the Department for Employment Services from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 95-289 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Department for Employment Services, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor
WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance

787 KAR 2:030E. Classifying a person as unemployed; appeals.

RELATES TO: KRS 141.065, Administrative Order HR 86-1

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: KRS 141.065 provides a credit to taxpayers for hiring a person classified as unemployed. The Department for Employment Services is required by Administrative Order HR 86-1 to perform all administrative functions pertaining to the Unemployment Tax Credit Program. The Secretary of the Cabinet for Workforce Development may adopt rules and administrative regulations as are necessary to implement the Unemployment Tax Credit Program and as are necessary to cooperate with the Revenue Cabinet for the proper administration of the program. The function of this administrative regulation is to establish when a person is classified as unemployed for purposes of the Unemployment Tax Credit Program, and to establish the appeals process and general rules for the conduct of hearings regarding the denial of the unemployment tax credit to a taxpayer.

Section 1. Definitions. (1) "Actively seeking work" means a person making a reasonable effort to obtain work at least sixty (60) days prior to hire as might be expected of a prudent person under like circumstances, including occupations, salary, number of employing firms in area and distance involved.

(2) "Full-time employment" means, for labor market attachment purposes, if a person worked more than twenty-three (23) hours per week or more than 100 hours per month for at least thirty (30) days prior to the sixty (60) day, minimum unemployed period.

(3) "Labor market attachment" means had full-time employment before the sixty (60) day minimum unemployed period. Self-employment can be used to meet this requirement.

(4) "Readily available" means a person who at least sixty (60) days prior to hire was willing and able to enter into full-time employment; and possessing the ability to overcome any barriers, including arranging child care, part-time work or school schedules, transportation, or other conditions that would prevent an individual from accepting full-time employment.

Section 2. (1) A person shall be considered "classified as unemployed" for purposes of the Unemployment Tax Credit Program

if:

- (a) Prior to the sixty (60) day minimum unemployment period, the person had prior labor market attachment; and
 - (b) During the sixty (60) day minimum unemployment period prior to being hired:
 - 1. Was not working; or
 - 2. Was employed not more than twenty-three (23) hours per week; or
 - 3. Was employed not more than 100 hours per month; and
 - 4. Was actively seeking and readily available for full-time employment.
- (2) Involvement in a strike or labor dispute during the sixty (60) day minimum unemployment period does not meet the definition of unemployment for purposes of the Unemployment Tax Credit Program.

Section 3. Request for Reconsideration. (1) Any party aggrieved as a result of the denial of the unemployment tax credit to a taxpayer shall request a reconsideration of the denial by contacting the state tax credit unit the request for reconsideration shall be in writing. The request for reconsideration shall be filed within fifteen (15) days of the mailing date of the denial notice.

(2) The aggrieved party shall submit any additional information to be considered during the reconsideration process in writing within ten (10) days of the mailing date of the request for reconsideration.

(3) The state tax credit unit shall issue its decision within forty-five (45) days of receipt of the request for reconsideration. Upon reconsideration, a certificate may be issued or a second denial letter stating appeal rights for a formal hearing may be issued.

Section 4. Appeals to Hearing Officer. (1) Within fifteen (15) days of the mailing date of a second denial notice, an aggrieved party shall file a written request for hearing with the state tax credit unit. Upon receipt of the written request for hearing, the Secretary of the Cabinet for Workforce Development shall appoint an impartial hearing officer to hear and decide appealed denials.

(2) A hearing shall be scheduled and commenced within sixty (60) days of receipt of the request for hearing. Notice of the hearing shall be mailed by certified mail, return receipt requested, to the parties.

(3) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses, and any other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences are to be open to the public. A written prehearing conference report shall be part of the record.

(4) Any party to a hearing and the administering agency may be represented by counsel and may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. No depositions shall be permitted for the purpose of discovery; however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas, and may admit relevant and probative evidence, and shall conduct the hearing in accordance with reasonable administrative practice.

(5) All testimony at the hearing shall be recorded.

(6) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument, and may terminate or exclude irrelevant or redundant evidence, testimony, or argument.

(7) Within thirty (30) days of adjournment of the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the record of the proceeding.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

STATEMENT OF EMERGENCY
788 KAR 2:010E

Under KRS Chapter 13A, to perfect the transition of the Office of Training and Reemployment from the Cabinet for Human Resources to the Cabinet for Workforce Development, pursuant to Executive Order 94-577 effective July 1, 1995, the administrative body is required to implement this administrative regulation in order to have sufficient authority to administer the programs housed within the Office of Training and Reemployment, which are mandated by federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

BRERETON C. JONES, Governor

WILLIAM D. HUSTON, Secretary

CABINET FOR WORKFORCE DEVELOPMENT
Office of Training and Reemployment

788 KAR 2:010E. Job Training Partnership Act.

RELATES TO: KRS 194.030(9)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 22, 1995

NECESSITY AND FUNCTION: PL 97-300, the Job Training Partnership Act authorizes the states to implement a job training program. The Cabinet for Workforce Development is authorized by KRS 151B.020 to adopt such rules and administrative regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this administrative regulation is to implement the Kentucky Job Training Program in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the Job Training Program as authorized by PL 97-300, the 1986 Amendments and as regulated in 20 CFR Parts 626 through 636, the following CFR, Public Law and Conference Report are adopted by reference:

(1) 20 CFR Parts 626 through 636, dated April 1, 1986, which contains regulations regarding the implementation of the Job Training Partnership Act (JTPA) and includes operational procedures for: determining eligibility of grant recipients and funding; preparing the Governor's Coordination and Special Services Plan; involving the State Job Training Coordinating Council; implementing interstate JTPA agreements; distribution of state funds; ensuring state education coordination and awarding grants; implementing training programs for older individuals; awarding state incentive grants; designating JTPA service delivery areas (SDA) and private industry councils; selection of SDA grant recipients; preparing, reviewing and approving job training plans; prohibiting use of public service employment for JTPA purposes; determining eligibility for need-based payments and benefits and assessing working conditions; ensuring compliance in the areas of grant payments, program income, insurance, procurement, management systems, reporting and recordkeeping, budgetary classifications and limitations, matching funds, property management standards, audits, program oversight, sanctions for Act violations, program close-out and performance standards; filing requests for and conducting grievance hearings; handling of administrative, civil and criminal complaints and reports of fraud, abuse and other criminal activity; and implementing summer youth employment and training

programs, native American employment and training programs, migrant and seasonal farmworker programs and veterans employment programs.

(2) PL 97-300, the Job Training Partnership Act of 1982 and the amendments issued in PL 99-496 dated October 16, 1986 which concerns the state and local service delivery system and general program and administrative issues including the authority and program requirements of the governor, state job training coordinating councils, private industry councils and chief elected officials; processes for designating local service delivery areas; preparing local plans and selecting local service providers; development of performance standards and procedures for implementation; fiscal control; monitoring and recordkeeping; training programs for disadvantaged youth and adults, including the areas regarding funding and eligibility and summer youth training and job programs; implementing training and employment aid program for dislocated workers including consultation with private industry councils; funding and implementation of employment and training programs for native Americans, migrant workers and veterans; Job Corps; labor market information systems; functions of the National Commission for Employment Policy; and coordination between the Work Incentive Program and the job training delivery system.

(3) Job Training Partnership Act, Conference Report, issued September 28, 1982, which is a joint explanatory statement of the Committee of Conference on the Job Training Partnership Act which explains the action agreed upon by the House and Senate managers and expresses the intent of the Congress.

(4) Interpretations of Job Training Partnership Act Rules and Regulations dated June 18, 1986, which contains interpretations pertaining to: Summer Youth Employment and Training Programs; Maximum and Minimum Limitations on Expenditures; Job Training Partnership Act, States' Responsibilities in Incident Report Procedures; and Job Training Partnership and Wagner-Peyser Acts Funds Availability. Also contained therein is an amendment to Part 629.38(e)(2)(iii) concerning Single Unit Charge Agreements involving Training of Youth as well as 20 CFR, Volume 51, Notices: No. 22, Job Training Partnership Act, Performance Standards for Program Years (PY) 1986 and 1987; No. 88, Job Training Partnership Act, Semiannual Status Report for Titles II-A and III Programs, and Title II-B Summer Performance Report; No. 117, Job Training Partnership Act, Annual Status Report for Titles II-A and III Programs.

Section 2. In order to coordinate the Job Training Program and provide for uniform service to the public, the following plan, instructions and procedures are adopted by reference:

(1) Governor's Coordination and Special Services Plan (GCSSP) for program years 1986 and 1987, dated May 15, 1986. This plan contains the identifying information of the applicant which includes the name and address of the grantee, date of submission, and time period covered. The program information includes the criteria for coordinating activities under the Act, including Title III activities, with programs and services provided by state and local agencies determined to have a direct interest in employment and training and human resource utilization within the state. It describes the use of resources provided to the state and its service delivery areas under the Act. It describes the projected use of resources, including education coordination, oversight, and support activities, priorities and criteria for state incentive grants, and performance standards and incentive award systems for the state-supported programs. It also addresses adjustments in Kentucky's performance standards as well as incentive awards and the method used in making the adjustments. It includes information on any of the activities listed in Section 121(c) of the Act which the state intends to conduct. It provides a statement indicating that the state had adequate methods of administration to assure compliance with Section 167 of the Act. It provides for a method of modification in accordance with procedures established by the Department of Labor if major changes occur in labor market

conditions, funding, or other factors during the period covered by the plan.

(2) Program Announcement for a Request for Proposal (RFP) for Older Individuals, dated May 30, 1986. This packet includes a letter of request seeking proposals to provide innovative employment and training programs for individuals age fifty-five (55) and older (older workers); also the procedures for the submission of a program request of funding for activities authorized under JTPA, Title II-A. These procedures include information on the purpose, objectives, authorized activities, approach and methodology, length of project, level of support and funding information, matching, service providers, list of service delivery areas (SDAs); also, the project application that includes name of project and agency, summary, requested funds, number of slots, budget summary and detailed budget, project description and design, performance standards, staff job descriptions, DES and SDA concurrence forms, EEO statement, and deliverer of training services.

(3) Program Announcement for a Request for Proposal (RFP) for postprogram data collection, dated June 23, 1986. This packet includes a letter of request seeking proposals from organizations which will gather data on former participants who received services which were funded through specific resources of JTPA, Title II-A (adults and Title III); also, the program announcement that includes the purpose, methodology, response requirements, project scope and duration and contracts. The RFP contains the description, outline and informational attachments. Included in these three (3) items are: special conditions and requirements, content specifications, evaluation criteria, selection process, general conditions, summary sheet application, budget summary, narrative instructions, narrative proposed work plan, demonstrated effectiveness of bidder, experience of key personnel, organizational/management systems, required inclusions, SDA listing, estimate of PY 1986 trainees, required questions in the survey and data entry form.

(4) Program Announcement for a Request for Proposal (RFP) for Audit of Funds Under the Job Training Partnership Act (JTPA) dated February 20, 1986. This packet includes a letter of request seeking applications from all certified public accounting firms interested in submitting bids for the audit of funds distributed to agency contractors under JTPA. The proposal package contains five (5) enclosures, including specification schedule, application and certification, list of audits to be conducted, JTPA federal regulations, and a copy of the Job Training Partnership Act (PL 97-300).

(5) Job Training Partnership Act On-the-job Training (OJT) Manual JTPA Titles II-A and III dated January 1, 1986, which contains updated information and instructions for state administered OJT Programs. This packet includes operational procedures and implementation for developing OJT contracts and determining employer and occupational eligibility for the program under JTPA, Title II-A and III. These procedures include information on: the purpose; performance standards; employer, occupational and participant eligibility; number of allowable trainees and their wages; working conditions and labor laws; apprenticeable occupations; development, negotiation, duration, completion, modification and monitoring of contracts; linkages and waiver of OJT procedures; matching funds; payment procedures (responsibility for payment, allowable costs, reimbursement procedures); copies of JTPA forms used in the program and line instructions for completing the forms.

(6) Job Training Partnership Act Financial Management Guide dated July 1, 1986. This guide sets forth minimum requirements for recipients of JTPA funds in the disbursement of, accounting for, and reporting of program funds. Included are sections pertaining to: definitions of JTPA financial terms; compliance standards for recipients in the control and accountability of assets, liabilities, funds, and expenditures by the various titles of JTPA; procedures to be followed in order to minimize the time elapsing between the receipt of JTPA funds and disbursement of those funds; the responsibilities and standards to be followed in order to ensure that a financial and

compliance audit is conducted on all JTPA funds; the responsibilities of the state and the SDAs in the financial monitoring of recipients of JTPA funds, in order to identify problem areas in recipient programs; procurement policies required to be followed in order to meet minimum federal, state, and local requirements; property management standards to be used by recipients in maintaining accountability of all property purchased with JTPA funds and transferred from the CETA Program; the responsibilities of the state and the service delivery areas in the purchase, maintenance, and use of the single integrated management information system for JTPA; and the instructions for completing the JTPA Quarterly Status Report and the JTPA Annual Status Report. Also included are JTPA forms and instructions for the completion thereof.

(7) JTPA Grievance Procedures (state level) dated January 1987, which provides for a participant grievance system to be adopted by all contractors (including their subcontractors) having JTPA funded contractual agreements with the state, a mechanism for hearing complaints that have not been resolved at the SDA (service delivery area) level and a formal procedure for the resolution of nonparticipant complaints and which includes the time frames and procedures to follow during the appeals process as well as forms to be used by the parties involved in the process.

Section 3. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621, and in local service delivery area offices located throughout the state.

WILLIAM H. GAUNCE, Executive Director

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 16, 1995

FILED WITH LRC: June 22, 1995 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development, Office of Training and Reemployment.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 94-577, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and general funds support the Office of Training and Reemployment, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment 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 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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the Department for Employment Services to facilitate the transfer of the Department to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the JTPA program administered by the Office of Training and Reemployment, Cabinet for Workforce Development. However, this is a technical promulgation to perfect the transfer of the JTPA Program to the Workforce Development Cabinet pursuant to Executive Order 94-577. 788 KAR 2:010E was formerly codified at 903 KAR 6:040. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the programs offered by the Department for Employment Services. As stated, no additional burden or responsibility is being imposed on participants within these programs. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. As stated, it is technical repromulgation. It should not affect any particular unit of government

4. Estimate the effect of this administrative regulation on the

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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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 94-577.

STATEMENT OF EMERGENCY 803 KAR 2:320

This emergency administrative regulation allows employers more time to comply with certain portions of the existing administrative regulation on asbestos by delaying the start-up date for compliance and modifies the hazard communication rule by eliminating a confusing clause in one section, corrects a typographical error, and clarifies the intent to regulate hazardous chemicals where CERCLA does not. The proposed changes in Section 1(3)(a)-(h) restore some previous rules relating to asbestos which had been mistakenly deleted. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" was filed with the Regulations Compiler on June 30, 1995.

BRERETON C. JONES, Governor
BILL RIGGS, Chairman

LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health

803 KAR 2:320E. Adoption of 29 CFR Part 1910.1000- .1500.

RELATES TO: KRS Chapter 338, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051, 338.061
EFFECTIVE: June 30, 1995

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended February 15, 1990 and May 15, 1990, with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.1000, "Air Contaminants", Table Z-1 is amended as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is incorporated by reference.

(a) 29 CFR 1910.1000, "Air Contaminants", Tables Z-1-A, Z-2 and Z-3 as published in Federal Register, Volume 54, Volume Number 12,

January 19, 1989 are incorporated by reference.

(b) 4,4'-"Methylene bis (2-chloroaniline)", found in Table Z-1-A of 29 CFR 1910.1000, as published in the Federal Register, Volume 54, Number 12, January 19, 1989, is hereby revoked.

(c) Revisions to 29 CFR 1910.1000, "Air Contaminants", Table Z-1-A, as published in the Federal Register, Volume 54, Number 127, July 5, 1989, is incorporated by reference.

(d) Revisions to 29 CFR 1910.1000, "Air Contaminants", Table Z-1-A, as published in the Federal Register, Volume 54, Number 170, September 5, 1989, is incorporated by reference.

(e) 29 CFR 1910.1000, Table Z-2, "Benzene", shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 176, September 11, 1987 are incorporated by reference.

(f) 29 CFR 1910.1000, Table Z-2, "Formaldehyde", as published in the Federal Register, Volume Number 52, December 4, 1987, is amended.

(g) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 57, Number 112, June 10, 1992, are incorporated by reference.

(h) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

(i) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(j) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(k) Amendments to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 58, Number 142, July 27, 1993, are incorporated by reference.

(2) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, October 17, 1986, Volume 51, No. 201, is incorporated by reference.

(a) 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.

(b) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.

(c) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, Volume 54, Number 243, December 20, 1989, are incorporated by reference.

(d) Amendments, revisions, and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, Volume 55, Number 24, February 5, 1990, are incorporated by reference.

(e) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.

(f) Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(g) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(h) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 57, Number 126, June 30, 1992, are

incorporated by reference.

(i) The revisions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos", as published in Federal Register, Volume 59, Number 153, August 10, 1994, are incorporated by reference.

(i) Amendments to 29 CFR 1910.1001, "Occupational Exposure to Asbestos", as published in Federal Register, Volume 60, Number 34, February 21, 1995, are incorporated by reference.

(3) The amendment to 29 CFR 1910.1003, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(4) The amendment to 29 CFR 1910.1004, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(5)(a) 29 CFR 1910.1005 "4,4'-methylene bis (2-chloroaniline)" and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), "Laboratory Activities", printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(b) Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows: "Premixed Solutions: Where 4,4'-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(6) The amendment to 29 CFR 1910.1006, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(7) The amendment to 29 CFR 1910.1007, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(8) The amendment to 29 CFR 1910.1008, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(9) The amendment to 29 CFR 1910.1009, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(10) The amendment to 29 CFR 1910.1010, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(11) The amendment to 29 CFR 1910.1011, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(12) The amendment to 29 CFR 1910.1012, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(13) The amendment to 29 CFR 1910.1013, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(14) The amendment to 29 CFR 1910.1014, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(15) The amendment to 29 CFR 1910.1015, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(16) The amendment to 29 CFR 1910.1016, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(17) The amendment to 29 CFR 1910.1017, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(18) The amendment to 29 CFR 1910.1018, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(19) 29 CFR 1910.1025, "Occupational Exposure to Lead" shall be amended as follows:

(a) "Table 1 - Implementation Schedule" is amended to read:

TABLE 1 - Implementation Schedule

INDUSTRY ¹ ug/m ³	COMPLIANCE DATES		
	200 ug/m ³	100 ug/m ³	50
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988
Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing	(2)	N/A	June 29, 1982
Lead Pigment Manufacture, Nonferrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair, Battery Breaking in the Collection and Processing of Scrap (excluding collection and processing of scrap which is part of a secondary smelting operation), Secondary Smelting of Copper, and Lead Casting	(2)	N/A	N/A
All Other Industries	(2)	N/A	June 11, 1984

¹Includes ancillary activities located on the same worksite.

²On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

(b) Revision to 1910.1025, as published in the Federal Register, Volume 54, Number 131, July 11, 1989 is incorporated by reference.

(c) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in Federal Register, Volume 55, Number 30, February 13, 1990, are incorporated by reference.

(d) Amendments, revisions, and additions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in Federal Register, Volume 56, Number 105, May 31, 1991, are incorporated by reference.

(20) Amendments to 29 CFR 1910.1027, "Cadmium", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(21) Amendments to 29 CFR 1910.1027, "Cadmium", as published in the Federal Register, Volume 55, Number 77, April 23, 1993, are incorporated by reference.

(22) 29 CFR 1910.1028, "Benzene", as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is incorporated by reference.

(23) 29 CFR 1910.1029, "Coke Oven Emissions", shall be amended as follows: Revision as published in the Federal Register, Volume 50, Number 178, September 13, 1985 are incorporated by reference.

(24) 29 CFR 1910.1030, "Bloodborne Pathogens", as published in the Federal Register, Volume 56, No. 235, is incorporated by reference with the following revisions, additions, or deletions:

(a) 29 CFR 1910.1030(d)(3)(ix) is amended to read: Gloves.

Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

(b) 29 CFR 1910.1030(d)(3)(ix)(D) is removed.

(25) Amendments to 29 CFR 1910.1030, "Bloodborne Pathogens", as published in the Federal Register, Volume 57, Number 127, are incorporated by reference.

(26) Corrections to 29 CFR 1910.1043, "Cotton Dust" as published in the Federal Register, Volume 51, Number 128, July 3, 1986, are incorporated by reference.

(27) The amendment to 29 CFR 1910.1044, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(28) The amendment to 29 CFR 1910.1045, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(29) Amendments and corrections to 29 CFR 1910.1047, "Ethylene Oxide and Appendices A, B, C and D", as published in the Federal Register, Volume 51, Number 132, July 10, 1986 are incorporated by reference.

(a) The amendments to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide", as published in the Federal Register, Volume 53, Number 66, April 6, 1988, are incorporated by reference.

(b) Revisions to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide", as published in Federal Register, Volume 53, Number 143, July 26, 1988, are incorporated by reference.

(30) 29 CFR 1910.1048, "Formaldehyde", as published in the Federal Register, Volume Number 52, December 4, 1987, is incorporated by reference.

(a) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in Federal Register, Volume 53, Number 170, September 1, 1988, are incorporated by reference.

(b) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 54, Number 133, July 13, 1989, is incorporated by reference.

(c) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 57, Number 102, May 27, 1992, are incorporated by reference.

(d) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 57, Number 112, June 10, 1992, are incorporated by reference.

(e) Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde", as published in the Federal Register, Volume 57, Number 118, June 18, 1992, are incorporated by reference.

(31) Amendments, revisions, and additions to 29 CFR 1910.1101, "Asbestos", as published in Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.

(32) Amendments to 29 CFR 1910.1050, "Methylenedianiline", as published in the Federal Register, Volume 57, Number 154, August 10, 1992, are incorporated by reference.

(33) Amendments to 29 CFR 1910.1101, "Asbestos", as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.

(34) 29 CFR 1910.1200, "Hazard Communication", shall be amended as follows:

(a) Amendments as published in the Federal Register, Volume 52, Number 163, August 24, 1987 are incorporated by reference.

(b) Revision of 29 CFR 1910.1200(i)(3), "Hazard Communication", and an amendment removing the last paragraph in 1910.1200 Appendix D, as published in the Federal Register, Volume 51, Number 189, September 30, 1986, are incorporated by reference.

(c) The revisions to 29 CFR 1910.1200, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(d) The revisions to 29 CFR 1910.1200, "Hazard Communication",

as published in the Federal Register, Volume 59, Number 245, December 22, 1994, are incorporated by reference.

(35) The addition of 29 CFR 1910.1201, "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994, is incorporated by reference.

(36) 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories", as published in Federal Register, Volume 55, Number 21, January 31, 1990, are incorporated by reference.

(37) Amendments to 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories", as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

(38) Amendments to 29 CFR 1910.1500, "Standards Organizations", as published in the Federal Register, Volume 57, Number 127, July 1, 1992, are incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: June 22, 1995

FILED WITH LRC: June 30, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this administrative regulation affect all employers in general industry and their employees.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. The amendments in Section 1 (2)(a)-(h) correct an administrative error from the last time the administrative regulation was amended. The amendment to Section 1(2)(i) extends the start-up dates for complying with the existing requirement regulating asbestos. The amendment to Section 1(34)(d) makes minor changes and technical corrections to the existing administrative regulation on hazard communication.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little effect from these proposed amendments.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues:

These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal 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) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed administrative regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program administrative regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The amendments in Section 1(2)(a)-(h) restores previous federal amendments that were accidentally deleted. The amendment to Section 1(2)(j) adopt revisions to the previously adopted regulations 29 CFR 1910.1001, as published in the Federal Register, Volume 60, Number 34, February 21, 1995. The amendment to Section 1(34)(d) adopts amendments to 29 CFR 1910.1200, as published in the Federal Register, Volume 59, Number 245, December 22, 1994.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These proposed amendments are identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

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. These amendments affect local government entities that have employees working with asbestos and those working with other hazardous substances.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed administrative regulations affect the safety and health of employees of local government who are exposed to asbestos, and those who are exposed to other hazardous substances.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY

803 KAR 2:403E

This emergency administrative regulation allows employers more time to comply with certain portions of the existing administrative regulation on asbestos by delaying the start-up date for compliance and modifies the hazard communication rule by eliminating a confusing clause in one section, corrects a typographical error, and clarifies the intent to regulate hazardous chemicals where CERCLA does not. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate in 29 CFR 1953.23 requiring implementation of the federal standard, or one more stringent, within six months of the date of promulgation of the new federal standard. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" was filed with the Regulations Compiler on June 30, 1995.

BRERETON C. JONES, Governor

BILL RIGGS, Chairman

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:403E. Adoption of 29 CFR Part 1926.50-.66.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061

EFFECTIVE: June 30, 1995

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1926.50-.66, revised as of June 30, 1993,

published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

- (1) The addition to 29 CFR 1926.50, "Medical Services and First Aid", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.
- (2) The additions to 29 CFR 1926.51, "Sanitation", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.
- (3) The additions and corrections to 29 CFR 1926.53, "Ionizing Radiation", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.
- (4) The additions to 29 CFR 1926.55, "Gases, Vapors, Fumes, Dusts, and Mists", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.
- (5) The additions to 29 CFR 1926.57, "Ventilation", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.
- (6) 29 CFR 1926.58, "Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in the Federal Register, Volume 51, Number 119, June 20, 1986 is adopted by reference.
 - (a) 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in Federal Register, May 12, 1987, Volume 52, No. 91, is incorporated by reference.
 - (b) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in Federal Register, Volume 53, Number 178, September 14, 1988, are incorporated by reference.
 - (c) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 55, Number 237, December 10, 1990, are incorporated by reference.
 - (d) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in Federal Register, Volume 54, Number 243, December 20, 1989, is incorporated by reference.
 - (e) Revisions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in Federal Register, Volume 55, Number 24, February 5, 1990, is incorporated by reference.
 - (f) Amendments, revisions and additions to 29 CFR 1926.58, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite", as published in the Federal Register, Volume 56, Number 171, September 4, 1991, are incorporated by reference.
 - (g) Amendments to 29 CFR 1926.58, "Asbestos, Tremolite, Anthophyllite, and Actinolite", as published in the Federal Register, Volume 57, Number 110, June 8, 1992, are incorporated by reference.
- (7) 29 CFR 1926.59, "Hazard Communication", as published in Federal Register, August 24, 1987, Volume 52, Number 163, is incorporated by reference.
 - (a) ~~[(7)]~~ Revisions to 29 CFR 1926.59, "Hazard Communication", as published in Federal Register, February 9, 1994, Volume 59, Number 27, are incorporated by reference.
 - (b) Revisions to 29 CFR 1926.59, "Hazard Communication," as published in Federal Register, Volume 59, Number 245, December 22, 1994, are incorporated by reference.
- (8) Amendments to 29 CFR 1926.60, "Methylenedianiline", as published in the Federal Register, Volume 57, Number 154, August 10, 1992, are incorporated by reference.
- (9) Amendments to 29 CFR 1926.62, "Lead in Construction; Interim Final Rule", as published in the Federal Register, Volume 58, Number 84, May 4, 1993, are incorporated by reference.
- (10) The addition of 29 CFR 1926.61, "Retention of DOT Markings, Placards, and Labels", as published in the Federal

Register, Volume 59, Number 137, July 19, 1994, is incorporated by reference.

(11) Amendments to 29 CFR 1926.63, "Cadmium", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(a) Amendments to 29 CFR 1926.63, "Cadmium", as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.

~~(b) [(42)]~~ Redesignation of 29 CFR 1926.63, "Cadmium", as published in the Federal Register, Volume 59, Number 1, January 3, 1994, is incorporated by reference.

~~[(13) Amendments to 29 CFR 1926.63, "Cadmium", as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.]~~

~~(12) [(14)]~~ 29 CFR 1926.64, "Process Safety Management for Highly Hazardous Chemicals", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

~~(13) [(15)]~~ 29 CFR 1926.65, "Hazardous Waste Operations and Emergency Response", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

~~(14) [(16)]~~ The revisions to 29 CFR 1926.65, "Hazardous Waste Operations and Emergency Response", as published in the Federal Register, Volume 59, Number 161, August 22, 1994, are incorporated by reference.

~~(15) [(17)]~~ 29 CFR 1926.66, "Criteria for Design and Construction of Spray Booths", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: June 22, 1995

FILED WITH LRC: June 30, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this administrative regulation affect all employers and employees in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by this proposed amendment. The proposed amendment makes minor changes and technical corrections to the existing administrative regulation on hazard communication. The amendments in Section 1(6), (8), and (9) correct an administrative error from the last time the administrative regulation was amended.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little effect from this proposed amendment.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding this proposed amendment which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This proposed amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promul-

gating body will not be affected by the adoption of this amendment.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed change.

(4) Assessment of anticipated effect on state and local revenues: This proposed amendment will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal 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) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed administrative regulation is adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: This proposed amendment will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of this proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program administrative regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This proposed amendment in Section 1(7)(b) adopts 29 CFR 1926.59, as published in the Federal Register, Volume 59, Number 245, December 22, 1994. The amendments in Section 1(6), (8), and (9) restore previous federal amendments that were accidentally deleted.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. This revision imposes no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed amendment affect local government entities that have employees working in construction exposed to hazardous substances.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed administrative regulation affects the safety and health of employees of local government who are involved in construction work and are exposed to hazardous substances.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. This proposed amendment will not affect the number of local government employees.

STATEMENT OF EMERGENCY

803 KAR 2:425E

This emergency administrative regulation allows employers more time to comply with certain portions of the existing administrative regulation on asbestos by delaying the start-up date for compliance. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate in 29 CFR 1953.23 requiring implementation of the federal standard, or one more stringent, within six months of the date of promulgation of the new federal standard. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" was filed with the Regulations Compiler on June 30, 1995.

BRERETON C. JONES, Governor

BILL RIGGS, Chairman

LABOR CABINET

**Department of Workplace Standards
Kentucky Occupational Safety and Health**

803 KAR 2:425E. Adoption of 29 CFR Part 1926.1100-.1148.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061

EFFECTIVE: June 30, 1995

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR, Part 1926.1100-.1148 revised as of June 30,

1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, Volume 58, Number 124. These standards are hereby incorporated by reference with the following additions, revisions, and deletions:

(1) The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 59, Number 153, August 10, 1994, is incorporated by reference.

(2) The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 34, February 21, 1995, is incorporated by reference.

(3) The amendment to 29 CFR 1926.1147, "Ethylene oxide", as published in the Federal Register, Volume 58, Number 143, July 28, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: June 22, 1995

FILED WITH LRC: June 30, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this administrative regulation affect all employers and employees in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by this proposed amendment. The amendment extends the start-up dates for complying with the existing administrative regulation regulating asbestos.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little effect from this proposed amendment.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding this proposed amendment which will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: This proposed amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this proposed amendment.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed change.

(4) Assessment of anticipated effect on state and local revenues: This proposed amendment will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal 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) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed administrative regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: This amendment will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of this proposed amendment.

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program administrative regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This proposed amendment adopts federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The proposed amendment adopts revisions to the previously adopted regulations 29 CFR 1926.1101, as published in the Federal Register, Volume 60, Number 34, February 21, 1995.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision imposes no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This proposed amendment affects local government entities that have employees involved in construction work exposed to asbestos.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed administrative regulation affects the safety and health of employees of local government involved in construction work who are exposed to asbestos.

4. How does this administrative regulation affect the local

government or any service it provides? The purpose of this proposed amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. This proposed amendment will not affect the number of local government employees.

STATEMENT OF EMERGENCY
803 KAR 2:500E

This emergency administrative regulation allows employers more time to comply with certain portions of the existing administrative regulation on asbestos by delaying the start-up date for compliance and modifies the hazard communication rule by eliminating a confusing clause in one section, corrects a typographical error, and clarifies the intent to regulate hazardous chemicals where CERCLA does not. Other proposed changes reflect revisions in the numbering of existing administrative regulations. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" was filed with the Regulations Compiler on June 30, 1995.

BRERETON C. JONES, Governor
BILL RIGGS, Chairman

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:500E. Adoption of 29 CFR Part 1915, 1917, 1918 and 1919, Maritime employment.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061

EFFECTIVE: June 30, 1995

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. The Occupational Safety and Health Standards Board hereby incorporates Chapter 29, Part 1915 as published in the April 20, 1983, Federal Register, Part 1917 as published in July 5, 1983, Federal Register, and Parts 1918 and 1919 of the Code of Federal Regulations, revised as of July 1, 1981, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1915.1, 1918.1, and 1919.1 shall read as follows: "The provisions of this regulation adopt and extend the applicability of established Federal Maritime Standards contained in 29 CFR 1915, 1916, 1917, 1918, and 1919 to all Maritime employers, Maritime employees, and places of Maritime employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) ~~The amendments to 29 CFR 1915, "Occupational Safety and~~

~~Health Standards for Shipyard Employment", as published in the Federal Register, Volume 58, Number 125, July 1, 1993, are incorporated by reference.~~

(3) 29 CFR 1915.4(b) and 1918.3(b), "Secretary", means Secretary of Labor, Kentucky Labor Cabinet, Commonwealth of Kentucky, or his authorized representatives.

(3) The revisions to 29 CFR 1915.5, "Reference Specifications, Standards, and Codes", as published in the Federal Register, Volume 58, Number 125, July 1, 1993, are incorporated by reference.

(4) The revisions to 29 CFR 1915.7, "Competent Person", addressing "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment", as published in the Federal Register, Volume 59, Number 141, July 25, 1994, are incorporated by reference.

(5) The revisions to 29 CFR 1915, Subpart B, "Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment", as published in the Federal Register, Volume 59, Number 141, July 25, 1994, are incorporated by reference.

(6) 29 CFR 1919.2(D), "Assistant Secretary" is changed to read: "Secretary" means the Secretary of Labor, Kentucky Labor Cabinet, Commonwealth of Kentucky, or his authorized representative.

(7) 29 CFR 1915.97, "Health and Sanitation", is revised to read as follows: Revisions as published in the Federal Register, Volume 52, Number 163, August 24, 1987.

(8) 29 CFR 1915.99, "Hazard Communication", as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(9) The revision to 29 CFR 1915.99, "Hazard Communication", redesignating it to 29 CFR 1915.1200, as published in the Federal Register, Volume 58, Number 125, July 1, 1993, is incorporated by reference. ~~[The revisions to 29 CFR 1915.99, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.]~~

(10) The addition of 29 CFR 1915.100, "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994, is incorporated by reference.

(11) Revision to 29 CFR 1915.113(b)(1), "Shackles and Hooks", as published in the Federal Register, Volume 51, Number 188, September 29, 1986 is incorporated by reference.

(12) Revision to 29 CFR 1915.172(d), "Portable Air Receivers and Other Unfired Pressure Vessels", as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.

(13) The revisions to 29 CFR 1915 Subpart Z, "Toxic and Hazardous Substances", as published in the Federal Register, Volume 58, Number 125, July 1, 1993, are incorporated by reference.

(14) ~~[(14)]~~ The addition of 29 CFR 1915.1001, "Asbestos", as published in the Federal Register, Volume 59, Number 153, August 10, 1994, is incorporated by reference.

(15) The revisions to 29 CFR 1915.1001, "Asbestos", as published in the Federal Register, Volume 60, Number 34, February 21, 1995, are incorporated by reference.

(16) 29 CFR 1915.1027 is revised as follows:

(a) ~~[(14)]~~ Amendments to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 57, Number 178, September 14, 1992, are incorporated by reference.

(b) ~~[(15)]~~ Amendments to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 58, Number 77, April 23, 1993, are incorporated by reference.

(c) ~~[(16)]~~ Amendments to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 59, Number 1, January 3, 1994, are incorporated by reference.

(17) The revisions to 29 CFR 1915.1200, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(18) The revisions to 29 CFR 1915.1200, "Hazard Communi-

cation", as published in the Federal Register, Volume 59, Number 245, December 22, 1995, are incorporated by reference.

(19) ~~[(17)]~~ 29 CFR 1917.1(a)(2)(x), "Marine Terminals", as published in the Federal Register, Volume Number 52, December 31, 1987, is incorporated by reference.

(20) ~~[(18)]~~ 29 CFR 1917.1(a)(2)(ix), "Scope and Applicability", as published in the Federal Register, Volume 52, Number 186, September 25, 1987 is incorporated by reference.

(21) ~~[(19)]~~ 29 CFR 1917.28, "Hazard Communication", as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(a) ~~[(20)]~~ Revisions to 29 CFR 1917.28, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(b) Revisions to 29 CFR 1917.28, "Hazard Communication", as published in the Federal Register, Volume 60, Number 34, February 21, 1995, are incorporated by reference.

(22) ~~[(21)]~~ The addition of 29 CFR 1917.29, "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994, are incorporated by reference.

(23) ~~[(22)]~~ 29 CFR 1917.44(o), "General Rules Applicable to Vehicles", shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are incorporated by reference.

(24) ~~[(23)]~~ 29 CFR 1917.72, "Grain Elevators", (reserved) as published in the Federal Register, Volume Number 52, December 31, 1987, is removed.

(25) ~~[(24)]~~ 29 CFR 1918.90, "Hazard Communication", as published in the Federal Register, Volume 52, Number 163, August 24, 1987 is incorporated by reference.

(a) ~~[(25)]~~ Revisions to 29 CFR 1918.90, "Hazard Communication", as published in the Federal Register, Volume 59, Number 27, February 9, 1994, are incorporated by reference.

(b) Revisions to 29 CFR 1918.90, "Hazard Communication", as published in the Federal Register, Volume 59, Number 245, December 22, 1995, are incorporated by reference.

(26) The addition of 29 CFR 1918.100, "Retention of DOT Markings, Placards, and Labels", as published in the Federal Register, Volume 59, Number 137, July 19, 1994, are incorporated by reference.

(27) 29 CFR 1919.2(e) "Administration" is changed to read: "Program" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.

(28) An employer, required under 29 CFR 1915, 1918 or 1919 to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

BILL RIGGS, Chairman

APPROVED BY AGENCY: June 22, 1995

FILED WITH LRC: June 30, 1995 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this administrative regulation affect all public sector employers having maritime operations and their employees.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings to those affected by these proposed amendments. The amendment to Section 1(15) extends the start-up dates for complying with the existing administrative regulation regulating asbestos. The amendment to Section 1(18), (21), and (25) makes minor changes and technical corrections to the existing administrative regulations on hazard communication. Other proposed changes reflect revisions in the numbering of existing administrative regulations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little effect from these amendments.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these proposed changes.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal 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) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed administrative regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these amendments.

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program administrative regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH

Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).
2. State compliance standards. These amendments adopt federal regulations.
3. Minimum or uniform standards contained in the federal mandate. The amendment to Section 1(15) adopt revisions to the previously adopted regulations 29 CFR 1915.1001, as published in the Federal Register, Volume 60, Number 34, February 21, 1995. The amendment to Section 1(18), (21), and (25) changes in the hazard communication regulation, as published in the Federal Register, Volume 59, Number 245, December 22, 1994. Other proposed changes reflect revisions in the numbering of existing administrative regulations.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These proposed amendments on the asbestos and hazard communication administrative regulations are identical to the federal regulations.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

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. These amendments affect local government entities that have employees in maritime operations working with asbestos and those working with other hazardous substances.
3. State the aspect or service of local government to which this administrative regulation relates. The proposed administrative regulations affect the safety and health of employees of local government in maritime operations who are exposed to asbestos, and those who are exposed to other hazardous substances.
4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health and to revise the numbering of existing administrative regulations to simplify research. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY 907 KAR 1:009E

This emergency administrative regulation is being amended to revise the incorporated by reference Physician Manual to correspond with the companion administrative regulation 907 KAR 1:010E, Payments for physicians' services, which contains reimbursement changes which are effective July 1, 1995. This action must be taken on an emergency basis in order to protect the public health by ensuring medically necessary medical services are available on a timely basis for the Medicaid eligible population. Failure to enact this administrative regulation on an emergency basis would pose an

imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on September 30, 1995 since this administrative regulation revises the incorporated by reference Physician Manual to correspond with the reimbursement changes effective July 1, 1995 contained in the companion administrative regulation 907 KAR 1:010E, Payments for physicians' services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

BRERETON JONES, Governor
MASTEN CHILDERS, II, Secretary

CABINET FOR HUMAN RESOURCES Department for Medicaid Services

907 KAR 1:009E. Physicians' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50

EFFECTIVE: June 30, 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 the provisions relating to physicians' services for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy.

Section 1. Physicians' Services. (1) Covered services shall include those furnished by physicians through direct physician-patient contact in the office, the patient's home, a hospital, nursing facility or elsewhere.

(2) For purposes of the Medicaid Program, oral surgeons shall be treated in the same manner as physicians with regard to coverage for services within their scope of licensed practice, and the term "physician" shall be construed to include oral surgeons unless the context in which it is used is to the contrary.

(3) Covered physicians' services and service limitations are shown in the Physician Manual.

Section 2. Physicians Manual. The Physician Manual specifies the conditions for participation, services covered, and limitations for the physicians' services component of the Medicaid Program. The Physician Manual, revised July 1, 1995 [~~October 15, 1994~~], incorporated by reference in this administrative regulation may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of the an appropriate fee allowed by 200 KAR 1:020 [~~which shall not exceed approximate cost~~].

Section 3. Additional Limitations. (1) A patient placed in "lock-in" status due to overutilization shall receive services only from his lock-in provider except in the case of emergency or referral.

(2) Laboratory procedures.

(a) Laboratory procedures performed in the physician's office shall be limited to those procedures listed on the agency's physician laboratory benefit schedule.

(b) The professional component of physician laboratory procedures performed by board certified pathologists in a hospital setting or an outpatient surgical clinic shall be covered if the physician has an agreement with the hospital or outpatient surgical clinic for the

provision of laboratory procedures.

(3) The cost of preparations used in injections shall not be considered a covered benefit, except as specified in the Physician Manual.

(4) Telephone contacts with patients shall not be considered a covered benefit.

(5) Services performed or recipient contacts made exclusively by physician assistants, nurses, or other physician's employees shall not be covered under the physicians' services component.

Section 4. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: June 26, 1995

FILED WITH LRC: June 30, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All physicians participating in the Medicaid Program who furnish delivery-related anesthesia services or who use the code for injection procedure for chemonucleolysis of intervertebral disk(s) - lumbar.

(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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(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: Reflected in companion reimbursement regulation 907 KAR 1:010E, Payments for physicians' services, filed at the same time as this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: (Cost)

2. Continuing costs or savings: (Cost)

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

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

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(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: See

companion reimbursement regulation 907 KAR 1:010E, filed at the same time as this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See companion reimbursement regulation 907 KAR 1:010E, filed at the same time as this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: Necessary services might not be rendered.

(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 amended to revise the incorporated by reference Physician Manual to correspond with the changes in the companion reimbursement regulation 907 KAR 1:010E, filed at the same time.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY

907 KAR 1:010E

This emergency administrative regulation is being amended effective July 1, 1995 as follows: (1) to reimburse physicians for delivery-related anesthesia services at the lesser of the actual billed charge or a standard fixed fee paid by the type of procedure, and (2) to reimburse physicians for the injection procedure for chemonucleolysis of intervertebral disk(s) - lumbar at the lesser of the actual billed charge or a fixed upper limit for that procedure established by the cabinet. This action must be taken on an emergency basis in order to protect the public health by ensuring medically necessary medical services are available on a timely basis for the Medicaid eligible population. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on September 30, 1995 as follows: (1) to reimburse physicians for delivery-related anesthesia

services at the lesser of the actual billed charge or a standard fixed fee paid by the type of procedure, and (2) to reimburse physicians for the injection procedure for chemonucleolysis of intervertebral disk(s) - lumbar at the lesser of the actual billed charge or a fixed upper limit for that procedure established by the cabinet. 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 1:010E. Payment for physicians' services.

RELATES TO: KRS 205.550

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.50, 42 CFR 447 Subpart B, 42 USC 1396a-d, s

EFFECTIVE: June 30, 1995

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

Section 1. Definition. (1) "Resource-based relative value scale (RBRVS) unit" is a value based on current procedural terminology (CPT) codes established by the American Medical Association assigned to the service which takes into consideration the physicians' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide the service in an area relative to national average price.

(2) "Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.

Section 2. Reimbursement. (1) Payment for covered physicians' services shall be based on the physicians' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet using a Kentucky Medicaid fee schedule developed from a resource-based relative value scale (RBRVS) based on the Harvard 1992 RBRVS Study. If there is no RBRVS based fee the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general rate setting methodology. Fixed upper limits not determined in accordance with the principle shown in this subsection (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

(2) RBRVS units shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit. The dollar conversion factors shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia (except delivery-related)	\$25.15
All Other Services	\$25.80

Section 3. Reimbursement Exceptions. (1) Except as otherwise specified in this section, physicians shall be allowed to secure drugs for specified immunizations identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs

were used to provide immunizations to Medicaid recipients.

(2) Except as otherwise specified in this section, physicians shall be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services shall reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs had been obtained through that agency upon receipt of appropriate notice that the drugs were used to provide immunizations to Medicaid recipients.

(3) Effective October 1, 1994, physicians shall be provided drugs for specified immunizations through the pediatric vaccine distribution program to be administered by the Department for Health Services in accordance with the terms, standards, and criteria described in 42 USC 1396a(a)(62) and 1396s.

(4) Payments for specified obstetrical services provided on or after July 1, 1991, shall be at the actual billed charge up to a maximum of \$900.

(5) For delivery-related anesthesia services provided on or after July 1, 1995, a physician shall be reimbursed the lesser of the actual billed charge or a standard fixed fee paid by type of procedure. Those procedures and standard fixed fees are:

Vaginal delivery	\$200
Epidural single	315
Epidural continuous	335
Cesarean section	320

~~(6) [(5)]~~ Payment for individuals eligible for coverage under Medicare, Part B is made in accordance with Sections 1 and 2 of this administrative regulation and subsections (1) through (4) and subsection (6) of this section within the individual's deductible and coinsurance liability.

~~(7) [(6)]~~ Family practice physicians practicing in geographic areas with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed at the physicians' usual and customary actual billed charges up to 125 percent of the fixed upper limit per procedure established by the cabinet.

~~(8) [(7)]~~ For services provided on or after July 1, 1990, physician laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

~~(9) [(8)]~~ Procedures specified by Medicare and published annually in the Federal Register and which are commonly performed in the physician's office are subject to outpatient limits if provided at alternative sites and shall be paid adjusted rates to take into account the change in usual site of service.

(10) Payments for the following procedure shall be paid the lesser of the actual billed charge or at a fixed upper limit for that procedure as established by the cabinet: Injection procedure for chemonucleolysis of intervertebral disk(s), lumbar - \$793.50.

Section 4. Implementation Date. The changes shown in this administrative regulation shall be applicable with regard to services provided on or after July 1, 1995 ~~[October 15, 1994]~~.

Section 5. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

MASTEN CHILDERS II, Commissioner and Secretary
APPROVED BY AGENCY: June 26, 1995
FILED WITH LRC: June 30, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All physicians participating in the Medicaid Program who furnish deliver-related anesthesia services or who use the code for injection procedure for chemo-nucleolysis of intervertebral disk(s) - lumbar.

(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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(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: Reflected in companion reimbursement regulation 907 KAR 1:010E, Payments for physicians' services, filed at the same time as this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: (Cost)

2. Continuing costs or savings: (Cost)

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(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: See companion reimbursement regulation 907 KAR 1:010E, filed at the same time as this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: See companion reimbursement regulation 907 KAR 1:010E, filed at the same time as this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: Necessary services might not be rendered.

(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 amended to revise the incorporated by reference Physician Manual to correspond with the changes in the companion reimbursement regulation 907 KAR 1:010E, filed at the same time.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY

907 KAR 1:014E

This emergency administrative regulation is being amended to incorporate by reference the Review and Approval of Hospital Emergency Room Services Manual to correspond with the companion administrative regulation 907 KAR 1:015E, Payments of hospital outpatient services. This action must be taken on an emergency basis to protect the public health and ensure access to medical services by the Medicaid eligible population while complying with House Bill 250 mandated to establish a system within Medicaid to reduce unnecessary hospital emergency room utilization and costs. 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 1:014E. Outpatient hospital services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, Chapter 205, 42 CFR 440.20, 42 USC 1396a, b, d

EFFECTIVE: June 30, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [of Medical Assistance in accordance with Title XIX of the Social Security Act]. 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 outpatient hospital services for which payment shall be made by the Medicaid [medical assistance] Program in behalf of both the categorically needy and medically needy.

Section 1. Hospital Outpatient Services Covered by the Medicaid

~~[Medical Assistance]~~ Program. There ~~shall be~~ ~~[are]~~ no limitations on the number of hospital outpatient visits or services available to program recipients.

(1) Hospital outpatient services to be covered, as listed below, shall be prescribed by, or in the case of emergency room services, determined to be medically necessary by a duly-licensed physician, or if applicable, a duly-licensed dentist, or a review agency designated by the cabinet for the care and treatment indicated in the management of illness, injury, impairment or maternity care, or for the purpose of determining the existence of an illness or condition in a patient. The services shall be furnished by or under the supervision of a duly-licensed physician, or if applicable, a duly-licensed dentist.

(a) Diagnostic services as ordered by a physician.

(b) Therapeutic services as ordered by a physician.

(c) Except for emergency room services rendered to children under the age of six (6), emergency room services in emergency situations as determined by a physician or a review agency designated by the Cabinet for Human Resources.

(d) Effective with regard to services provided on or after July 1, 1990, drugs, biologicals, or injections administered in the outpatient hospital setting.

(2) Hospital outpatient services for maternity care may be provided by an advanced registered nurse practitioner (ARNP) who has been designated by the Kentucky Board of Nursing as a nurse midwife or by a registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Human Resources.

Section 2. Hospital Outpatient Services not Covered by the Medicaid ~~[Medical Assistance]~~ Program. (1) Items and services which are not reasonable and necessary for or related to the diagnosis or treatment of illness or injury, impairment or maternity care.

(2) Services for which the individual has no obligation to pay and for which no other person has a legal obligation to provide or to pay.

(3) Medical supplies and appliances except those incident to the performance of services in the hospital outpatient department and which are included in the rate of payment established by the Kentucky Medicaid ~~[Medical Assistance]~~ Program for hospital outpatient services.

(4) Drugs, biologicals and injectables purchased by or dispensed to a patient.

(5) Routine physical examinations.

Section 3. Review and Approval of Hospital Emergency Room Services Manual. (1) The policies of the cabinet with regard to hospital emergency room services are shown in the "Review and Approval of Hospital Emergency Room Services Manual" dated July 1, 1995, which is incorporated by reference in this administrative regulation.

(2) This manual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. eastern time in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of the appropriate fee allowed by 200 KAR 1:020.

Section 4. The changes shown in this administrative regulation shall be effective with regard to services provided on and after July 1, 1995.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: June 26, 1995

FILED WITH LRC: June 30, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All hospital outpatient

services providers participating in the Medicaid 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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(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: Reflected in companion reimbursement regulation 907 KAR 1:015E filed at the same time as this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(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: Public health care will be improved since inappropriate utilization will be decreased and appropriate utilization maintained.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Health care in general could be negatively impacted.

(c) If detrimental effect would result, explain detrimental effect: Could negatively affect the provision of care under the Medicaid Program.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? 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.

ADMINISTRATIVE REGISTER - 266

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.
2. State compliance standards. This administrative regulation does not set compliance standards.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY 907 KAR 1:015E

This emergency administrative regulation is being amended to establish, effective for services provided on or after July 1, 1995, a payment limitation for nonemergency medical services provided in the emergency room for Medicaid eligible individuals age 6 or older for a medical condition that does not meet the criteria established for a medical emergency as outlined in the Review and Approval of Hospital Emergency Room Services Manual. The payment limitation shall be \$22.97 plus the usual payment amount for ancillary services which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists. This action must be taken on an emergency basis to protect the public health and ensure access to medically necessary medical services by the Medicaid eligible population while complying with the House Bill 250 mandate to establish a system within Medicaid to reduce unnecessary hospital emergency room utilization and costs. 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 1:015E. Payments for hospital outpatient services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, Chapter 205, 42 CFR Subpart 447, 42 USC 1396a, b, d

EFFECTIVE: June 30, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [of Medical Assistance in accordance with Title XIX of the Social Security Act]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for hospital outpatient services.

Section 1. Outpatient Hospital Services. Except as specified in Section 2 of this administrative regulation, [For services provided on

or after July 1, 1990,] the cabinet shall reimburse participating hospitals for outpatient services at the rate of sixty-five (65) percent of usual and customary charges billed to the Medicaid [Medical Assistance] Program with a settlement (except for out-of-state hospitals) to the lower of cost or charges at the year end. Charges or costs shall not be transferred between the inpatient and outpatient service units. Laboratory services shall be paid based on the Medicare allowable payment rates as specified in 907 KAR 1:029, Payments for laboratory services. For laboratory services with no established allowable payment rate, the payment shall be based on sixty-five (65) percent of usual and customary actual billed charges with no settlement to cost.

Section 2. Limitations on Payments for Nonemergency Hospital Care Provided in Emergency Rooms to Individuals Age Six (6) or Above. If services are provided in an emergency room on or after July 1, 1995, to individuals age six (6) or above which do not meet the criteria established for reimbursement for a medical emergency the following limitations shall apply:

(1) Payment shall not be made for ancillary services provided to individuals age six (6) or above except for those which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists;

(2) If the cabinet determines that services provided in the hospital emergency room to an individual age six (6) or above are for a condition that does not meet the criteria for a medical emergency in accordance with the Review and Approval of Hospital Emergency Room Services Manual, the cabinet shall pay twenty-two (22) dollars and ninety-seven (97) cents for the emergency room service, and this payment amount shall be considered payment in full; and

(3) Ancillary services provided to individuals age six (6) or above determined not to have been medically appropriate to determine if a medical emergency exists shall not be billed to the recipient since the payment of twenty-two (22) dollars and ninety-seven (97) cents shall be considered payment in full.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: June 26, 1995

FILED WITH LRC: June 30, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: All hospital outpatient service providers participating in the Medicaid 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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: (Savings) \$2 to 3 million.

2. Continuing costs or savings: (Savings) \$2 to 3 million.

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: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(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: Public health care will be improved since inappropriate utilization will be decreased and appropriate utilization maintained.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Health care in general could be negatively impacted.

(c) If detrimental effect would result, explain detrimental effect: Could negatively affect the provision of care under the Medicaid Program.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY 907 KAR 1:060E

This emergency administrative regulation is being promulgated to

provide various clarifications with regard to coverage of medical transportation and the manner in which program limitations will be applied. This action must be taken on an emergency basis to reduce inappropriate utilization and protect human health by assuring that Medicaid recipients will continue to have adequate access to medical transportation services. 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 1:060E. Medical transportation.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, Chapter 305, 42 CFR 440.170, 42 USC 1396(d)

EFFECTIVE: June 30, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid 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 the service of transportation for access to medical services for which payment shall be made by the Medicaid [Medical Assistance] Program in behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Household" means a single housing unit which is legally considered the residence of one (1) or more persons who may or may not be related. An apartment building, duplex, fourplex, etc. shall not be considered a single housing unit.

(2) "Medical necessity" means a condition requiring medical attention.

(3) "Medical service area" means a county of residence and contiguous counties.

Section 2. Transportation under the Medicaid Program shall be provided only to Medicaid eligible recipients and if necessary, an attendant or parent to accompany the recipient.

Section 3. [4-] Ambulance Services. Ambulance services shall be provided only if medically necessary [when other means of transportation is contraindicated,] and if the [following] criteria shown in this section are met.

(1) Emergency ambulance services shall be provided without preauthorization to the nearest hospital emergency room or appropriate medical facility or provider as defined in 907 KAR 1:061E. A statement that the Medicaid recipient received emergency services shall be obtained from the medical personnel of the facility which treated the recipient. [may be provided without preauthorization when the emergency treatment is indicated and rendered.]

(2) [Nonemergency ambulance services designed to facilitate the orderly admittance, transfer or placement of the patient shall be permitted without preauthorization when the place of destination, point of departure, and purpose of transfer meet guidelines specified by the agency.]

(3) Nonemergency ambulance services [for round trips] to a hospital, [or a] clinic, physician's office or other health facility [to secure outpatient treatment or therapy] shall be provided if [when] preauthorized. In the event that the Department for Social Insurance local office is closed, the nonemergency ambulance service shall be postauthorized. Preauthorization and postauthorization shall be

performed by the Department for Medicaid Services or its authorized representative utilizing criteria shown in Sections 4 and 5 of this administrative regulation. [by the Division of Medical Assistance.]

Section 4. [2-] Locally Authorized Medical Transportation. (1) A transportation preauthorization [Through December 31, 1990 a potty cash] system administered at each [the] local Department for Social Insurance office [level] shall provide for preauthorized nonemergency [nonambulance] transportation approvals, including nonemergency ambulance services, limited to the provision of the services under the following conditions:

(a) The recipient [client] shall be traveling to or from a Medicaid [medical service] covered service under a state plan, exclusive of pharmaceutical services [drugs];

(b) The service shall be determined to be medically necessary; [and]

(c) Payment for transportation shall be necessary to assure that the medical service is secured; and

(d) Failure to pay for transportation results in a hardship to the Medicaid recipient. A hardship shall not be considered to exist if free transportation which is appropriate for the recipient's medical needs is available or if use of an operational household vehicle is available, appropriate, and is not used for commercial purposes. [The same system of preauthorization of transportation shall continue in effect on and after January 1, 1991, except that the local potty cash system shall be dissolved and payments for locally authorized medical transportation shall be made directly to participating providers by the Medicaid program.]

(2) Locally authorized medical transportation [as above] shall be provided as necessary on an exceptional postauthorization basis as specified in Section 3(2) of this administrative regulation with the additional limitation that postauthorization shall be justified by the recipient indicating [client showing] the need for medical transportation arose and was provided [fulfilled] outside normal working hours and that payment for the transportation has not been made.

Section 5. [3-] Determination of Necessity. (1) All approvals for nonemergency transportation services [Any determination of medical necessity of transportation,] and the provision of preauthorization and postauthorization, shall be made by the Department for Medicaid Services [cabinet] or by the department's [an] authorized representative.

(2) Only transportation within the medical service area shall be approved. Transportation services provided outside the medical service area shall be approved by the Department for Medicaid Services or the department's authorized representative if the medical service required by the recipient is not available in that area and the recipient has been appropriately referred by a local medical provider, [unless preauthorized by the cabinet (or postauthorized in certain instances), except in instances where previously designated criteria for transportation not requiring authorization shall be met.]

(3) Only the least expensive available transportation suitable for the recipient's needs shall be approved.

Section 6. Transportation Services Manual. The Transportation Services Manual contains the conditions for participation, services covered, and limitations for ambulance transportation services component. The Transportation Services Manual dated July 1, 1995, incorporated by reference in this administrative regulation 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 be obtained from that office upon payment of the appropriate fee.

Section 7. The provisions of this administrative regulation as amended shall be effective for services provided on or after July 1, 1995.

Section 8. 907 KAR 1:420, Incorporation by Reference of the Ambulance Transportation Services Manual, is repealed.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: June 29, 1995

FILED WITH LRC: June 30, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: Various medical transportation providers and all medical recipients using medical transportation.

(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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Shown in companion regulation 907 KAR 1:061E.

2. Continuing costs or savings: Shown in companion regulation 907 KAR 1:061E.

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: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

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

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

Disparate treatment of any person or entity subject to this administrative regulation could raise questions or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

STATEMENT OF EMERGENCY 907 KAR 1:061E

This emergency administrative regulation is being promulgated to provide for rate revisions and limitations on payments for providers of Medicaid transportation. This action must be taken on an emergency basis to reduce inappropriate utilization and protect human health by assuring that Medicaid recipients will continue to have adequate access to medical transportation services. 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 1:061E. Payments for medical transportation.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, Chapter 205, 42 CFR 440.170, 447.200 through 447.205, 42 USC 1396(d)

EFFECTIVE: June 30, 1995

NECESSITY AND FUNCTION: The Cabinet for Human Resources, Department for Medicaid Services 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 method for determining amounts payable by the department ~~[cabinet]~~ for medical transportation services.

Section 1. Definitions. For purposes of this administrative regulation, the following definitions apply:

(1) "Advanced life support" (ALS) ambulance services is defined in 902 KAR 14:070 and meets requirements specified in 902 KAR 14:080, Sections 1 through 10, and is licensed by the Cabinet for Human Resources.

(2) "Appropriate medical facility or provider" means a local medical provider other than an emergency room of a hospital who can provide necessary emergency care when a hospital emergency room is not located within the medical service area.

(3) "Air ambulance provider" is defined in 902 KAR 14:070 and shall meet requirements specified in 902 KAR 14:090 and is licensed by the Cabinet for Human Resources.

(4) "Ambulatory recipient who is disoriented" means an individual who is confused, especially with respect to time, place, and identity of persons or objects. The extent of disorientation shall be sufficient to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.

(5) [(4)] "Attendant" means an individual who accompanies the recipient, if necessary, to, from, and while receiving medical services. A parent who must accompany a minor child is considered to be an attendant.

(6) "Basic life support" (BLS) ambulance services is defined in 902 KAR 14:070 and meets requirements specified in 902 KAR 14:080, Sections 1 through 7 and 8, as appropriate, and is licensed by the Cabinet for Human Resources.

(7) [(2)] "Commercial transportation carriers [vendors]" means those commercial carriers licensed in accordance with the laws of Kentucky, other states, or of the United States to transport members of the general public such as a taxi cab.

(8) "Medical condition" is defined as any condition of the recipient which does not allow him to travel alone or without physical assistance.

(9) [(3)] "Noncommercial group carriers" means those vendors who provide bus or bus-type medical transportation to an identifiable segment of the eligible recipient group, but not including vendors whose transportation costs are allowable costs under their reimbursement system (except community [e.g.,] mental health centers). The segment may be identifiable by geographical boundary, type of medical service required, common medical destination (i.e., clinic, primary care center, etc.), or other similar grouping method. Included within this definition are:

(a) Community action agencies (or successor agencies) providing bus or bus-type service for a poverty or near-poverty area target population; and

(b) Other similar providers as identified by the cabinet.

(10) "Nonemergency health transportation services (NEHT)" is defined in 902 KAR 14:070 and meets requirements specified in 902 KAR 14:060 and is licensed by the Cabinet for Human Resources.

(11) [(4)] "Private automobile carrier [vendor]" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional medical transportation of eligible recipients. ~~Included within this definition are ambulance type vendors who are noncertified or who have not chosen or been approved to participate in the Title XIX program as a provider of ambulance services, if willing to accept private automobile vendor rates.~~

(12) "Recipient" means an individual who is eligible for Medicaid benefits and meets the criteria for transportation services as defined in 907 KAR 1:060.

(13) [(5)] "Specialty [individual] carrier" means a vendor who provides, through specially equipped vehicles, medical transportation for nonambulatory recipients (those who are required to travel by wheelchair) or for ambulatory but disoriented recipients (those who are sufficiently disoriented as to time, place, person or objects so as to be unable to travel to or from medical services unaccompanied or unsupervised), and who provides services not normally available from other transportation vendors. The equipment required shall be a van or similar type vehicle with a ramp or lift for wheelchairs; and the service shall be the accompaniment of the recipient from point of origin to point of destination where the recipient is placed in the charge of the receiving individual, including physical assistance or guidance to the recipient ~~[if necessary]~~. To be considered a specialty

~~[individual]~~ carrier for purposes of reimbursement from the cabinet, the carrier shall be recognized by the cabinet as a specialty ~~[individu-~~ al] carrier with approval given by the cabinet for reimbursement at specialty ~~[individual]~~ carrier rates. The cabinet may require the submission of documentation designed to show that the vendor is capable of providing specialty ~~[individual]~~ carrier service in an adequate and safe manner.

(14) "Upper limit" means the maximum reimbursement rate that the Department for Medicaid Services shall pay the transportation provider for the services provided.

(15) ~~[(6)]~~ "Waiting time" means that period of time following provision of transportation to a medical vendor during which the private automobile vendor is waiting for the recipient to receive medical treatment, in order to provide the return trip required by the recipient. In the instance of an eligible recipient being admitted to a medical institution for inpatient care, waiting time is considered to have occurred ~~if [when]~~ the private automobile vendor waits a sufficient period of time to ensure the recipient's admittance to the facility.

Section 2. Licensed Ambulance Services Reimbursement. (1) The department ~~[cabinet]~~ shall reimburse licensed participating ambulance services at the lesser of their usual and customary charges or the maximum rate established by the department ~~[cabinet]~~.

(2) The maximum rate shall be the amount arrived at by combining the base rate, mileage allowance, oxygen rate, and cost of other supplies ~~[following component costs]~~, as applicable:

(a) The base rate for ALS emergency transportation to the emergency room of a hospital ~~[which]~~ shall be set at eighty-five (85) ~~[fifty-(50)]~~ dollars per one (1) way trip and includes all mileage costs for the first ten (10) miles; the mileage allowance for trips shall be three (3) dollars per mile for mileage above the first ten (10) miles; a flat rate of twenty-five (25) dollars shall be set for each additional recipient with no additional allowance for mileage.

(b) The rate for air ambulance transportation shall be an all-inclusive rate. Reimbursement shall be the provider's usual and customary charge not to exceed the upper limit of \$3,500. All claims for air ambulance transportation services shall be submitted to the Department for Medicaid Services and shall be reviewed for determination that air transport was medically necessary and appropriate.

(c) The base rate for BLS emergency transportation to the emergency room of a hospital shall be set at sixty (60) dollars per one (1) way trip and includes all mileage costs for the first ten (10) miles; the mileage allowance for trips shall be two (2) dollars per mile for mileage above the first ten (10) miles; a flat rate of twenty (20) dollars shall be set for each additional recipient with no additional allowance for mileage.

~~[(b) A mileage allowance of one (1) dollar per mile for mileage above the first ten (10) miles;]~~

(d) The base rate for any ALS or BLS providing emergency ambulance transportation to an appropriate medical facility or provider shall be set at fifty-five (55) dollars per one (1) way trip and includes all mileage costs for the first ten (10) miles; the mileage allowance for trips shall be two (2) dollars per mile for mileage above the first ten (10) miles; a flat rate of fifteen (15) dollars shall be set for each additional recipient with no additional rate for mileage. Payment shall be contingent upon review of required documentation. Claims shall be reviewed by the Department for Medicaid Services. Required documentation shall be a statement of a medical emergency by the attending medical provider.

(e) The base rate for NEHT services when transporting a recipient who is on a stretcher to a medical provider, other than a pharmacy, shall be set at thirty (30) dollars per one (1) way trip and includes all mileage costs for the first ten (10) miles; the mileage allowance for trips shall be one (1) dollar per mile for mileage above the first ten (10) miles. The reimbursement for NEHT services when transporting a recipient who is in a wheelchair shall be in accordance with Section

6, specialty carriers, of this administrative regulation.

(f) The base rate for nonemergency transportation for all licensed ambulance services when no medical care or treatment of a recipient is required or indicated during transport shall be the rate specified in paragraph (e) of this subsection.

(g) ~~[(e)]~~ An oxygen rate, which is set at ten (10) ~~[eight-(8)]~~ dollars per one (1) way trip; for all licensed ambulance services, excluding air ambulances; and

(h) ~~[(d)]~~ The cost ~~[(as determined by the cabinet)]~~ of other itemized supplies for ALS or BLS emergency transportation services shall be the actual cost as reflected on the transportation provider's invoice which shall be maintained in the provider's files and shall be produced upon request by the cabinet.

Section 3. Commercial Transportation Carriers Reimbursement ~~[Vendors]~~. The department ~~[cabinet]~~ shall reimburse participating commercial transportation carriers at usual commercial rates with limitations as follows: ~~[vendors at the normal passenger rate charged to the general public, taking into consideration as applicable the reduced fees frequently and customarily paid when multiple passengers are transported at the same time.]~~

(1) For taxi services provided in regulated areas the provider shall be reimbursed the normal passenger rate charged to the general public for a one (1) way trip regardless of the number of Medicaid eligible recipients transported when the trip is within the medical service area (as defined in 907 KAR 1:060), i.e., the taxi shall be paid the single passenger rate regardless of the number of additional passengers.

(2) ~~[(The following maximum rates shall be applicable)]~~ For ~~[franchised (licensed)]~~ taxi services in those areas of the state where taxi rates are not regulated by the appropriate local rate setting authority, and for ~~[franchised (licensed)]~~ taxi services in regulated areas when they go outside the medical service area (as defined in 907 KAR 1:060), the provider shall be reimbursed the normal passenger rate charged the general public for a single passenger (without payment for additional passengers, if any), up to the upper limit; reimbursement for transport of a parent or attendant shall be considered included within the upper limit allowed for the trip.

(a) ~~[(1)]~~ The upper limit for a recipient shall be the usual and customary charge up to a maximum of six (6) dollars for trips of five (5) miles or less, one (1) way, loaded miles.

(b) ~~[(2)]~~ The upper limit for a recipient shall be the usual and customary charge up to a maximum of twelve (12) dollars for trips of six (6) to ten (10) miles, one (1) way, loaded miles.

(c) ~~[(3)]~~ The upper limit for a recipient shall be the usual and customary charge up to a maximum of twenty (20) dollars for trips of eleven (11) to twenty-five (25) miles, one (1) way, loaded miles.

(d) ~~[(4)]~~ The upper limit for a recipient shall be the usual and customary charge up to a maximum of thirty (30) dollars for trips of twenty-six (26) miles to fifty (50) miles, one (1) way, loaded miles.

(e) ~~[(5)]~~ The upper limit for a recipient for trips of fifty-one (51) miles or above shall be the lesser of the usual and customary charge or an amount derived by multiplying one (1) dollar by the actual number of miles, not to exceed a maximum of seventy-five (75) dollars per trip, one (1) way, loaded miles.

Section 4. Private Automobile Carriers Reimbursement ~~[Vendors]~~.

(1) The department ~~[cabinet]~~ shall reimburse private automobile carriers ~~[vendors]~~ at the basic rate of twenty-two (22) ~~[twenty-(22)]~~ cents per mile plus a flat fee of four (4) ~~[two-(2)]~~ dollars per recipient ~~[eligible passenger]~~ if waiting time is required. For round trips of less than five (5) miles the rate shall be computed on the basis of a maximum allowable fee of six (6) ~~[three-(3)]~~ dollars for the first recipient ~~[passenger]~~ plus four (4) ~~[two-(2)]~~ dollars each for waiting time for additional recipient ~~[eligible passengers]~~. Private automobile carriers ~~[vendors]~~ shall have a signed participation agreement with the Department for Medicaid Services prior to furnishing reimbursable

medical transportation services.

(2) For round trips of five (5) to twenty-five (25) miles the rate for private automobile carriers ~~[venders]~~ shall be computed on the basis of a maximum allowable fee of ~~ten (10) [five (5)]~~ dollars for the first recipient ~~[passenger]~~ plus ~~four (4) [two (2)]~~ dollars each for waiting time for additional recipient ~~[eligible passengers]~~. The maximum allowable fee rates shall not be utilized in situations where mileage is paid.

(3) Even though the maximum allowable fee rate when computed on the basis of ~~twenty-two (22) [twelve (12)]~~ cents per mile plus ~~four (4) [two (2)]~~ dollars for waiting time would not equal the ~~six (6) [three (3)]~~ dollars or ~~ten (10) [five (5)]~~ dollars allowable amounts, the higher amount ~~[that amount]~~ may be paid to encourage private automobile carriers ~~[venders]~~ to provide necessary medical transportation. Additionally, nothing in this section requires the ~~department [cabinet]~~ to pay the amounts specified if ~~[in the event]~~ the private automobile carrier ~~[vender]~~ expresses a preference for reimbursement in a lesser amount; ~~then [in that event]~~ the lesser amount shall be paid. Toll charges shall be reimbursable when presented with a receipt [incurred].

(4) Waiting time shall be a reimbursable component of the private automobile carrier ~~[vender]~~ transportation fee only if ~~[when]~~ waiting time occurs. If ~~[when]~~ waiting time occurs due to admittance of the recipient into the medical institution, the private automobile carrier ~~[vender]~~ may be reimbursed for the return trip to the point of recipient pickup as though the recipient ~~[client]~~ were in the vehicle; that is, the total reimbursable amount shall be computed on the basis of the maximum allowable fee or mileage rate plus waiting time as shown in this section. Waiting time shall not be paid for the attendant or caretaker relative (e.g., mother, father) who is accompanying the recipient and not personally being transported for Medicaid covered service.

(5) If a private automobile carrier is transporting more than one (1) recipient, only one (1) mileage payment shall be allowed. Mileage shall be computed on the basis of the distance between the most remote recipient and the most remote medical service utilized; to include any necessary additional mileage to pick up and discharge the additional recipients.

Section 5. Noncommercial Group Carriers. The ~~department [cabinet]~~ shall reimburse participating noncommercial group carriers based on actual reasonable, allowable cost to the provider based on cost data submitted to the cabinet by the provider; however, the minimum rate shall be twenty (20) cents per recipient per mile transported and the rate upper limit shall be fifty (50) cents per recipient per mile transported. Payment for a parent or other attendant shall be at the usual recipient rate.

Section 6. Specialty ~~[individual]~~ Carriers. (1) Participating specialty ~~[individual]~~ carriers shall be reimbursed at the lesser of the following rates:

- (a) The actual charge for the service; or
- (b) The usual and customary charge for that service by the carrier, as shown in the schedule of usual and customary charges submitted by the carrier to the ~~department [cabinet]~~; or
- (c) The program maximum established for the service.

(2) Program maximums shall be ~~[are]~~:

(a) Nonambulatory recipient requires the use of a wheelchair ~~[patients]~~ for transportation within a distance of ten (10) miles or less, the upper limit shall be ~~twenty (20) [twenty-five (25)]~~ dollars for the first recipient ~~[patient]~~ plus ten (10) dollars for each additional nonambulatory recipient ~~[patient]~~ transported on the same trip, for each time a recipient ~~[patient]~~ is transported to or transported from the medical service site. To this base rate may be added ~~one (1) [two (2)]~~ dollar[s] and fifty (50) cents per loaded mile for the first recipient ~~[per patient]~~ for miles the recipient ~~[patient(s)]~~ is transported above ten (10) (one (1) way), and toll charges actually incurred and verified; mileage

charges shall not be allowed for additional recipients.

(b) Ambulatory recipients who are disoriented ~~[patients]~~; for transportation within a distance of ten (10) miles or less, the upper limit shall be ~~ten (10) [twelve (12)]~~ dollars ~~[and fifty (50) cents]~~ per recipient ~~[patient]~~ for each time a recipient ~~[patient(s)]~~ is transported to or transported from the medical service site. To this base rate may be added ~~one (1) [two (2)]~~ dollar[s] and fifty (50) cents per loaded mile for the first recipient ~~[per patient]~~ for miles the recipient ~~[patient]~~ is transported above ten (10) (one (1) way), and toll charges actually incurred and verified; mileage charges shall not be allowed for additional recipients.

(c) For both paragraphs (a) and (b) of this subsection, ~~[mileage shall be computed by the most direct accessible route from point of pickup to point of delivery, and reimbursement for mileage shall be allowed only for those miles the recipient is actually transported in excess of ten (10).]~~ empty vehicle miles shall not be included when computing allowable reimbursement for mileage.

(3) Reimbursement shall be made at specialty ~~[individual]~~ carrier rates for the following types of recipients only:

(a) Nonambulatory recipients who need to be transported by wheelchair, but shall not include [including] recipients who need to be transported as ~~[a]~~ stretcher patients; and

(b) Ambulatory recipients who are ~~[but]~~ disoriented ~~[recipients, defined as persons confused, especially with respect to time, place and identity of persons or objects. The extent of disorientation shall be such as to preclude the recipient from safely utilizing, unaccompanied, alternate methods of transportation.]~~

(4) The specialty carrier shall obtain a statement from the recipient's physician (or, if the recipient is in a ~~[skilled]~~ nursing ~~[or intermediate care]~~ facility, from the director of nursing, charge nurse, or medical director in lieu of physician) to verify that transportation by the specialty carrier is medically necessary due to the recipient's nonambulatory or disoriented condition. Claims for payment which are submitted without the required statement of verification shall not be paid.

Section 7. ~~[Specially authorized transportation services provided by participating ambulance services may be paid for at a rate of forty (40) dollars per one (1) way trip, which includes all mileage costs for the first ten (10) miles, and a mileage allowance of seventy-five (75) cents per mile above the first ten (10) miles, unless otherwise authorized.]~~ Specially authorized transportation services ~~[provided by participating specialty carriers, or as otherwise]~~ authorized in unforeseen circumstances may be paid for at a rate adequate to secure the necessary service; ~~[in no event, however, shall]~~ the amount allowed shall not exceed the usual and customary charge of the provider. The Department for Medicaid Services shall review and approve or disapprove requests for specially authorized transportation services based on medical necessity.

Section 8. Use of Flat Rates. ~~[When a recipient chooses to use a medical provider outside the medical service area (i.e., the medical service is available within the medical service area and the recipient has not been appropriately referred to a medical provider outside the medical service area).]~~ Transportation payment shall not exceed the lesser of six (6) dollars per trip, one (1) way (or twelve (12) dollars for a round trip), or the usual fee for the participating transportation provider computed in the usual manner if:

- (1) The recipient chooses to use a medical provider outside the medical service area (defined in 907 KAR 1:060); and
- (2) The medical service is available in the recipient's medical service area; and
- (3) The recipient has not been appropriately referred.

Section 9. Posting of Rates. All transportation providers, except private auto providers, shall be required to post their rates with the Department for Social Insurance offices in the counties which they

serve. These rates shall apply for all Medicaid recipients and shall be effective for a twelve (12) month period and may be revised on a quarterly basis. The rate charged to the Medicaid Program shall not exceed the rate charged to the general public.

Section 10. [9-] Meals and Lodging. The flat rate [upper limits] for meals and lodgings for recipients and attendants when preauthorized (or postauthorized if appropriate) by the department [cabinet] shall be as follows:

(1) Standard area:

(a) Meals: breakfast - \$4 per day; lunch - \$5 per day; dinner - \$11 per day; and

(b) Lodgings: ~~[actual cost up to \$40 per day if known; if not known,] \$40 per day.~~

(2) High rate area:

(a) Meals: breakfast - \$5 per day; lunch - \$6 per day; dinner - \$15 per day; and

(b) Lodgings: ~~[actual cost up to \$55 per day if known; if not known,] \$55 per day.~~

Section 11. [40-] Limitations. (1) Any reimbursement for medical transportation shall be contingent upon the recipient receiving the appropriate pre- or postauthorization for medical transportation as required by the department [cabinet].

(2)(a) Authorization shall not be granted for recipients transported for purposes other than to take the recipient to or from covered Medicaid services being provided to that recipient, except in the instance of one (1) parent accompanying a child to or from covered medical services being provided to the child or if one (1) attendant is authorized for a recipient traveling to or from covered medical services based on medical condition of the recipient.

(b) Reimbursement shall be limited to transportation services and shall not include the services, salary or time of the attendant or parent.

(3) An individual who owns a taxi company and who uses the taxi as his personal vehicle shall be reimbursed at the private auto rate when transporting household family members.

(4) Mileage for reimbursement purposes shall be computed by the most direct accessible route from point of pickup to point of delivery.

Section 13. The provisions of this administrative regulation as amended shall be effective for services provided on or after July 1, 1995.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: June 29, 1995

FILED WITH LRC: June 30, 1995 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Masten Childers II, Commissioner

(1) Type and number of entities affected: Various medical transportation providers and all medical recipients using medical transportation.

(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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

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

competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$700,000 to \$1,000,000 (savings).

2. Continuing costs or savings: \$700,000 to \$1,000,000 (savings).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirements.

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

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY THE PROMULGATING AGENCY
AND THE REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on July 10, 1995, unless otherwise noted.

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission
(As Amended)

9 KAR 1:010. Statement of financial disclosure.

RELATES TO: KRS 11A.050

STATUTORY AUTHORITY: KRS 11A.050(2), (3), 11A.110(3), (4)

NECESSITY AND FUNCTION: KRS 11A.050 mandates that each officer as defined in KRS 11A.010(7), [and] public servant as listed in KRS 11A.010(9)(a)-(i), and candidate for the public offices listed in KRS 11A.010(9)(a)-(i) file a statement of financial disclosure with the commission. KRS 11A.050(2) requires the commission to prescribe the form for the statement of financial disclosure. This administrative regulation prescribes the form and incorporates it by reference.

Section 1. Definition. (1) "Candidates for public offices" means candidates for the public offices listed in KRS 11A.010(9).

(2) "Officer" is defined by KRS 11A.010(7).

(3) "Public servants" is defined by KRS 11A.010(9). [The "Statement of Financial Disclosure" and the "Instructions for Filing a Statement of Financial Disclosure" are [form is] incorporated by reference.]

Section 2. (1) The statement of financial disclosure required of officers and public servants by KRS 11A.050(1) shall be filed on Ethics Commission form "Statement of Financial Disclosure".

(2) Candidates for public offices shall file a statement of financial disclosure on Ethics Commission form "Statement of Financial Disclosure". [Those required to file are officers as defined in KRS 11A.010(7), [and] public servants [as] listed in KRS 11A.010(9)(a)-(i), and candidates for the public offices listed in KRS 11A.010(9)(a)-(i).]

Section 3. (1) The following documents are incorporated by reference:

(a) "Statement of Financial Disclosure (Rev 030195)"; and

(b) "Instructions for Filing a Statement of Financial Disclosure (Rev 030195)".

(2) These forms may be inspected, copied, or obtained from the Executive Branch Ethics Commission, Room 273 Capitol Annex, 702 Capital Avenue, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday. [The "Statement of Financial Disclosure (Rev. 030195)" and the "Instructions for Filing a Statement of Financial Disclosure (030195)" [(011493)] may be inspected, copied, or obtained from the Executive Branch Ethics Commission, [Room 136, State Capitol, Frankfort, Kentucky 40601,] 8 a.m. to 4:30 p.m., Monday through Friday.]

LIVINGSTON TAYLOR, Chairman
APPROVED BY AGENCY: April 27, 1995
FILED WITH LRC: May 15, 1995 at noon

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission
(As Amended)

9 KAR 1:040. Initial and updated registration statements and registration cards for executive agency lobbyists and lobbyist employers, [lobbying handbook, including registration forms,] expenditure statements, financial disclosure forms, [and] termination forms, and executive agency lobbying handbook.

RELATES TO: KRS 11A.211, 11A.216, 11A.221, 11A.241(4), (5)

STATUTORY AUTHORITY: KRS 11A.241(4), (5), (6)

NECESSITY AND FUNCTION: KRS 11A.241(4) requires the Executive Branch Ethics Commission to prescribe the initial registration statement and the termination notice required by KRS 11A.211, the statement of expenditures required by KRS 11A.216, and the statement of financial transactions required by KRS 11A.221. This administrative regulation establishes these forms. KRS 11A.241(6) requires the commission to publish a handbook that explains the provisions of KRS 11A.201 to 11A.246. This administrative regulation establishes that handbook. [KRS 11A.201 to 11A.246 and 11A.000(5) to (9) establishes the requirements for executive agency lobbying, including forms and penalties for violation thereof. This administrative regulation establishes the Initial Registration Form for executive agency lobbyists and their employers, the Updated Registration Statement which includes the Statements of Expenditures and Financial Transactions which are required to be filed three (3) times per year, the Lobbyists Registration Card, and the Termination Form. All of these forms are contained in the Executive Agency Lobbying Handbook, which is also adopted in this administrative regulation.] [The effective date of Senate Bill 7, 1993 (1st Extra. Sess.) Ky. Acts ch. 4, secs. 45 to 55 (to be codified as KRS 11A.201 to 11A.246 and 11A.000(5) to (9)) is September 16, 1993. KRS 11A.211(1) requires the filing of an initial registration statement by an executive agency lobbyist and his employer within ten (10) days following the engagement of an executive agency lobbyist. KRS 11A.211(6) requires the commission to issue a registered executive agency lobbyist a registration card. Engaged executive agency lobbyists and their employers will be required to file initial registration statements with the commission on the effective date of Senate Bill 7. The commission is required to implement the provisions of KRS 11A.201 to 11A.246 by administrative regulation, including the initial registration statement form. This administrative regulation establishes the initial registration form and the registration card.]

Section 1. Definitions. "Regular and substantial basis" means [the] executive agency lobbying activity of more than one (1) time per year regarding a decision that involves state expenditures that exceed \$5,000 per year.

Section 2. Initial Registration Statement. (1) The initial registration statement required by KRS 11A.211 shall be filed on the "Initial Registration Statement" form incorporated by reference in Section 4 of this administrative regulation. [Effective September 16, 1993,] [An "Initial Registration Statement" shall be filed by an engaged executive agency lobbyist and his employer within ten (10) days following the engagement of the lobbyist.]

(2)(a) The brief description of the executive agency decision shall include the subject matter for which an executive agency lobbyist:

1. Has been engaged; or

2. Is responsible.

(b) Subject matters shall include:

1. An award of grant for social services;

2. A lease for office space or equipment;

3. A contract to provide food, clothing, or other consumable products;

4. Any other subject matter. ~~The brief description of the executive agency decision shall include the subject matter for which an executive agency lobbyist has been engaged or for which he is responsible, such as an award of a grant for social services, a lease for office space or equipment, a contract to provide food, clothing or other consumable products, or a personal service contract.]~~

(3)(a) The signature on the "Initial Registration Statement" which is filed with the commission shall be an original signature in ink other than black ~~(in blue ink).~~

(b) The ~~"Initial Registration Statement" form and each of the other~~ forms ~~[which is]~~ incorporated by reference in this administrative regulation ~~[by reference in Section 3]~~ may be reproduced by an executive agency lobbyist or his employer.

Section 3. (1) The updated registration form required by KRS 11A.211(2) shall be filed on the applicable updated registration forms incorporated by reference in Section 4 of this administrative regulation.

(2) The notice of termination required by KRS 11A.211(4) shall be filed on the Termination Notification As Executive Agency Lobbyist Form incorporated by reference in Section 4 of this administrative regulation.

Section 4. ~~[3-]~~ Material Incorporated by Reference.

(1) The following documents are incorporated by reference:

(a) "Executive Agency Lobbyist/Employer Initial Registration Statement (Rev. 030195)"; ~~(EBEC:EAL-1-9/93); and~~

(b) "Updated Registration Statement - Executive Agency Lobbyist (Rev. 030195)";

(c) "Updated Registration Statement - Employer of Executive Agency Lobbyist (Rev. 030195)";

(d) "Termination Notification as Executive Agency Lobbyist (Rev. 030195)";

(e) Executive Agency Lobbying Handbook (Rev. 030195); and

(f) "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist (9/93)".

(2) **These forms** ~~[The "Executive Agency Lobbyist/Employer Initial Registration Statement (Rev. 030194)", "Updated Registration Statement - Executive Agency Lobbyist (Rev. 030195)", "Updated Registration Statement - Employer of Executive Agency Lobbyist (Rev. 030195)", "Termination Notification as Executive Agency Lobbyist (Rev. 030195)", and "Executive Agency Lobbying Handbook (Rev. 030195)"]~~ ~~(EBEC:EAL-1-9/93)~~ may be inspected, copied, or obtained from the Executive Branch Ethics Commission, **Room 273, Capitol Annex, 702 Capital Avenue, Frankfort, Kentucky 40601,** ~~(Room 161, Capitol Annex, Frankfort, Kentucky 40601)~~ 8 a.m. to 4:30 p.m., Monday through Friday.

LIVINGSTON TAYLOR, Chairman

APPROVED BY AGENCY: April 27, 1995

FILED WITH LRC: May 15, 1995 at noon

**GENERAL GOVERNMENT CABINET
State Board of Elections
(As Amended)**

31 KAR 4:100. Evaluation of precinct election officers.

RELATES TO: KRS 117.045~~(2)~~

STATUTORY AUTHORITY: KRS 117.045~~(1)~~ ~~(2)~~

NECESSITY AND FUNCTION: County boards of elections appoint precinct election officers. This administrative regulation is necessary to assist county boards of elections in determining if a person nominated to serve as precinct election officer is qualified to serve in that capacity.

Section 1. In evaluating if a person nominated to serve as a precinct election officer is qualified to serve in that capacity, a county board of elections may use ~~[consider]~~ the following evaluation procedures:

(1) Determine if the person submitted a signed statement in accordance with KRS 117.045(2); ~~[has a history of refusing to follow election procedures while serving as a precinct election officer in the past; or]~~

(2) Determine if the person meets the qualifications set forth in KRS 117.045(8); and ~~[has demonstrated a complete lack of understanding of proper election procedures while serving as a precinct election officer in the past.]~~

(3) Determine if the person has a history of refusing to follow election procedures or has demonstrated a complete lack of understanding of proper election procedures while serving as a precinct election officer in the past.

Section 2. A county board of elections shall ~~[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 the evaluation procedures set forth in Section 1 of this administrative regulation. ~~[either of the considerations set forth in Section 1 of this administrative regulation.]~~

BOB BABBAGE, Chairman

APPROVED BY AGENCY: May 15, 1995

FILED WITH LRC: May 15, 1995 at noon

**GENERAL GOVERNMENT CABINET
State Board of Elections
(As Amended)**

31 KAR 4:110. Approval of establishment of precinct containing less than 350 registered voters. ~~[Division of county into precincts.]~~

RELATES TO: KRS 117.055(2), 117.345(2)

STATUTORY AUTHORITY: KRS 117.055(2)

NECESSITY AND FUNCTION: The State Board of Elections shall not remit to a county the expenses of an election for any precinct containing less than 350 registered voters unless the county has received prior approval from the State Board of Elections. This administrative regulation is necessary to set forth under what circumstances the State Board of Elections shall grant approval for a precinct containing less than 350 registered voters.

Section 1. ~~[A county board of elections shall receive approval from]~~ The State Board of Elections shall approve the establishment of a precinct containing less than 350 registered voters by a county board of elections if the county board submits to the state board a written request for approval that demonstrates either of the following: ~~[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:]~~

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

(2) That combining the subject precinct with an adjoining precinct

would create an undue hardship on the voters of the [subject] precinct because fifty (50) percent or more ~~[there is a large percentage]~~ of the voters in the subject precinct ~~[who]~~ are physically disabled or elderly.

Section 2. A written request for approval under Section 1 of this administrative regulation shall be accompanied by supportive ~~[supporting]~~ evidence which may include a map illustrating the difficulty of combining the subject precinct with an adjoining precinct due to geographic impediments or distance. ~~[of the subject precinct.]~~

Section 3. Nothing in this administrative regulation shall impair or affect the requirement that the county board of elections establish precincts so that no boundary of a precinct crosses a boundary set forth in KRS 117.055(1).

BOB BABBAGE, Chairman

APPROVED BY AGENCY: May 15, 1995

FILED WITH LRC: May 15, 1995 at noon

GENERAL GOVERNMENT CABINET
Board of Accountancy
(As Amended)

201 KAR 1:300. Rules of professional conduct.

RELATES TO: KRS 325.240, 325.340

STATUTORY AUTHORITY: KRS 325.240

NECESSITY AND FUNCTION: Pursuant to KRS 325.240, the Kentucky State Board of Accountancy may promulgate rules of professional conduct. This administrative regulation is necessary to establish the Kentucky State Board of Accountancy Rules of Professional Conduct that are patterned after the Code of Professional Conduct adopted by the American Institute of Certified Public Accountants (AICPA). The function of this administrative regulation is to adopt appropriate rules of professional conduct to establish and maintain a high standard of integrity and dignity in the public accounting profession. The Kentucky State Board of Accountancy may review the AICPA's interpretations of its code of professional conduct for guidance when applying the provisions of this administrative regulation.

Section 1. Definitions. (1) "AICPA" means the American Institute of Certified Public Accountants.

(2) "Audit" means an examination of financial statements of an entity in accordance with standards promulgated by the American Institute of Certified Public Accountants (AICPA), including generally accepted auditing standards (GAAS) and upon which an opinion is expressed or disclaimed regarding whether the financial statements conform to generally accepted accounting principles (GAAP) or other comprehensive basis of accounting.

(3) "Board" is defined in KRS 325.220(1).

(4) "Client" means a person or entity which retains a licensee to provide public accounting services.

(5) "Commission" means any item of value given or received by a licensee to or from any third party in return for suggesting the purchase of any product or service.

(6) "Compilation" means presenting in the form of financial statements information that is the representation of management or owners without undertaking to express any assurance on the statements.

(7) "Contingent fee" means a fee established for the performance of any public accounting service pursuant to a written or oral agreement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise

dependent upon the finding or result of the service.

(8) "Financial statement" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources and obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles (GAAP) or a comprehensive basis of accounting other than generally accepted accounting principles (GAAP).

(a) General use financial statements, financial forecasts, projections and similar presentations are considered financial statements.

(b) Financial presentations included in tax returns are not financial statements.

(9) "Generally accepted accounting principles (GAAP)" means the conventions, rules, and procedures which describe accepted accounting practices at a particular time. They include broad guidelines of general applications and detailed practices and procedures that provide a standard by which to measure financial presentations.

(10) "Review" means performing inquiry and analytical procedures that provide the licensee with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements for them to be in conformity with generally accepted accounting principles (GAAP) or, if applicable, with another comprehensive basis of accounting.

Section 2. Independence. (1) A licensee or a firm shall not express an opinion on financial statements of an entity unless he or the firm is independent with respect to the entity.

(2) Prior to expressing an opinion on financial statements, the licensee shall assess his relationship with the entity to determine whether his opinion will be considered independent, objective and unbiased by a third party having knowledge of all facts referring to the relationship between the licensee and the entity.

(3) A licensee shall not be considered to be independent if during the period:

(a) Of the engagement or at the time of expressing his opinion, the licensee or his firm:

1. Had or was committed to acquire any direct or material indirect financial interest in the entity;

2. Was a trustee of any trust or executor or administrator of any estate if the trust or estate had or was committed to acquire any direct or material indirect financial interest in the entity;

3. Had any joint, closely held business investment with the entity or any officer, director or principal stockholder which was material in relation to the licensee's or his firm's net worth;

4. Had any loan to or from the entity or to or from any officer, director or principal stockholder of the entity.

(b) Covered by the financial statements, the period of the professional engagement or at the time of expressing an opinion, the licensee or his firm served as a:

1. Promoter, underwriter, voting trustee, director, officer or in any capacity equivalent to that of a member of management or an employee of the entity; or

2. Trustee for a pension or profit sharing trust of the entity.

(4) The restriction found in subsection (3)(a)4 of this section shall not apply to the following loans obtained from a financial institution prior to January 1, 1992, which are current as to all terms of the loan, were made under normal lending procedures, terms and requirements, and have not been renegotiated:

(a) Loans obtained by a licensee or his firm which are not material in relation to the net worth of the borrower;

(b) Home mortgages; and

(c) Other secured loans, except loans guaranteed by a licensee's firm which are otherwise unsecured.

Section 3. Integrity and Objectivity. A licensee engaged in the practice of public accounting shall maintain objectivity, integrity, and

be free of conflicts of interest. The licensee shall not subordinate his judgment to others.

Section 4. Competence. A licensee or a firm engaged in the practice of public accounting shall:

- (1) Perform, or offer to perform, only those professional services that he or his firm may reasonably expect to complete with professional competence;
- (2) Exercise due professional care in the performance of professional services;
- (3) Adequately plan and supervise the performance of professional services; and
- (4) Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

Section 5. Standards of Practice. When performing an audit, review, compilation, or any other professional service within the practice of public accounting, the licensee and his firm shall comply with the appropriate practice standards as follows:

- (1) Generally accepted auditing standards (GAAS) as reflected in the following documents:
 - (a) "AICPA Professional Standards", Volume 1, U.S. Auditing Standards, Section AU, as of June 1, 1994 ~~[1992]~~;
 - (b) "AICPA Professional Standards", Volume 1, Attestation Standards, Section AT, as of June 1, 1994 ~~[1992]~~;
 - (c) Government Auditing Standards, "Yellow Book", General Accounting Office, 1994 ~~[1988]~~ revision;
 - (d) "Interpretation of Continuing Education and Training Requirements", Government Auditing Standards, General Accounting Office, April, 1991; and
- (2) Other applicable standards:
 - (a) "AICPA Professional Standards", Volume 2, Accounting and Review Services, Section AR, as of June 1, 1994 ~~[1992]~~;
 - (b) "AICPA Professional Standards", Volume 2, Consulting Services, Section CS, as of June 1, 1994 ~~[1992]~~; or
 - (c) "AICPA Professional Standards", Volume 2, Tax Practice, Section TX, as of June 1, 1994 ~~[1992]~~.
- (3) These standards are incorporated by reference and may be inspected at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m. Monday through Friday.

Section 6. Accounting Principles. (1) A licensee who is aware that the financial statement or financial data of any entity contains a departure from GAAP that has a material effect on the financial statement or financial data taken as a whole shall not:

- (a) Express an opinion or state affirmatively that the financial statement or financial data are presented in conformity with GAAP or another comprehensive basis of accounting; or
- (b) State that he is unaware of any material modifications that should be made to the statements in order for them to be in conformity with GAAP.
- (2) Financial statements may depart from GAAP, if the licensee:
 - (a) Demonstrates that due to unusual circumstances the financial statements or data would otherwise have been misleading;
 - (b) Describes the departure;
 - (c) States the approximate effects, if practicable; and
 - (d) Explains the reasons why compliance with GAAP would result in a misleading statement.
- (3) GAAP is established by principles, practices, or guidance provided in statements, interpretations, bulletins, guides, and other documents identified in "AICPA Professional Standards", Volume 1, U.S. Auditing Standards, Section AU 411, as of June 1, 1994 ~~[1992]~~.
- (4) These standards are incorporated by reference and may be inspected at the board office, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30 a.m. and 4:30 p.m. Monday through

Friday.

Section 7. Confidential Client Information. A licensee shall comply with the requirements of KRS 325.440 relating to the disclosure of confidential client information.

Section 8. Client Records. (1) A licensee shall comply with the requirements of KRS 325.420 relating to the ownership of accountant's working papers - client records. ~~(furnish to his client upon request:~~

- ~~(a) A copy of a tax return, report, or other document, any of which was previously issued to or for such client; and~~
- ~~(b) Any accounting or other records received from or on behalf of the client.]~~
- (2) The licensee shall not have a lien on these accounting or other records.

Section 9. Advertising and Other Forms of Solicitation. (1) A licensee shall not seek to obtain clients by advertising or other forms of solicitation that are false, misleading, or deceptive.

- (2) The use of coercion, overreaching or harassing conduct.

Section 10. Commissions. (1) A licensee shall not recommend or refer to a client any product or service in exchange for a commission, recommend any product or service to be supplied by his client to a third party, or receive a commission when the licensee or the licensee's firm also performs for that client:

- (a) An audit or review of a financial statement;
- (b) A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's report does not disclose a lack of independence; or
- (c) An examination of prospective financial information.
- (2) The prohibition of subsection (1) of this section applies during the period in which the licensee is engaged to perform any of the services listed in subsection (1)(a), (b), and (c) of this section and the period covered by any historical financial statements involved in the listed services.

(3) A licensee who is not prohibited from receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

(4) A licensee who accepts a fee for recommending or referring any service of another licensee to any person or entity or who pays a fee to obtain a client shall disclose the receipt or payment of the fee to the client.

- ~~(a) Pay a commission to obtain a client; or~~
- ~~(b) Accept a commission for a referral to a client of products or services of others.]~~

(5) [(2)] This rule shall not prohibit:

- (a) Payments for the purchase of an accounting practice; or
- (b) Retirement payments to individuals, and their heirs or estates, who were formerly engaged in the practice of public accounting.

Section 11. Form of Practice and Name. (1) A licensee shall not practice under a firm name which includes any assumed business name ~~[that does not consist of the names of one (1) or more present or former certified public accountant partners or shareholders].~~

(2) A licensee shall only practice in the form of a sole proprietorship, partnership, or professional service corporation, corporation, registered limited liability partnership, or a limited liability company registered with the board.

Section 12. Contingent Fees. (1) A licensee shall not accept or perform any public accounting services for a contingent fee or receive a contingent fee from a client for whom the licensee or the licensee's firm performs:

- (a) An audit;
- (b) A review;
- (c) A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's report does not disclose a lack of independence; or

(d) An examination of prospective financial information.

(2) The prohibition of subsection (1) of this section applies during the period of time in which the licensee is engaged to perform those services and the period covered by any historical financial statements involved in those services.

(3) A licensee in public practice shall not prepare for a contingent fee:

(a) An original or amended tax return or claim for a tax refund. Preparation of an original or amended tax return or claim for tax refund includes giving advice on events which have occurred at the time the advice is given if such advice is directly relevant to determining the existence, character, or amount of a schedule, entry, or other portion of a return or claim for refund; or

(b) An amended federal or state income tax return for a client claiming a refund of taxes because a deduction was inadvertently omitted from the return originally filed when there is no question as to the propriety of the deduction, rather the claim is filed to correct an omission.

(4) The following are examples of circumstances where a contingent fee would be permitted regardless of whether the licensee or licensee's firm is performing the services specified in subsection (1) of this section:

(a) Representing a client in an examination by a revenue agent of the client's federal or state income tax return;

(b) Filing an amended federal or state income tax return claiming a tax refund based on a tax issue that is either the subject of a test case by a different taxpayer or with respect to which the taxing authority is developing a position;

(c) Filing an amended federal or state income tax return or refund claim which claims a tax refund in an amount greater than the threshold for review by the Joint Committee on Internal Revenue Taxation (\$1,000,000 at March, 1991) or state taxing authority;

(d) Requesting a refund of either overpayments of interest or penalties charged to a client's account or deposits of taxes improperly accounted for by the federal or state taxing authority in circumstances where the taxing authority has established procedures for the substantive review of such refund requests;

(e) Requesting, by means of protest or similar document, consideration by the state or local taxing authority of a reduction in the assessed value of property under an established taxing authority review process for hearing all taxpayer arguments relating to assessed value; or

(f) Representing a client to obtain a private letter ruling or influencing the drafting of an administrative regulation or statute.

(5) Fees shall not be considered as contingent:

(a) If fixed by courts or other public authorities; or

(b) In tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies. A fee is considered determined based on the findings of governmental agencies, if the licensee can demonstrate a reasonable expectation at the time of the fee arrangement, of substantive consideration by an agency with respect to the licensee's client. The expectation is deemed not reasonable in the case of preparation of original tax returns.

(6) Fees may vary depending on the complexity of services rendered.

JOHN N. CRAFT, CPA, President

APPROVED BY AGENCY: March 25, 1995

FILED WITH LRC: May 12, 1995 at 10 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended)

201 KAR 30:050. Examination, education, and experience requirement.

RELATES TO: KRS ~~[324A.030]~~ 324A.035(1), (3), 324A.040(2) ~~[324A.065]~~

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3), 324A.040(2)

NECESSITY AND FUNCTION: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3) (d), (e), and (f) requires the board to establish by administrative regulations requirements for experience, examination of applicants, and the continuing education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the examination, education, and experience requirements for appraisers of real property in federally-related transactions. [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 approved by:

(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 or 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 shall [may] have been completed prior to examination [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, 1020 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.

**GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended)**

201 KAR 30:120. Temporary appraisal licenses and certificates.

RELATES TO: KRS 324A.065(1), 324A.075[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, 324A.035(1), (3), 324A.065(1), 324A.075

NECESSITY AND FUNCTION: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3) (d), (e), and (f) requires the board to establish by administrative regulations requirements for experience, examination of applicants, and the continuing education of appraisers. KRS 324A.065(1) authorizes the board to establish fees. KRS 324A.075 authorizes the board to establish requirements for reciprocity. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates.. [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. (1) An applicant shall be granted a temporary practice certificate or license by the board, to perform the appraisal assignment described in his application, if:

(a) He has filed a properly completed application;

(b) He has submitted the required fee with the application;

(c) He has satisfied the board as to his qualifications, eligibility, and moral fitness for temporary licensing or certification privileges; and

(d) The time projected by the applicant for completion of the assignment is reasonable, given the scope and complexity of the assignment.

(2) Application for a temporary practice certificate or license shall be made on board form, "Nonresident Application for Temporary Appraiser Permit". [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. (1) Except as provided by subsection (2) of this section, licensing and certification privileges granted under the provisions of this administrative regulation shall expire upon the earlier of the:

(a) Completion of the appraisal assignment described in the application for temporary licensing; or

(b) Expiration date set forth in the temporary practice certificate or license.

(2) To afford an applicant additional time to complete the appraisal assignment, the board shall extend the licensing or

certification privileges granted under an applicant's temporary practice certificate or license, if he shows to the board's satisfaction that, notwithstanding his diligent attention to the appraisal assignment, additional time is needed to complete the assignment. [~~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 the provisions of this administrative regulation [this rule] shall not advertise or otherwise hold themselves out as being a Kentucky state-licensed or state-certified appraiser.

Section 5. Incorporation by Reference. (1) "Nonresident Application for Temporary Appraiser Permit (October 1992)" is incorporated by reference.

(2) This form may be inspected, copied, or obtained at the office of the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, Kentucky 40511-8410, 8 a.m. to 4:30 p.m., Monday through Friday.

JED DETERS, Chairman

APPROVED BY AGENCY: March 31, 1995

FILED WITH LRC: April 4, 1995 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended)**

401 KAR 5:030. Nondegradation [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 nondegradation [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 Nondegradation [Antidegradation] Policy. The following procedures shall govern implementation of the nondegradation [antidegradation] policy of 401 KAR 5:029, Section 2 [4].

(1) Surface waters shall be placed into one (1) of three (3) categories [~~four (4) classifications~~]: outstanding national resource

waters, waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, [~~outstanding state resource waters, high quality waters,~~] or use protected waters.

(2) Categorization of surface waters to outstanding national resource waters. The following procedures shall govern the categorization of surface waters to outstanding national resource waters.

(a) A surface water shall meet, at a minimum, the requirements for outstanding resource water classification found in 401 KAR 5:031, Section 7.

(b) The water shall be demonstrated to be of national ecological or recreational significance.

(3) Categorization of surface water to waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. Waterbodies in this category shall include any of the following:

(a) Surface waters designated as Kentucky Wild Rivers, unless they are categorized as outstanding national resource waters;

(b) Outstanding resource waters other than those that support federally threatened or endangered aquatic species;

(c) Surface waters that fully support all applicable designated uses and 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 4 of this administrative regulation; and

(d) Waters in the cabinet's reference reach network.

(4) [(4)] Procedure for implementing the nondegradation [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.

(5) [(2)] Procedure for implementing the nondegradation [antidegradation] policy in waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water [~~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 nondegradation [antidegradation] implementation procedures for waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water [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 for waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.

[8. New zones of initial dilution are prohibited in these waters.]

(b) If the permit applicant determines that it can meet these limitations, the KPDES permit shall be issued with these limitations without further nondegradation ~~[antidegradation]~~ review as described in subsection (6) [(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 less 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.

(c) New zones of initial dilution are prohibited in these waters.

(6) [(3)] Procedure for implementing the nondegradation [antidegradation] policy in use protected waters for point source discharges. All surface waters not listed in Section 3 of this administrative regulation as outstanding national resource waters or waterbodies whose quality exceeds that necessary to support fish, shellfish, and wildlife and recreation in and on the water shall be categorized as use protected waters.

(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.

(7) [(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 nondegradation [antidegradation] implementation, for dischargers located within that local government's [its] jurisdiction to surface waters of the Commonwealth.

Section 2. Procedures for Recategorizing Waters. This section shall apply to the recategorization of surface waters to outstanding national resource waters and waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. The reclassification of waters to outstanding resource waters shall be governed by the procedures in 401 KAR 5:026.

(1) The cabinet may propose to recategorize certain waters to outstanding national resource waters and waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water:

(a) If the cabinet proposes to recategorize 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 recategorize.

(2) Any person may request recategorization of a surface water to an outstanding national resource water or a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the 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 recategorize the particular water as required by subsection (4) of this section;

(b) The petitioner shall have the burden of proof that the recategorization 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 recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization 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 recategorized the cabinet shall publish notice of the recategorization. Any permit issued after the date of publication shall be issued with limitations based on the new category. When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, the cabinet shall propose to have all recategorized waters promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data are required to support a petition for recategorization:

(a) To support a petition for outstanding national resource waters:

1. A United States Geological Survey 7.5 Minute Topographic Map showing those surface waters to be recategorized, 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 recategorization 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 recategorization is proposed;

4. The existing and designated uses of the waters upstream and downstream of the proposed recategorized 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;

8. A documented rationale as to why the waters qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) To support a petition for waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water:

1. A United States Geological Survey 7.5 Minute Topographic Map showing the surface waters to be recategorized, 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 recategorization 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;

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4. Fish collection data and an Index of Biotic Integrity calculation from a waterbody if that criterion specified in Section 1(3)(c) of this administrative regulation is utilized.

Section 3. List of Surface Water Categories. (1) Surface waters categorized for nondegradation purposes are listed in the following tables. The county column indicates the county in which the mouth or outlet of the surface water is located.

(2) Surface waters not specifically listed in this section are categorized as use protected.

LIST OF SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATERS

Stream	Zone	County
Red River	River Mile 68.6 to River Mile 49.2	Menifee/ Wolfe
Underground River System	Within Mammoth Cave National Park Boundary	Edmonson/ Hart/Barren
Big South Fork of Cumberland River	River Mile 55.2 to River Mile 45.0	McCreary

LIST OF SURFACE WATERS CATEGORIZED AS WATERBODIES WHOSE QUALITY EXCEEDS THAT NECESSARY TO SUPPORT PROPAGATION OF FISH, SHELLFISH, AND WILDLIFE AND RECREATION IN AND ON THE WATER

Stream	Zone	County
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LITTLE SANDY RIVER BASIN

Arabs Fork*	Source to confluence with Clay Fork	Carter
Big Caney Creek*	Source to Grayson Lake	Elliott
Big Sinking Creek*	Source to River Mile 10.7	Carter
Laurel Creek*	Source to River Mile 7.6	Elliott

LICKING RIVER BASIN

Bucket Branch*	Source to confluence with North Fork of Licking River	Morgan
Devils Fork*	Source to confluence with North Fork of Licking River	Morgan
Licking River	River Mile 165.0 to River Mile 154.5	Bath/ Rowan
North Fork of Licking River*	Source to River Mile 13.0	Morgan

KENTUCKY RIVER BASIN

Clear Creek*	Source to River Mile 4.1	Woodford
Clemons Fork*	Source to Buckhorn Creek	Breathitt
Coles Fork*	Source to Buckhorn Creek	Breathitt
Right Fork of Buffalo Creek*	Source to Buffalo Creek	Owsley
South Fork of Station Camp Creek*	Source to River Mile 5.3	Jackson
Station Camp Creek*	River Mile 22.3 to River Mile 19.0	Estill
Sturgeon Creek*	Source to River Mile 4.0	Lee

SALT RIVER BASIN

Salt Lick Creek*	Source to River Mile 5.3	Marion
Wilson Creek*	Source to River Mile 12.2	Bullitt

GREEN RIVER BASIN

Beaverdam Creek*	Source to River Mile 7.6	Edmonson
Gasper River*	Source to River Mile 32.3	Logan
Goose Creek*	Source to River Mile 5.6	Casey
Green River	River Mile 207.8 to River Mile 181.7	Edmonson
Russell Creek*	Source to River Mile 60.5	Adair
Trammel Fork*	River Mile 30.15 (Kentucky-Tennessee State Line) to River Mile 19.4	Allen

LOWER CUMBERLAND RIVER BASIN

Whipporwill Creek*	Source to Red River	Logan
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TENNESSEE RIVER BASIN

Blood River*	River Mile 15.65 (Kentucky-Tennessee State Line) to River Mile 15.1	Calloway
Panther Creek*	Source to River Mile 1.2	Calloway
Soldier Creek*	River Mile 5.3 to River Mile 2.6	Marshall

TRADEWATER RIVER BASIN

Sandlick Creek*	Source to River Mile 3.5	Christian
Tradewater River*	Source to River Mile 126.0	Christian

OHIO RIVER BASIN (Main Stem and Minor Tributaries)

Yellowbank Creek*	Source to River Mile 4.4	Breckinridge
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LAKES AND RESERVOIRS

Metropolis Swan	Entire Lake	McCracken Ballard
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MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)

Murphy's Pond	Entire Pond and Preserve Area	Hickman
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UPPER CUMBERLAND RIVER BASIN

Bad Branch*	Source to confluence with Poor Fork of Cumberland River	Letcher
Bark Camp Creek*	Source to River Mile 2.6	Whitley
Buck Creek*	River Mile 62.6 to River Mile 28.9	Pulaski
Cane Creek*	Source to River Mile 7.0	Laurel
Cumberland River	River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)	McCreary/ Whitley
Eagle Creek*	Source to River Mile 3.0	McCreary
Horse Lick Creek*	Source to River Mile 12.3	Jackson
Little South Fork of Cumberland River	River Mile 35.6 to River Mile 4.1	Wayne
Marsh Creek*	Source to River Mile 12.6	McCreary

Martins Fork of Cumberland River	River Mile 31.3 to River Mile 27.4	Harlan
Rock Creek	Tennessee-Kentucky State Line (River Mile 21.9) to White Oak Creek	McCreary
Rockcastle River	River Mile 24.4 to River Mile 8.5	Laurel/
Pulaski		
South Fork of Dog Slaughter Creek*	Source to Dog Slaughter Creek	Whitley

*Waterbodies in the cabinet's reference reach network

Section 4. 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 Water," 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: June 15, 1995
FILED WITH LRC: June 15, 1995 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended)

704 KAR 20:305. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028 [456-970], 161.030

NECESSITY AND FUNCTION: KRS 161.030 requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate written tests prior to initial certification in Kentucky. The tests are to measure communication skills, general knowledge, professional education concepts, and knowledge in the specific teaching field of the applicant. The Education Professional Standards Board [State Board of Education] is charged with selecting the tests; determining minimum acceptable levels of achievement on each test; establishing a reasonable fee related to the cost of administration of the tests, such fees to be paid by the teacher applicants; and establishing procedures for persons having less than minimum levels of performance on any test to repeat that test and be informed of strengths and weaknesses in performance areas. This administrative regulation implements such duties relative to teacher testing.

Section 1. [(4)] All new teacher applicants and out-of-state applicants for certification with less than two (2) years of teaching experience as defined in 704 KAR 20:045 shall successfully complete the appropriate written tests identified in this administrative regulation prior to initial Kentucky certification. Scores on tests completed five (5) or more years prior to application for certification shall not be acceptable. [Each applicant shall successfully complete the National Teacher Examinations for communication skills, general knowledge, and professional knowledge, except that the applicants for certification as teachers of industrial education described in 704 KAR 20:222 shall take other designated examinations as specified in 704 KAR 20:310. In addition, each applicant shall successfully complete the appropriate

specialty examination corresponding to the teacher's preparation and selected from the National Teacher Examinations specialty tests with the following exceptions:

(a) Applicants prepared for vocational agriculture and applicants prepared for health education shall take the specialty examinations developed by the Department of Education and approved by the State Board of Education.

(b) Applicants for health occupations shall take the examination required for state licensure in the respective health occupations specialty.

(c) Applicants for certification in industrial education—preparation level, as described in 704 KAR 20:222, shall take other designated specialty tests.

(d) Applicants whose teaching specialty is in a major for which no appropriate specialty test is available shall take the specialty test corresponding to the minor teaching specialty.]

[(2) In the event that a person who completes an out-of-state teacher preparation program comes to Kentucky after the deadline date for taking the written tests, a temporary certificate may be issued for a period of up to six (6) months, provided the prospective employer cannot otherwise fill the vacant position with a certified teacher. [If the written tests are available during the period of the temporary certificate, the teacher shall take the tests.] If the person successfully completes the written tests, the certificate shall be extended for the remainder of the year. In the event the person fails the examination, the temporary certificate shall be valid only for the current semester.]

Section 2. The following NTE Core Battery Tests and passing scores shall be required of each applicant: [In order to satisfy the testing prerequisites for teacher certification, each applicant shall score at least the minimum passing score, as set forth hereinafter, on each of the four (4) tests of communication skills, general knowledge, professional knowledge, and the specialty test in the applicant's teaching field.]

(1) Communication skills - 646;

(2) General knowledge - 643;

(3) Professional knowledge - 644.

Section 3. Specialty tests and passing scores shall be required of each applicant as identified in this section.

(1) Applicants for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board test for interdisciplinary early childhood, with no passing score established.

(2) Applicants for elementary certification shall take the NTE Early Childhood Education Test (10020) with a passing score of 480.

(3)(a) Applicants for middle school certification shall take Education in the Elementary School Test (20010) with a passing score of 510 through August 31, 1996.

(b) Effective September 1, 1996, applicants for middle grade certification shall take the following specialty tests with the passing scores corresponding to the middle school teaching fields:

1. English and communications - English Language Literature and Composition: Content Knowledge (10041) with a passing score of 138 and English Language, Literature, and Composition: Essays 20042 with no passing score established.

2. Mathematics - Mathematics: Content Knowledge (10061) with a passing score of 130 and Mathematics: Proofs, Models, and Problems, Part I (20063) with no passing score established.

3. Science - Education Elementary School (20010) with a passing score of 510.

4. Social Studies - Social Studies: Content Knowledge (10081) with a passing score of 146 and Social Studies: Interpretation of Materials (20083) with no passing score established.

(4) Applicants for school media librarian certification shall take the Library Media Specialist Test (10310) with a passing score of 590.

(5) Applicants for certification for teachers of exceptional children (except for communication disorders) shall take the Special Education Test (10350) with a passing score of 500.

(6) Applicants for certification at the secondary level shall take the specialty test(s) corresponding to the teaching area or major with the passing score as identified in this subsection through August 31, 1996. Applicants whose teaching specialty is in a major for which no appropriate specialty test is available shall take the specialty test corresponding to the minor teaching specialty.

(a) Art - Art Education Test (10130) - 510;

(b) Biology - Biology and General Science (10030) - 550;

(c) Chemistry - Chemistry, Physics and General Science (10070) - 510;

(d) Comprehensive Business - Business Education Test (10100) - 540;

(e) Distributive Education - Business Education Test (10100) - 540;

(f) Dramatics - Speech Communication Test (10220) - 540;

(g) Dramatics-Speech - Speech Communication Test (10220) - 540;

(h) English - English Language and Literature Test (10040) - 510;

(i) French - French Test (10170) - 510;

(j) German - German Test (20180) - 490;

(k) Health - Education Professional Standards Board test for health education - 67;

(l) Health Occupations - Test by the State licensing agency corresponding to the health specialty;

(m) History - Social Studies Test (10080) - 500;

(n) History - Political Science - Social Studies Test (10080) - 500;

(o) Industrial Education - Orientation and Exploration Levels - Technology Education Test (10050) - 550;

(p) Industrial Education - Preparation Level (area) - shall take other designated special test corresponding to the preparation specialty;

(q) Mathematics - Mathematics Test (10060) - 500;

(r) Mathematics - Physical Science (area) - Select from either Mathematics Test (10060) - 500; or Chemistry, Physics and General Science Test (10070) - 510;

(s) Music (vocal and instrumental) - Music Education Test (10110) - 510;

(t) Physical Education - Physical Education Test (10090) - 540;

(u) Physics - Chemistry, Physics, and General Science Test (10070) - 510;

(v) Political Science - Social Studies Test (10080) - 500;

(w) Science (area) - Select from either Biology and General Science Test (10030) - 550; or Chemistry, Physics and General Science Test (10070) - 510;

(x) Social Studies (area) - Social Studies Test (10080) - 500;

(y) Spanish - Spanish Test (10190) - 490;

(z) Speech - Speech Communication Test (10220) - 540;

(aa) Vocational Agriculture - Education Professional Standards Board test for vocational agriculture (10700) - 530; and

(bb) Vocational Home Economics - Home Economics Education Test (10120) - 540.

(7) Effective September 1, 1996, applicants for certification at the secondary level shall take the specialty test(s) with the passing score as identified in this subsection.

(a) English - English Language, Literature, and Composition: Content Knowledge (10041) with a passing score of 138; and English Language, Literature, and Composition: Essays (20042) with no passing score established, shall be required for applicants for secondary certification with teaching area in English and majors in dramatics, dramatics-speech, English, journalism, and speech.

(b) Biological Science - Biology: Content Knowledge, Part I (20231) with a passing score of 139 and Biology: Content Essays (30233) with no passing score established, shall be required for applicants for secondary certification with a teaching major in biology.

(c) Physical Science - General Science: Content Knowledge, Part 2, (10432) with a passing score of 150 and either Chemistry: Content Knowledge (20241) with a passing score of 144 or Physics: Content Knowledge (10261) with a passing score of 141 shall be required for applicants for secondary certification with a major in chemistry, earth science and physics.

(d) Mathematics - Mathematics: Content Knowledge (10061) with a passing score of 141 and Mathematics Proofs, Models and Problems, Part I (20063) with no passing score established shall be required for applicants for secondary certification with a major in mathematics.

(e) Social Studies - Social Studies: Content Knowledge (10081) with a passing score of 146 and Social Studies: Interpretation of Materials (20083) with no passing score established shall be required of applicants for secondary certification with an area in social studies or a major in economics, economics-sociology, geography, history, history-political science, political science, or psychology.

(8) Effective September 1, 1996, applicants for certification in all grades shall take the specialty test(s) with the passing score as identified in this subsection.

(a) Physical Education - Physical Education: Content Knowledge (10091) with a passing score of 152 and Physical Education: Movement Forms-Analysis and Design (30092) with no passing score established.

(b) Spanish - Spanish Content Knowledge (10191) with a passing score of 145 and Spanish: Productive Language Skills (20192) with no passing score established.

(9) Specialty tests for applicants who successfully complete the new test(s) identified in subsections (3)(b), (7), and (8) of this administrative regulation prior to September 1, 1996, shall be accepted for the issuance of the corresponding certification.

(1) Effective for persons applying for initial teacher certification prior to January 1, 1989, the following minimum passing scaled scores for the respective tests will be applicable:

(a) The National Teacher Examinations Core Battery Tests:

1. Communication skills - 643;

2. General knowledge - 637;

3. Professional knowledge - 641.

(b) The National Teacher Examinations Specialty Tests:

1. Art education - 470;

2. Biology and general science - 520;

3. Business education - 490;

4. Chemistry, physics and general science - 470;

5. Early childhood education - 470;

6. Education in the elementary school - 480;

7. English language and literature - 480;

8. French - 460;

9. German - 470;

10. Home economics education - 500;

11. Industrial arts education - 510;

12. Mathematics - 460;

13. Music education - 480;

14. Physical education - 490;

15. Social studies - 460;

16. Spanish - 480;

17. Speech communication and theater - 410; and

18. Media specialist library and audiovisual services - 550.

(2) Effective for persons applying for initial teacher certification on or after January 1, 1989, the following minimum passing scaled scores for the respective tests will be applicable:

(a) The National Teacher Examinations Core Battery Tests:

1. Communication skills - 646;

2. General Knowledge - 643;

3. Professional knowledge - 644.

(b) The National Teacher Examinations Specialty Tests:

1. Art education - 510;

2. Biology and general science - 550;

3. Business education—540;
 4. Chemistry, physics and general science—510;
 5. Early childhood education—490;
 6. Education in the elementary school—510;
 7. English language and literature—510;
 8. French—510;
 9. German—490;
 10. Home economics education—540;
 11. Industrial arts education—550;
 12. Mathematics—500;
 13. Music education—510;
 14. Physical education—540;
 15. Social studies—500;
 16. Spanish—490;
 17. Speech communication and theater—540;
 18. Media specialist library and audiovisual services—500; and
 19. Special education—500.
- (3) Scores on tests completed four (4) or more years prior to application for certification will not be acceptable in meeting the requirements under subsection (1) or (2) of this section.

Section 3. Applicants for certification at the elementary level, middle-grade level, school media librarian, and for special education shall take the designated specialty tests indicated below in addition to the tests for communication skills, general knowledge, and professional knowledge:

- (1) Provisional elementary certificate—education in the elementary school test;
- (2) Provisional certificate for teaching in the early elementary grades—early childhood education test;
- (3) Provisional certificate for teaching in the middle grades—education in the elementary school test;
- (4) Provisional certificate for school media librarian—media specialist library and audiovisual services test;
- (5) Provisional certificate for teachers of exceptional children grades K-12—speech and communication disorders—no appropriate test available;
- (6) Provisional certificate for teachers of exceptional children grades K-12 (other than for speech and communication disorders)—for persons applying for certification prior to January 1, 1989—education in the elementary school test, and for persons applying for certification on or after January 1, 1989—special education test; and
- (7) Provisional certificate for teachers of exceptional children grades 7-12 (other than for speech and communication disorders)—for persons applying for certification on or after January 1, 1989—the specialty test corresponding to the high school teaching major or the special education test.

Section 4. Applicants for certification at the high school level shall take the test corresponding to the area or major teaching specialty as designated below in addition to the tests for communication skills, general knowledge, and professional knowledge:

- (1) Art—art education test;
- (2) Basic business—business education test;
- (3) Biology—biology and general science test;
- (4) Chemistry—chemistry, physics and general science test;
- (5) Distributive education—business education test;
- (6) Dramatics—speech communication test;
- (7) Dramatics—speech—speech communication test;
- (8) Earth science—no test available;
- (9) Economics—social studies test, see Section 5 of this administrative regulation;
- (10) Economics sociology—social studies test, see Section 5 of this administrative regulation;
- (11) English—English language and literature test;
- (12) French—French test;
- (13) Geography—social studies test, see Section 5 of this

administrative regulation.

- (14) German—German test;
- (15) Health—Department of Education test for health education;
- (16) Health occupations—test by the state licensing agency corresponding to the health specialty;
- (17) History—social studies test;
- (18) History—political science—social studies test;
- (19) Industrial education—orientation and exploration levels—industrial arts education test;
- (20) Industrial education—preparation level (area)—shall take other designated special test corresponding to the preparation specialty;
- (21) Journalism—no test available;
- (22) Latin—no test available;
- (23) Mathematics—mathematics test;
- (24) Mathematics—physical science (area)—select from either mathematics test or chemistry, physics and general science test;
- (25) Music (either vocal and/or instrumental)—music education test;
- (26) Physical education—physical education test;
- (27) Physics—chemistry, physics, and general science test;
- (28) Political science—social studies test;
- (29) Psychology—no test available;
- (30) Science (area)—select from either biology and general science test or chemistry, physics and general science test;
- (31) Secretarial studies—business education test;
- (32) Social studies (area)—social studies test;
- (33) Sociology—social studies test, see Section 5 of this administrative regulation;
- (34) Spanish—Spanish test;
- (35) Speech—speech communication test;
- (36) Vocational agriculture—Department of Education test for vocational agriculture; and
- (37) Vocational home economics—home economics education test.

Section 5. Teacher applicants whose major specialty is in economics, economics sociology, geography, or sociology shall take the specialty test in social studies for research and validation purposes, but shall not be required to make the passing score established in Section 2 of this administrative regulation.

Section 4. [6.] (1) Applicants for initial certification may take the NTE Core Battery Tests and Praxis II: Subject Assessments and Specialty Area Tests [National Teacher Examinations] on any of the dates established by the Educational Testing Service for national administration or on such dates as may be established by the Education Professional Standards Board [Kentucky Department of Education] for special administration.

(2) Applicants must authorize test results to be forwarded by the Educational Testing Service to the Kentucky Department of Education and to the appropriate teacher preparation institution.

(3) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Educational Testing Service. It shall be the responsibility of each applicant to seek information regarding the dates and location of the tests and to make application for the appropriate examinations prior to the deadlines established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 5. [7.] Applicants shall pay the appropriate examination fee for the relevant test(s) required to be taken, to the Educational Testing Service, publisher of the National Teacher Examinations, unless a lesser fee has been negotiated by the Department of Education. Fees for specialty tests developed by the Department of

Education shall be equivalent to the current fees for such tests administered by the Educational Testing Service.

Section 6. [8.] Applicants who fail to achieve at least the minimum score on one (1) or more of the core battery examinations (communication skills, general knowledge, professional knowledge) or on the specialty examination appropriate to the teaching field shall be permitted to retake the test or tests during one (1) of the scheduled test administrations.

Section 7. [9.] The Education Professional Standards Board [Department of Education] shall collect such data and conduct such analyses of the impact of these tests as to permit a review of these administrative regulations on an annual or biennial basis.

DANIEL GREENE, Chair

APPROVED BY AGENCY: May 1, 1995

FILED WITH LRC: May 5, 1995 at 1 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended)

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 "Licensing Form 99-7" [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 "Licensing Form 99-8" ~~[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 shall be ~~[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 shall be ~~[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.

Section 6. Licensing forms umbered 99-7 and 99-8, revised in June 1995, are prescribed by the department and herein incorporated by reference. Copies may be obtained from the Department of Insurance, P.O. Box 517, 215 West Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

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 PROTECTION AND REGULATION CABINET
Public Service Commission
(As Amended)

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 ~~[e 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. (1) Each electric utility shall file its integrated resource plan according to a staggered 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.

(a) The integrated resource plans shall be filed at the specified times following the effective date of this administrative regulation:

1. Kentucky Utilities Company shall file nine (9) months from the effective date;

2. Kentucky Power Company shall file fifteen (15) months from the effective date;

3. East Kentucky Power Cooperative, Inc. shall file twenty-one (21) months from the effective date;

4. The Union Light, Heat & Power Company shall file twenty-seven (27) months from the effective date;

5. Big Rivers Electric Corporation shall file thirty-three (33) months from the effective date; and

6. Louisville Gas & Electric Company shall file thirty-nine (39) months from the effective date.

(b) The schedule shall provide at such time as all electric utilities have filed integrated resource plans, the sequence shall repeat.

(c) 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. Good cause may include a change in a utility's financial or resource conditions. [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;]

(d) [(b)] 300 days from the effective date of this administrative regulation, two (2) additional utilities shall file their integrated resource plans;

(e) 330 days from the effective date of this administrative regulation, the remaining utilities shall file their integrated resource plans;

(f) If any [of these] filing date falls [e 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 any 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 ~~[an 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 ~~[ie]~~ 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 [ie] 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) [(40)] A utility shall file all updates of load forecasts with the commission when they are adopted by the utility.~~

~~(7) [(41)] 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]~~ discussion ~~[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 filing.~~

~~(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. ~~[44.]~~ 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. ~~[42.]~~ 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] ~~[following interrogatories and comments]~~ conferences ~~[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.

CABINET FOR HUMAN RESOURCES

Department for Health Services

(As Amended)

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

RELATES TO: KRS 218A.070, 218A.180, 218A.200, 902 KAR 55:080, 21 CFR 1306.05, 1306.11 to 1306.15

STATUTORY AUTHORITY: KRS 194.050, 218A.250

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

Section 1. Definitions. (1) "Home infusion pharmacy" means a pharmacy which compounds solutions for direct administration to a patient in a private residence, long-term care facility or hospice setting by means of parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion.

(2) "Long-term care facility" means a nursing home, skilled nursing facility, nursing facility as defined in PL 100-203, intermediate care facility, or intermediate care facility for the mentally retarded.

Section 2. Transmission by Facsimile of a Prescription for a Schedule II Controlled Substance. (1) A prescription prepared in accordance with KRS 218A.180, 21 CFR 1306.05 and 902 KAR 55:080 for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by a practitioner or the practitioner's agent to a home infusion pharmacy by facsimile.

(2) A prescription prepared in accordance with KRS 218A.180, 21 CFR 1306.05 and 902 KAR 55:080 for a Schedule II controlled substance for a resident of a long-term care facility may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3) [a] The facsimile prescription shall serve as the written prescription, required by KRS 218A.180(1) for the dispensing of a Schedule II controlled substance ~~[for seven (7) calendar days]~~.

[b] Within seven (7) calendar days after transmitting a facsimile prescription for a Schedule II controlled substance, the prescribing practitioner shall deliver ~~[cause]~~ the original written prescription ~~[to be delivered]~~ to the dispensing pharmacy.

[c] A practitioner who fails to deliver the original written prescription within the period specified in paragraph (b) of this subsection shall be deemed to have violated KRS 218A.1404(3).

Section 3. Partial Filling of a Prescription for a Schedule II Controlled Substance. (1) Except as provided in subsection (2) of this section a pharmacist may partially fill a prescription for a controlled substance listed in Schedule II if the pharmacist:

(a) Is unable to dispense the full quantity prescribed;

(b) Makes a notation of the quantity dispensed on the face of the written prescription; and

(c) Dispenses the remaining portion of the prescription within seventy-two (72) hours of the first partial filling. No further quantity shall be dispensed without a new written prescription.

(2) A written prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a documented terminal illness may be dispensed in partial quantities, including but not limited to individual dosage units if:

(a) The pharmacist records on the face of the prescription "terminally ill" or "LTCF patient" or words of similar meaning;

(b) The pharmacist records on the back of the written prescription or on another appropriate record, uniformly maintained and readily retrievable, the following data:

1. The date of the partial dispensing;
2. The quantity dispensed;
3. The remaining quantity authorized to be dispensed; and
4. The identification of the dispensing pharmacist;

(c) The pharmacist contacts the practitioner prior to dispensing the partial quantity if there is any question whether the patient is terminally ill;

(d) The pharmacist determines that each subsequent partial dispensing is necessary;

(e) The total quantity dispensed in all partial dispensings does not exceed the quantity prescribed; and

(f) No dispensing occurs beyond sixty (60) days from date of issuance of the prescription.

RICE C. LEACH, MD, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: March 14, 1995

FILED WITH LRC: March 15, 1995 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

902 KAR 115:020. Enforcement of water fluoridation program.

RELATES TO: KRS 211.190

STATUTORY AUTHORITY: KRS 211.190(11)

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures for the enforcement of the Cabinet for Human Resources' water fluoridation programs as directed by KRS 211.190(11).

Section 1. Notice of Violation. (1) If the Cabinet for Human Resources has reasonable grounds to believe that a violation of 902 KAR 115:010 has occurred, it shall serve the alleged violator with cabinet Form DH-36, "Notice of Violation".

(2) The "Notice of Violation" shall state:

(a) In particular, the specific:

1. Violation; and

2. Measures required to be taken to correct the violation; and

(b) The date by which the corrective measures shall be completed;

(c) That the alleged violator has the right to request a hearing before the cabinet, at which he may:

1. Be represented by counsel;

2. Present evidence on his behalf; and

3. Cross-examine witnesses;

(d) That the request for a hearing shall be made on cabinet Form DH-37, "Request For Hearing";

(e) That a written transcript of a hearing shall:

1. Not be made unless requested by a party; and

2. Be paid for by the requesting party; and

(f) That, within thirty (30) days of the date of the notice, the cabinet shall begin legal proceedings against the alleged violator if he fails to:

1. Take the corrective measures specified in the notice; or

2. Request a hearing. [Notice of Violation. (1) If the Cabinet for Human Resources has reasonable grounds to believe that a violation of KRS 211.190 or 902 KAR 115:020 has occurred, the cabinet shall serve the suspected violator with a written notice of violation by certified mail, stating in particular the nature of the violation, outlining remedial measures and setting the date by which remedial measures must be completed.

(2) The notice of violation shall be made in writing on Form DH-36 "Notice of Violation" (10/94). Form DH-36, "Notice of Violation", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]

Section 2. Hearing. (1) If an alleged violator requests a hearing, the cabinet shall notify him of the:

a) Time and place of the hearing; and

(b) Name of the hearing officer;

(2) Notice of the hearing shall be made on Form DH-38, "Notice of Hearing"; and

(3) The decision of the hearing officer shall:

(a) Be written;

(b) Made upon the evidence presented; and

(c) Include findings of fact and conclusions of law. [Failure to Take Remedial Measures. (1) The cabinet may impose a fine for failure to take remedial measures within the time period specified in the notice of violation.

(2) The fines imposed shall not exceed those fines authorized by KRS 211.990.]

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form DH-36, "Notice of Violation (10/94)";

(b) Form DH-37, "Request for Hearing (12/94)"; and

(c) Form DH-38, "Notice of Hearing (7/95)".

(2) These forms may be inspected, copied, or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort Kentucky, 8 a.m. to 4:30 p.m., Monday through Friday. [Notice of Initial Decision to Impose a Fine for Failure to Provide Supplemental Water Fluoridation. (1) If the cabinet determines that a fine should be imposed for failure to take remedial action, the cabinet shall provide written notice of the cabinet's initial decision to impose a fine.

(2) The cabinet's initial decision to impose a fine shall become final thirty (30) days after the date of the notice, unless a hearing is requested.

Section 4. Hearing Procedures. (1) A hearing shall be provided regarding the cabinet's initial decision to impose a fine if requested within thirty (30) days of the date of the notice of the cabinet's initial decision.

(2) The request for a hearing shall be made in writing on Form DH-37 "Request for Hearing" (12/94), to the cabinet within ten (10) days after notification by the cabinet of its initial decision to impose a fine. Form DH-37, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(3) The cabinet shall notify the requesting party in writing of the:

(a) Name of the hearing officer; and

(b) Time and place of the hearing.

(4) All parties shall have the right to:

(a) Be represented by counsel;

(b) Present evidence on his behalf; and

(c) Cross-examine witnesses.

(5) A written transcript of the hearing shall not be made unless requested by a party. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(6) The hearing officer shall have the authority to issue subpoenas and all necessary process in proceedings brought before or initiated by the cabinet. Service of process and proof of service shall comply with KRS 211.220.

(7) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

RICE C. LEACH, M.D., Commissioner

MASTEN CHILDERS, II, Secretary

APPROVED BY AGENCY: May 12, 1995

FILED WITH LRC: May 15, 1995 at 11 a.m.

COMPILER'S NOTE: The following administrative regulation, 907 KAR 1:600, was amended by the promulgating agency and the Interim Joint Committee on Health and Welfare, and became effective on June 21, 1995.

**CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)**

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 without good cause;

(e) The applicant requests in writing voluntary withdrawal of the application without good cause;

(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 decrease 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.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)

907 KAR 1:605. Medicaid procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 CFR 435.530, 435.531, 435.540, 435.541, 435.914, 435.916, 42 USC 1396a, b, d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program.

Section 1. Eligibility Determination Process. (1) Eligibility shall be determined prospectively, except that for retroactive coverage[,] eligibility shall be determined pursuant to subsection (3) of this section [retroactively]. To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria as set forth in 907 KAR 1:004 and 1:011 for the appropriate month of coverage.

(2) Each decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall be required to:

1. Furnish verification of financial and technical eligibility as set forth in 907 KAR 1:004 and 1:011; and

2. Give written consent to those contacts necessary to verify or clarify any factor pertinent to the decision of eligibility.

(b) When informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information at the time requested shall be considered a failure by the applicant or recipient to present adequate proof of eligibility.

(3) Retroactive eligibility for Medicaid shall be effective no later than the third month prior to the month of application if:

(a) A Medicaid service was received; and

(b) Technical and financial eligibility requirements were met as set forth in 907 KAR 1:004 and 1:011.

(4) Eligibility for qualified medicare beneficiary (QMB) coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as set forth in 907 KAR 1:004 and 1:011.

Section 2. Continuing Eligibility. The recipient shall be responsible for reporting within ten (10) days any change in circumstances which

may affect eligibility. In addition, eligibility shall be redetermined:

(1) Every twelve (12) months; or

(2) When a report is received or information is obtained about a change in circumstances.

Section 3. Determination of Incapacity or Permanent and Total Disability. (1) A determination that a parent with whom the needy child lives is incapacitated, or that the individual requesting Medicaid due to disability is both permanently and totally disabled, shall be made by the medical review team following review of both medical and social reports except as listed in subsection (2) or (3) of this section.

(2) A parent shall be considered incapacitated without a determination from the medical review team if:

(a) The parent declares physical inability to work;

(b) The worker observes some physical or mental limitation; and

(c) The parent:

1. Is receiving supplemental security income (SSI); or

2. Is age sixty-five (65) or over; or

3. Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 1382c or 416 by either the Social Security Administration or the medical review team; or

4. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

5. Is receiving retirement, survivors, and disability insurance (RSDI) benefits, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or

6. Is receiving Veterans Administration (VA) benefits based on 100 percent disability, as verified by an award letter; or

7. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician is also requested to indicate if incapacity existed as of the application date.

(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:

(a) Receives RSDI or railroad retirement benefits based on disability; or

(b) Received SSI based on disability during any portion of the twelve (12) months preceding the application month and discontinuance was due to income or resources, not to improvement in physical condition; or

(c) Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 416 or 1382C by the Social Security Administration; or

(d) Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition.

MASTEN CHILDERS, II, Commissioner and Secretary
APPROVED BY AGENCY: March 9, 1995
FILED WITH LRC: March 13, 1995 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)

907 KAR 1:610. Medicaid right to apply and reapply.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 116.048, 194.050, 205.520, 42

CFR 435.906, 435.907, 435.909, 435.911, 435.912, 42 USC 1396a, b, d, 1973gg-10

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth provisions relating to the procedure by which an application for Medicaid coverage is filed. KRS 116.048 designates the cabinet to have responsibility for the administration of public assistance programs as a voter registration agency in accordance with 42 USC 1973gg-10. Therefore, this administrative regulation sets forth policy and procedure necessary to provide an eligible Medicaid recipient the opportunity to register, or to decline from registering, to vote.

Section 1. Right to Apply or Reapply. (1) Each individual wishing to do so shall have the opportunity to apply or reapply for Medicaid through the Department for Social Insurance (DSI).

(2) An individual eligible for Aid to Families with Dependent Children (AFDC), State Supplementation or Supplemental Security Income (SSI) through the Social Security Administration shall be eligible for Medicaid without a separate application.

(3) An individual applying on the basis of age, blindness or disability shall not be eligible as a medically needy individual, under 907 KAR 1:011, if his income and resources are within SSI limits. Denial of assistance by the Social Security Administration for SSI for technical reasons shall also be considered a denial for Medicaid.

Section 2. Application Process. (1) An application shall be considered to have been made when the individual or his representative has signed, under penalty of perjury, the application form prescribed by the DSI or the Social Security Administration, for SSI, and the application has been received at the appropriate office.

(2) An application shall also be considered to be made based on the date of contact with DSI or the Social Security Administration for SSI, by a person with a physical or mental impairment who needs special accommodation due to his impairment.

(3) If the applicant is unable to come to the office to apply, he may designate an authorized representative to apply for him or request a home visit to complete the application process.

(4) The applicant may be assisted by an individual of his choice in the application process and may be accompanied by this individual in all contacts with the agency.

(5) Deaf and hard of hearing services shall be provided in accordance with 900 KAR 1:070.

(6) Interpreter services shall be provided for persons who do not speak English, utilizing procedures and forms specified by 900 KAR 1:070.

Section 3. Who May Sign an Application. (1) An application for Medicaid shall be signed by the individual requesting assistance, the relative with whom the child lives, or an interested party acting on behalf of the applicant.

(2) An application for Medicaid for children in foster care or private child caring institutions shall be signed by the representative of the agency to which the child is committed or the institution in which the child is placed.

Section 4. Where Applications are Filed and Processed. (1) The application may be filed at any DSI office and shall be processed in the county of residence except that any application for SSI and Medicaid shall be filed in the service area office of the Social Security Administration.

(2) If an individual is applying for nursing facility or psychiatric facility services, the DSI office in the county where the facility is located shall take and process the application.

(3) If an individual is applying in a county other than the county of residence and is hospitalized, the DSI office in the county of hospitalization shall take the application and transfer the pending application to the county of residence, and the DSI office in the county of residence shall process the application using the original application date.

(4) If an individual is applying in a county other than the county of residence and is not hospitalized, the DSI office in the receiving county shall partially complete the application, transfer the application to the county of residence on the same day the application is taken, and explain to the applicant that the application shall be processed in the county of residence. The DSI office in the county of residence shall schedule a face-to-face interview and process the application using the original application date.

(5) If a Kentucky resident is temporarily out of state, a letter from the applicant, an interested party or an out-of-state agency shall be accepted as the initiation of the application process when an emergency arises from accident or sudden illness, care and services are needed immediately, and the individual's health would be endangered if he undertook to return to the state. Upon notification of the emergency, the official application form shall be forwarded to the initiating party.

Section 5. Action on Applications. (1) A decision shall be made on each Medicaid application within forty-five (45) days, except that for applications requiring a disability determination, sixty (60) days shall be allowed.

(2) Time frame exceptions:

(a) If the applicant is cooperating but is unable to obtain necessary verification for an eligibility decision to be made; or

(b) If the delay is beyond the control of staff (such as failure or delay on the part of the applicant or examining physician or because of some administrative or other emergency that could not be controlled by staff).

(3) The case record shall document the cause for the time standard delay.

(4) Failure to process an application within the above time frame shall not be used as the basis for denial.

Section 6. Voter Registration. (1) An applicant or recipient meeting all of the following criteria shall be provided the opportunity at the local Department for Social Insurance office to complete an application to register to vote or update his current voter registration:

(a) Be age eighteen (18) or over;

(b) Be present in the office at the time of the interview or if a change of address is reported; and

(c) Not be registered to vote or not registered to vote at his current address.

(2) The following individuals shall not be permitted to register to vote by the process established in this administrative regulation:

(a) An individual not included in the Medicaid application;

(b) ~~A Medicaid [shall not be registered to vote in this process, including a] payee only;~~

(c) An authorized representative of a Medicaid recipient; or

(d) 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

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approve the application to register to vote and send a confirmation or denial notice to the applicant.

Section 7. Materials Incorporated by Reference. (1) Forms necessary for application for benefits under the Medicaid Program are incorporated effective April 1, 1995. These forms include the PA-1, revised October 1992; PA-1A, revised March 1991; PA-1C, revised October 1991; PA-1P, revised April 1992; PA-1UP, revised May 1991; and the KIM-100, revised March 1994.

(2) These forms may be reviewed at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m. Copies may be obtained upon payment of an appropriate fee which shall not exceed approximate cost.

MASTEN CHILDERS II, Commissioner and Secretary
APPROVED BY AGENCY: March 8, 1995
FILED WITH LRC: March 13, 1995 at 3 p.m.

CABINET FOR HUMAN RESOURCES Department for Medicaid Services (As Amended)

907 KAR 1:640. Income standards for Medicaid.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 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 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. (1) Increases in Social 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).

(2) 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. (1) A [No] technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2) 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.

(3) 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.

(4) 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.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)

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 of 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 to:

a. ~~Fe~~ The spouse;

b. ~~Fe~~ A child who is under age twenty-one (21) or to a child who is blind or disabled;

c. ~~Fe~~ A sibling who has equity interest in the home who lived with the institutionalized individual one (1) year prior to institutionalization; and

d. ~~Fe~~ 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) Disposal of a resource.

(a) 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.

(b) The value of the transferred resource shall be disregarded if:

1. ~~It is for the purpose of~~ The transfer is in accordance with 42 USC 1396p(c)(2)(B) or (C);

2. ~~It is for~~ is for some reason other than to qualify for Medicaid; or

3. ~~It is~~ The transferred resource was considered an excluded resource at the time it was transferred. ~~the value of the transferred resource shall be disregarded.~~

(c) 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.

(d) 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 **Medicaid** eligible, the cabinet shall:

(a) ~~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;

(b) 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.

(9) Disclaiming of an inheritance by the individual entitled to the inheritance shall be considered a transfer of resources.

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.

(a) 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; or

(b) 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 that could be made (even though not disbursed) shall be considered as a resource [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.

Section 3. Treatment of Trusts. (1) Effective October 1, 1993 with

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)

907 KAR 1:660. Relative responsibility requirements for Medicaid.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435 Subparts 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) "Medically needy income level" means the basic maintenance standard used in the determination of Medicaid eligibility for the medically needy.

(5) "Month of separation" means the month in which an individual ceases living in the same household of the Medicaid budget unit.

(6) ~~[(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 (1/2) 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 stepchild(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.

1. 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.

2. 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.

3. If there is no excess income, the minor parent and grandparent or spouse and incapacitated stepparent shall be eligible.

4. 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)1. 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.

2. 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.

3. A separate spend-down case(s) may then be established for the technically excluded child(ren).

4. The income, resources and needs of the responsible relative or parent shall be included in the budget process.

(b)1. 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.

2. 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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR WRITTEN COMMENTS RECEIVED

TRANSPORTATION CABINET
(Amended After Hearing)

600 KAR 5:010. Transportation of nonpublic school students.

RELATES TO: KRS 158.115, Part XI of Chapter 5 of the Acts of the First 1994 Extraordinary Legislative Session

STATUTORY AUTHORITY: Part XI of Chapter 5 of the Acts of the First 1994 Extraordinary Legislative Session.

NECESSITY AND FUNCTION: The Commonwealth's Biennium Budget for fiscal years 1994-96 included \$2 million in the General Fund Surplus Budget Expenditure Plan each year for the transportation of nonpublic school students. On September 1, 1994 the state Supreme Court issued an opinion relating to the methods of public financing of the transportation of nonpublic school students. This administrative regulation is promulgated to establish the eligibility criteria for application for a portion of the \$2 million appropriated each of the fiscal years of the biennium. The Transportation Cabinet has made every effort to adhere to the provisions of the 1994 Supreme Court ruling as well as the stated intention of the General Assembly with the passage of House Bill 2 during the First Extraordinary Legislative Session of 1994.

Section 1. Application for Fiscal Year 1994-95 Funds. (1) Any fiscal court which provided financial support for the transportation of nonpublic school students in school year 1994-95 pursuant to the provisions of KRS 158.115 may make application to the Transportation Cabinet for reimbursement of that financial support.

(2) The application to the Transportation Cabinet shall:

(a) Not be received by the Office of the Secretary later than June 1, 1995;

(b) Include a resolution from the fiscal court stating that the county provided funds in school year 1994-95 for the transportation of nonpublic school students;

(c) Include the amount of funds provided by the county for the transportation of nonpublic school students; and

(d) Include a detailing of the method by which the funds were made available for the transportation of the nonpublic school students.

(3) The Transportation Cabinet shall evaluate the applications received and divide the \$2 million available in fiscal year 1994-95 based on the following:

(a) If the valid application amounts spent by the counties equal or total less than the appropriated amount, the Transportation Cabinet shall authorize payment for each requested reimbursement amount.

(b) If the valid application amounts received exceed the appropriated amount, the Transportation Cabinet shall base the appropriation amount to each applicant county on Section 3 of this administrative regulation.

Section 2. Application for Fiscal Year 1995-96 Funds. (1) Any fiscal court which provided financial support ~~has budgeted funds or intends to budget funds~~ for the transportation of nonpublic school students in and for school year 1995-96 pursuant to the provision of KRS 158.115, may make application to the Transportation Cabinet for funds to reimburse ~~match~~ the local funds ~~being~~ provided for this purpose, if there are sufficient excess general funds available for this purpose.

(2) The application to the Transportation Cabinet shall:

(a) Not be received by the Office of the Secretary later than June 10 ~~February 4~~, 1996;

(b) Include a resolution from the fiscal court stating that the

county has provided ~~or has budgeted~~ funds in and for school year 1995-96 for the transportation of nonpublic school students;

(c) Include the amount of funds provided ~~budgeted~~ by the county for the transportation of nonpublic school students; ~~and~~

(d) Include a detailing of the method by which the funds were ~~or will be~~ made available for the transportation of the nonpublic school students; and

(e) If in existence, include a copy of the contract between the fiscal court and each local school board transporting nonpublic school students at the expense of the fiscal court.

(3) The Transportation Cabinet shall evaluate the applications received and divide the \$2 million available in fiscal year 1995-96 based on the following:

(a) If the valid application amounts shown as expended ~~budgeted~~ by the counties or invoiced to the fiscal courts by the local school boards are equal to or total less than the appropriated amount, the Transportation Cabinet shall authorize payment for each requested reimbursement amount.

(b) If the valid application amounts shown as expended ~~budgeted~~ by the counties or invoiced to the fiscal courts by the local school boards exceed the appropriated amount, the Transportation Cabinet shall base the appropriation to each eligible applicant county on Section 3 of this administrative regulation.

Section 3. Proration of Appropriated Funds. (1) If the funds made available for the transportation of nonpublic school students are to be prorated pursuant to either Section 1(3)(b) or 2(3)(b) of this administrative regulation, the Transportation Cabinet shall prorate the funds appropriated for this purpose based on the following criteria:

(a) From the latest figures from the Department of Education available at the time of review of the applications, the total number of public school students transported plus the total number of nonpublic school students who would be eligible to take advantage of the transportation. The number of nonpublic school students shall not include those students who:

1. Attend schools on military reservations or which are fully federally funded; or

2. Are taught at home.

(b) Based on the latest figures from the Department of Education available at the time of the review of the applications, the statewide average for the annual cost of the transportation of an individual student.

(c) The amount of local funds expended or budgeted for the transportation of nonpublic school students.

(2) For fiscal year 1994-95, the maximum a county would be eligible to apply for would be the lesser of the following:

(a) The product of the total students established pursuant to subsection (1)(a) of this section times the value established pursuant to subsection (1)(b) of this section; or

(b) The funds actually expended by that county for the transportation of nonpublic school students during school year 1994-95.

(3) For fiscal year 1995-96, the maximum a county would be eligible to apply for would be the lesser of the following:

(a) The product of the total students established pursuant to subsection (1)(a) of this section times the value established pursuant to subsection (1)(b) of this section; or

(b) The funds actually expended ~~or budgeted~~ by that county for the transportation of nonpublic school students during school year 1995-96.

(4) For fiscal year 1994-95, if it is necessary to prorate the appropriation, the funds for each eligible, applicant county shall be the product of \$2,000,000 times the application amount for that county

established by subsection (2) of this section divided by the total amount of the eligible applications received for all counties pursuant to subsection (2) of this section.

(5) For fiscal year 1995-96, if it is necessary to prorate the appropriation, the funds for each eligible, applicant county shall be the product of \$2,000,000 times the application amount for that county established by subsection (3) of this section divided by the total amount of the eligible applications received for all counties pursuant to subsection (3) of this section.

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: July 10, 1995

FILED WITH LRC: July 11, 1995 at 11 a.m.

LABOR CABINET
Department of Workers' Claims
(Amended After Hearing)

803 KAR 25:190. Utilization review and medical bill audit.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), 342.260

NECESSITY AND FUNCTION: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations that [which] require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. The function of this administrative regulation is to insure that all insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(2) "Utilization review and medical bill audit plan" means the written plan submitted to the Commissioner of the Department of Workers' Claims by each [all] insurance carrier[e], individual self-insured employer[e] and [self-insured] group[e] self-insurer describing the procedures governing utilization review and medical bills audit activities [utilization review program implemented].

(3) "Utilization review [program]" means the system used to manage and assess patient care through case-by-case assessment of the reasonableness, frequency, duration and appropriateness of medical care and services for purposes of determining the availability of payment. [Utilization review includes, but is not limited to review of requests for authorization for medical services and review of bills for medical services which have been provided.]

(4) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that: [statements and payments for medical goods and services, and charges for depositions, reports, and photocopies comply with KRS Chapter 342 and applicable administrative regulations; that] utilization reviewers are appropriately qualified; that treatment rendered injured workers is

reasonably necessary, appropriate in frequency and intensity, and effective; and that necessary medical services are not withheld or unreasonably delayed; and that statements for medical services are not disputed without reasonable grounds].

(2) The medical bill audit program shall assure that: statements and payments for medical goods and services and charges for depositions, reports, and photocopies comply with KRS Chapter 342 and applicable administrative regulations; medical bill auditors are appropriately qualified; and, statements for medical services are not disputed without reasonable grounds.

(3) [(2)] All insurance carriers, individual self-insured employer[e], and [self-insured] group[e] self-insurers shall fully implement and thereafter maintain a utilization review and medical bill audit program no later than February 1, 1996 [December 1, 1995].

Section 3. Utilization Review and Medical Bill Audit Plan[;] Requirements. No later than December 1, 1995 each [October 1, 1995, all] insurance carrier[e], individual self-insured employer[e] and [self-insured] group[e] self-insurer shall provide to the commissioner a written plan for the implementation of a utilization review and medical bill audit program. The utilization review and medical bill audit plan shall include:

(1) A description of the process, policies and procedures whereby decisions as to the reasonableness and necessity of medical services and the appropriateness of statements for medical services are made;

(2) A description of the specific criteria utilized in the decision making process including treatment protocols or standards in any software, database or other resources used in the development of the review processes;

(3) A description of the criteria by which claims, [and] medical services and medical bills will be selected for [utilization] review;

(4) A description of the qualifications of internal and consulting personnel who will conduct the utilization review, demonstrating education, training, and experience pertinent to evaluating the clinical issues or services under review and the manner in which the [such] personnel are involved in the review process. The plan shall demonstrate that only licensed physicians, registered nurses, licensed practical nurses, medical records technicians or other personnel, who through training and experience are qualified to issue decisions on medical necessity or appropriateness, shall approve utilization review decisions. Only licensed physicians shall issue utilization review denials and only licensed physicians shall supervise utilization review personnel conducting case review. Personnel making utilization review recommendations and decisions shall hold any license required by the jurisdiction in which they are employed and shall hold a license appropriate to the medical utilization review of Kentucky workers' compensation cases;

(5) A description of the qualifications of internal and consulting personnel who will conduct medical bill audits, demonstrating education, training and experience pertinent to evaluating medical bills and statements. Personnel conducting medical bill audits shall hold any license required by the jurisdiction in which they are employed;

(6) [(5)] A process to assure that treatment plans are obtained for review by qualified medical personnel in all instances where treatment plans are required under 803 KAR 25:096;

(7) [(6)] A timetable for implementation of a utilization review and medical bill audit program which shall provide for full implementation no later than February [December] 1, 1995;

(8) [(7)] A system for promptly notifying treating physicians and other providers of utilization review denials. [any refusal to pay a statement for medical services or to preauthorize services where preauthorization is requested setting forth the basis for denial and referral to recognized standards upon which the denial is based.]

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Payment ~~[of statements]~~ for medical services ~~[and requests for preauthorization]~~ should not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information;

(9) ~~[(8)]~~ A database recording the instances of utilization review, medical bill audit, the name of the reviewer, the extent of the review, the conclusions of the reviewer, and the action, if any, taken as the result of the review. Data shall be maintained for a period of no less than two (2) years and is subject to audit by the commissioner, or his designee pursuant to KRS 342.035(5)(b);

(10) ~~[(9)]~~ A provision for the audit of each medical bill, medical report, and deposition fee regardless of the amount of the bill; and

(11) ~~[(10)]~~ A description of an appeal process, within the structure of utilization ~~[utilize]~~ review and medical bill audit, whereby initial determinations may be appealed. Review of the initial decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer within thirty (30) ~~[fifteen (15)]~~ days of a request for appellate review. The appeal procedure shall provide for timely notice to anyone aggrieved by the initial decision of the right to appeal and shall provide for a written decision upon appeal; and

(12) A description of the policies and procedures that will be implemented to protect the confidentiality of patient information.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at noon

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JULY 15, 1995

**GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Amendment)**

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.

RELATES TO: KRS 314.011(7), 314.193(2)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY AND FUNCTION: KRS Chapter 314 requires that standards in the performance of advanced registered nursing practice be established by administrative regulation to safeguard the public health and welfare.

Section 1. Definitions. "Established protocol" means a written document jointly approved by the physician and the advanced registered nurse practitioner delineating the areas of practice for the advanced registered nurse practitioner, which is reviewed at least annually and includes those areas of practice related to diagnostic tests, and prescription of medications and treatments. In delineating the areas of practice in the established protocol, the advanced registered nurse practitioner shall conform to the standards of practice of the appropriate nursing organization incorporated by reference in Section 2 of this administrative regulation. Any limitations beyond that set out in the scope and standards of practice statements shall be delineated in the established protocol.

Section 2. The practice of the advanced registered nurse practitioner shall be in accordance with the standards and functions defined in the scope and standards of practice statements for each specialty area as adopted by the board. The board has adopted the following scopes and standards of practice of those national [certifying] organizations recognized pursuant to 201 KAR 20:056, Section 3(2):

(1) American Nurses' Association, The Scope of Practice of the Primary Health Care Nurse Practitioner, 1985, Standards of Practice for the Primary Health Care Nurse Practitioner, 1987;

(2) American Nurses' Association, a Statement on Psychiatric - [and] Mental Health Clinical Nursing Practice and [-1976-] Standards of Psychiatric - [and] Mental Health Clinical Nursing Practice, 1994; [-1982 and Standards of Child and Adolescent Psychiatric and Mental Health Nursing Practice, 1985;]

(3) American Nurses' Association, Statement on the Scope of Medical-Surgical Nursing Practice, 1980;

(4) American Nurses' Association, The Role of the Clinical Nurse Specialist, 1986;

(5) American Association of Nurse Anesthetists, Scope of Practice, 1992 Standards for Nurse Anesthesia Practice, 1989, and Patient Monitoring Standards, 1992;

(6) American College of Nurse-Midwives, Standards for the Practice of Nurse-Midwifery, 1993;

(7) Nurses' Association of the American College of Obstetricians and Gynecologists (now known as the Association of Women's Health, Obstetric, and Neonatal Nurses), The OB/GYN Women's Health Nurse Practitioner, Role Definition, Competencies and Educational Guidelines, 1990;

(8) National Association of Pediatric Nurse Associates and Practitioners, Scope of Practice for Pediatric Nurse Practitioners, 1990, Standards of Practice for Pediatric Nurse Practitioners, 1987;

(9) American Academy of Nurse Practitioners, Standards of Practice, 1993; and

(10) American Academy of Nurse Practitioners, Scope of Practice for Nurse Practitioners, 1993.

Section 3. In the performance of advanced registered nursing practice acts, the advanced registered nurse practitioner shall practice in accordance with established protocol and shall seek consultation or referral in those situations where practice requirements are not included in the established protocol.

Section 4. Advanced registered nursing practice shall not preclude the practice by the advanced registered nurse practitioner of registered nursing practice as defined in KRS 314.011(5).

PATRICIA B. BURGE, President

APPROVED BY AGENCY: June 23, 1995

FILED WITH LRC: July 3, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1995, at 9 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1995, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Psychiatric/mental health ARNPs; approximately 50.

(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: N/A

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Updates standard of practice.

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

(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? N/A

**GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Amendment)**

201 KAR 20:162. Procedures for disciplinary hearings.

RELATES TO: KRS 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY AND FUNCTION: To provide for the orderly conduct of hearings and to protect the due process rights of nurses and applicants.

Section 1. Purpose and Rule of Construction. The purpose of this administrative regulation is to enable the board to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the licensee or applicant. Accordingly, this administrative regulation shall be liberally construed so as to aid that process.

Section 2. Composition of the Hearing Panel. (1) Disciplinary actions shall be heard by a hearing panel consisting of two (2) members of the board and a hearing officer, who may be an assistant attorney general or other attorney designated by the board.

(2) A hearing officer and one (1) member of the board may conduct a hearing for consideration of reinstatement of a revoked or suspended license and consideration of removal of a license from probationary status.

(3) A board member who has participated in the investigation of a disciplinary action or who has discussed the merits of an action with the agency staff or who has personal knowledge of the facts giving rise to a disciplinary action shall not sit on a panel hearing that particular action nor participate in the adjudication of the matter.

(4) The hearing shall be transcribed by a court stenographer.

Section 3. Rights of the Licensee or Applicant. The licensee or applicant shall have the right to be present and to be heard by the hearing panel, to be represented by legal counsel, to present evidence, to cross examine witnesses presented by the board, and to make both opening and closing statements. The licensee or applicant shall also have the right to have subpoenas issued. The licensee or applicant shall bear the cost of serving the subpoenas.

Section 4. Prehearing Disclosure of Evidence. (1) By the board. The names, addresses and telephone numbers of witnesses expected to be called by the board and copies of documents to be introduced

at the hearing shall be made available upon request of the licensee or applicant. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board, upon request.

(2) By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall furnish to the legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing, and a list of the names, addresses, and telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.

(3) At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall also file with the board written response to the specific allegations contained in the notice of charges. Allegations not properly answered will be deemed admitted. The panel may for good cause permit the late filing of an answer.

(4) Sanctions for failure to comply with prehearing disclosure. If a party fails to comply with this section the panel hearing the disciplinary action may refuse to allow into evidence such items or testimony as have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make such other order as it deems appropriate. Sanctions shall be applied by the hearing officer but may be overridden by the unanimous vote of the board members of the panel.

(5) Continuing duty to disclose. After disclosure has been completed each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to its attention. Such additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

Section 5. Order of Proceeding. (1) The hearing officer shall call the meeting to order and shall identify the parties to the action and the persons present. The hearing officer shall ask the parties to state for the record any objections or motions. The hearing officer shall rule upon any objections or motions, subject to be overridden by the unanimous vote of the board members of the panel. Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive its opening statement, but opening statements may not be reserved.

(2) The taking of proof shall commence with the calling of witnesses on behalf of the board. Such witnesses shall be examined first by the attorney for the board, then by the licensee or applicant or that person's attorney, and finally by members of the hearing panel. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the board the licensee or applicant shall call its witnesses. Such witnesses shall be examined first by the licensee or applicant or that person's attorney, then by the attorney for the board, and finally by the members of the hearing panel. Rebuttal examination of those witnesses shall proceed in the same order. Documents or other evidence may be introduced as appropriate.

(4) At the conclusion of the proof the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.

(5) The hearing officer shall also be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the case.

Section 6. Rules of Evidence. (1) The hearing panel shall not be bound by the technical rules of evidence. The hearing panel may

receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the panel is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the hearing panel is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) The hearing panel retains the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence shall be made by the hearing officer but may be overridden by the unanimous vote of the board members of the panel.

Section 7. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall have one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations it shall propose an order based upon the evidence presented. The hearing officer shall draft a proposed decision including findings of fact and conclusions of law consistent with the panel's deliberations as well as a recommended order to be submitted to the full board. A copy of the proposed decision shall be sent to the licensee or applicant by certified mail and to all members of the board as well as the attorney for the board.

Section 8. Written Arguments or Exceptions to a Proposed Decision. The licensee or applicant shall have twenty (20) days from the date the proposed decision is mailed to file with the board written arguments or exceptions to any portion of the proposed decision. The twenty (20) day period may be extended at the discretion of the board president. The attorney for the board shall have ten (10) days from the expiration of the period allowed to the licensee or applicant to file responses on behalf of the board, which period may be extended at the discretion of the board president.

Section 9. Decision by the Board. The full board shall review the proposed decision and consider the evidence presented and, after consideration of any written arguments or exceptions which have been presented, shall make a final determination as follows:

- (1) Adopt the proposed decision as submitted; or
- (2) Modify the proposed decision as deemed necessary; or
- (3) Remand the case to the hearing panel for further evidence.

The hearing panel shall then schedule another hearing to obtain additional evidence. The board shall then consider the findings of fact and recommendations from the original hearing and any additional hearing as well as additional written arguments or exceptions as the parties have presented and shall render its final decision in the case.

Section 10. Record to be Maintained. A transcript of the testimony taken during the hearing shall be kept by the board. A copy of that transcript shall be available to the licensee or applicant from the court stenographer or, if the stenographer is unable to furnish a copy, from the board upon request and payment of the appropriate fee. A copy of the transcript of the hearing shall be available to all board members. Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the hearing officer.

Section 11. Continuances; Proceedings in Absentia. It shall be the policy of the board not to postpone cases which have been scheduled for hearings absent good cause. A request by a licensee or applicant for a continuance may be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon

good cause. The decision whether to grant a continuance shall be made by the hearing officer. However, the burden is upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 12. Hearing Fee. If the order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant, a hearing fee in an amount equal to the cost of stenographic services and the cost of the hearing officer shall be assessed against the licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314. In cases of financial hardship, the board may waive all or part of the fee.

PATRICIA B. BURGE, President

APPROVED BY AGENCY: June 23, 1995

FILED WITH LRC: July 12, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1995, at 9 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1995, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Licensees who have a disciplinary hearing. Number 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: 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: Cost of hearing officer - amount unknown.

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: N/A

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

- (a) Geographical area in which administrative regulation will be implemented: None
- (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: N/A
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: No
 - (c) If detrimental effect would result, explain detrimental effect:
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed regulation if in conflict: 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? N/A

TOURISM CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:015. Boats and outboard motors; restrictions.

RELATES TO: KRS 150.010, 150.090, 150.620, 150.625, 150.990

STATUTORY AUTHORITY: KRS ~~13A.350,~~ 150.620, 150.625

NECESSITY AND FUNCTION: To regulate the size of outboard motors and boats on state-owned lakes to minimize the conflict with the primary purposes of the lakes which are the perpetuation of fish or game populations and the associated sports. This amendment is necessary to prohibit the use of internal combustion motors on Lebanon City Lake, and to remove motor size restrictions and increase the boat size limit on Guist Creek Lake. [change the motor size and speed limit at Greenbo Lake and bring this administrative regulation into compliance with the provisions of KRS Chapter 13A.]

Section 1. Boat Size Restrictions. (1) A person shall not operate on the lakes listed in this administrative regulation:

- (a) Houseboats.
- (b) Except on Guist Creek Lake after February 29, 1996, monohull boats, except canoes, with a centerline length exceeding eighteen (18) feet, six (6) inches.
- (c) Except on Lake Malone or Lake Beshear, pontoon boats with floats and decking exceeding twenty-two (22) feet.
- (d) On Lake Malone or Lake Beshear, pontoon boats with floats and decking exceeding thirty (30) feet.
- (e) On Guist Creek Lake after February 29, 1996, monohull boats, except canoes, with a centerline length exceeding twenty-two (22) feet.

(2) There is no size restriction on canoes.

Section 2. A person shall not operate electric or internal combustion motors on:

- (1) Lake Chumley, Lincoln County;
- (2) Dennie Gooch Lake, Pulaski County;
- (3) Martin County Lake, Martin County; and
- (4) Kingdom Come Lake, Harlan County.

Section 3. Persons shall not use internal combustion motors on:

- (1) Carter Caves Lake, Carter County;
- (2) Spurlington Lake, Taylor County;
- (3) Marion County Lake, Marion County;

- (4) Lake Washburn, Ohio County;
- (5) Bert Combs Lake, Clay County;
- (6) McNeely Lake, Jefferson County;
- (7) Lake Mauzy, Union County;
- (8) Carpenter Lake and Kingfisher Lakes, Daviess County;
- (9) Metcalfe County Lake, Metcalfe County;
- (10) Briggs Lake, Logan County;
- (11) Big Turner, Ballard County;
- (12) Little Turner, Ballard County;
- (13) Shelby, Ballard County;
- (14) Mitchell, Ballard County;
- (15) Happy Hollow, Ballard County;
- (16) Burnt Slough, Ballard County;
- (17) Butler, Ballard County;
- (18) Sandy Slough, Ballard County;
- (19) Long Pond, Ballard County;
- (20) Cross Slough, Ballard County;
- (21) Little Green Sea, Ballard County;
- (22) Burnt Pond, Ballard County;
- (23) Arrowhead Slough, Ballard County;
- (24) Deep Slough, Ballard County;
- (25) Beaver Dam Slough, Ballard County;
- (26) Cypress Slough, Ballard County;
- (27) Twin Pockets Slough, Ballard County;
- (28) Lake Reba, Madison County;
- (29) Lincoln Homestead Lake, Washington County;
- (30) Goose, Muhlenberg County;
- (31) Island, Ohio County;
- (32) South, Ohio County;
- (33) Lebanon City Lake, Marion County, after February 29, 1996.

Section 4. On the following lakes, a person shall not:

- (1) Use motors larger than ten (10) horsepower.
- (2) Operate motors faster than slow speeds which cause no disturbance or interference with fishing.
 - (a) Shanty Hollow Lake, Warren County;
 - (b) Bullock Pen Lake, Grant County;
 - (c) Lake Boltz, Grant County;
 - (d) Kincaid Lake, Pendleton County;
 - (e) Elmer Davis Lake, Owen County;
 - (f) Beaver Creek Lake, Anderson County;
 - (g) Herb Smith Lake, Harlan County;
 - (h) Corinth Lake, Grant County;
 - (i) Swan Lake, Ballard County.

Section 5. A person shall not operate a boat motor larger than 150 horsepower ~~[or boat motors without an underwater exhaust]~~ on:

- (1) Guist Creek Lake, Shelby County, through February 29, 1996;
- (2) Lake Malone, Todd, Muhlenberg and Logan Counties; and
- (3) Lake Beshear, Christian and Caldwell Counties.

Section 6. Persons shall not exceed idle speed on Greenbo Lake, Greenup County; Pan Bowl Lake, Breathitt County; and Wilgreen Lake, Madison County.

Section 7. Persons shall not operate boat motors without underwater exhausts on the lakes listed in this administrative regulation.

C. THOMAS BENNETT, Commissioner
 MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 9, 1995

FILED WITH LRC: July 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995 at 9 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard shall notify

this agency in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish & Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Contact Person: Peter Pfeiffer

(1) Type and number of entities affected: Boaters who use Guist Creek Lake and Lebanon City Lake.

(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. There will be no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The amendments to this administrative regulation will not impact 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 imposes no paperwork requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No anticipated effects.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game 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 anticipated economic impacts.

(b) Kentucky: No anticipated economic impacts.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternatives on Lebanon City Lake were to ban all boat motors or to allow limited horsepower internal combustion motors. Because of the size of this body of water, internal combustion motors are inappropriate, and there is no reason to ban electric motors. On Guist Creek Lake, the alternative was to retain current motor and boat size restrictions. This alternative was rejected because increasing size of boats and motors were precluding members of the public from using the lake.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation impacts public safety to the extent that it improves safety on smaller lakes by imposing boat and motor size limitations.

(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: Unlimited boat and motor size on smaller lakes could create a safety hazard.

(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 was used to the extent that lake size and other safety factors were applied in determining motor or motor size limits. 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.

TOURISM CABINET

Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:085. Mussel shell harvesting.

RELATES TO: KRS 150.025, 150.110, 150.170, 150.175, 150.190, 150.510, 150.520

STATUTORY AUTHORITY: KRS 150.025, 150.170, 150.175, 150.520

NECESSITY AND FUNCTION: It is necessary to regulate the manner of taking mussels because of their value and their susceptibility to overharvest. This amendment is necessary to create mussel sanctuaries around Ohio River islands now part of a national wildlife refuge. ~~[extend the mussel sanctuary on the Green River because of the presence of threatened or endangered mussel species.]~~

Section 1. All persons except helpers and those specified in Section 4 of this administrative regulation, who actively participate in the harvesting and sale of mussels or mussel shells, whether or not they own or possess the gear being used in the harvest of mussels or mussel shells, shall have an appropriate license. Each licensed musseler may employ one (1) helper to assist in the harvesting, transporting and sale of mussels. A licensed musseler shall accompany each helper when brailing, transporting or selling shells.

Section 2. Only persons having a valid musseling license or mussel buyers license may sell mussels or mussel shells. Mussel buyers shall purchase mussels or mussel shells only from individuals possessing a valid musseling license or mussel buyers license.

Section 3. All musselers shall paint or affix their department issued identification number to their brail boat so as to be clearly visible to aerial observation. Boats used in musseling operations shall have a licensed musseler in the boat.

Section 4. A person shall not possess more than six (6) mussels without having an appropriate musseling license or mussel buyers license. Mussels shall be legal size according to Section 9 of this administrative regulation.

Section 5. Mussel License Application Procedure. (1) The department shall not issue more than 500 mussel licenses per calendar year.

(2) Persons wishing to purchase musseling licenses shall apply during the November before the year they wish to mussel.

(3) Applicants shall complete a musseling license application provided by the department.

(4) If the number of applications exceeds 500, the department shall first grant new licenses to current mussel license holders, then select the remaining applicants by a random drawing.

(5) If the number of applications is less than 500, the department shall grant licenses to all applicants, and shall grant licenses to persons applying after November 31 on a first-come, first-served basis until 500 licenses have been issued.

(6) The appropriate resident or nonresident mussel license fee shall accompany each application. The department shall return the fees of those not drawn.

Section 6. Except as specified in Sections 7 and 8 of this administrative regulation, the musseling season is open year around only on the following waters:

- (1) Kentucky Lake;
- (2) Barkley Lake;
- (3) Tennessee River from Kentucky Lake dam to the mouth;
- (4) Cumberland River from Barkley Lake dam to the mouth;
- (5) Ohio River;
- (6) Green River from Green River Lake dam to the mouth;
- (7) Barren River from Barren River Lake dam to the mouth;
- (8) Kentucky River from Beattyville downstream to the mouth;
- (9) Rough River from Rough River Lake dam to the mouth;
- (10) Rolling Fork River.

Section 7. Musseling is prohibited in the following designated areas which are established as mussel sanctuaries:

(1) The Tennessee River from Kentucky Dam downstream to river mile seventeen and eight-tenths (17.8).

(2) The stream segments 200 yards below any dam on any stream.

(3) The Cumberland River from Barkley Dam downstream to U.S Highway 62 bridge.

(4) All embayments on Barkley and Kentucky Lakes as defined by the Kentucky Lake Musseling Waters Map and the Lake Barkley Musseling Waters Map, both of which are hereby incorporated by reference. Maps shall be available for inspection or purchase by contacting the Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. on Monday through Friday, except holidays. The effective date of the maps shall be August 15, 1993.

(5) The Ohio River:

(a) Between river mile 418 and river mile 419;

(b) ~~and~~ Between river mile 965.0 and river mile 974.1;

(c) Between river mile 387.0 at Ruggles Run, Kentucky and river mile 388.7 at Cummins Branch, Kentucky; and

(d) Between river mile 394.6 at Lindseys Creek, Ohio, and river mile 397.1 at Old Ferry Landing, Manchester, Ohio.

(6) The Green River from lock and dam #5 downstream four and eight-tenths (4.8) miles to the confluence of Ivy Creek and from the eastern boundary of Mammoth Cave National Park upstream ninety-seven and six-tenths (97.6) miles to the Green River Lake dam.

(7) The Barren River from lock and dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch.

Section 8. Musseling is permitted during the hours of 6 a.m. and 6 p.m. daily except in Barkley and Kentucky Lakes where the hours shall be as follows:

(1) West side of each lake as marked by the red navigation buoys or fifty-five (55) feet of water depth.

(a) December - February - 8:30 a.m. to 3:30 p.m.

(b) March - November - 8 a.m. to 6 p.m.

(2) East side of each lake as marked by the red navigation buoys on both lakes.

(a) December - February - 9:30 a.m. to 3 p.m.

(b) March - November - 9:30 a.m. to 5 p.m.

(3) Exception: The brailing hours for the entire canal area connecting Kentucky and Barkley lakes and all of Barkley Lake from Barkley Dam south to Cumberland River mile 36.2 (Big Horse Ford light and day marker) shall be as follows:

(a) December - February - 8:30 a.m. to 3:30 p.m.

(b) March - November - 8 a.m. to 6 p.m.

(4) Saturday and Sunday brailing on Kentucky Lake is prohibited during the month of March and during the period beginning on the Saturday preceding Memorial Day and extending through Labor Day.

(5) Saturday and Sunday brailing on Barkley Lake is prohibited beginning on the Saturday preceding Memorial Day and extending through the 30th day of September. Brailing is further prohibited on Kentucky and Barkley Lakes on Memorial Day, July 4th and Labor Day.

Section 9. The statewide size limits for taking of mussels shall be as follows. All mussels smaller than these minimum sizes shall immediately be returned to the bed from which taken.

(1) Washboard mussels, *Megaloniais nervosa*, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of three and three-fourths (3 3/4) inches.

(2) Three (3) ridge mussels, *Amblema plicata*, shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and three-fourths (2 3/4) inches.

(3) All other mussels, except the Asiatic clam, *Corbicula* sp. shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and one-half (2 1/2) inches.

(4) The Asiatic clam, *Corbicula* sp., may be taken at any size.

Section 10. Method of Harvest. (1) Mussel harvesting, except as provided in Section 11 of this administrative regulation, shall be by bail only.

(2) No more than two (2) bails each sixteen (16) feet or less in length shall be simultaneously operated from any boat.

(3) More than two (2) bails may be carried aboard the boat.

(4) Mussel bail hooks shall be constructed of wire of at least fourteen (14) gauge; smaller wire is prohibited.

(5) Prongs of hooks shall be no longer than one and one-fourth (1 1/4) inch as measured from the tip of point to place on hook where the prongs are joined.

(6) Persons shall not possess dredges or compressed air tanks while on a licensed bail boat.

Section 11. Mussel Harvesters' Reporting Requirements. (1) Mussel license holders shall submit annual written reports to the department by December 31 of each year.

(2) Musselers shall provide the department with the following information:

(a) Name, address and mussel license number;

(b) Dates of brailing activity;

(c) Waters brailed;

(d) Name or category of mussels taken;

(e) Weight of each type or category;

(f) Price received per pound of each type or category;

(g) Total value of mussels sold;

(h) Name and license number of buyer who bought mussels.

(3) The department shall not renew the license of a musseler who fails to submit a report or does not provide the required information until the complete report is submitted.

Section 12. Mussel Buyers' Reporting Requirements. (1) Mussel buyers shall complete a mussel transaction report each time shells are acquired.

(2)(a) Mussel buyers shall use the Mussel Transaction Report form (July 1994) which is incorporated by reference; and

(b) copies of the form may be inspected, copied, or obtained from the offices of the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday except holidays.

(3) Mussel buyers shall use forms in sequential order.

(4) Mussel buyers shall submit voided forms to the department. They shall write "void," their license number, date and signature on voided forms.

(5) Mussel buyers shall submit reports on each month's activity. Reports are due by the 15th of the month following the reported transaction.

(6) Mussel buyers who do not acquire shells during a particular month shall submit a report stating that no business was conducted.

(7) The department shall not renew the license of a mussel buyer who fails to submit monthly reports or who does not provide the required information until all completed reports for the year are received.

Section 13. The commissioner may designate as disaster areas waters in which all live mussels have been killed, and may issue a special permit allowing the use of various harvest methods.

Section 14. No mussels designated as endangered shall be taken.

C. THOMAS BENNETT, Commissioner
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 9, 1995

FILED WITH LRC: July 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995 at 10 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard shall notify this agency in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish & Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Contact Person: Peter Pfeiffer

(1) Type and number of entities affected: There are approximately 250 licensed musselers in Kentucky. A maximum of 20 individuals are musseling in the waters covered 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: No comments received. The amendment to this administrative regulation will close approximately four miles of the Ohio River to musseling. Musselers who currently work these areas will have to relocate their activities.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation will

have no impact on the costs of doing business, either in the geographical area or the state.

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

1. First year following implementation: No addition paperwork requirements will result from amending this 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 are anticipated.

2. Continuing costs or savings: Same as for 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:

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund revenues will be used to implement and enforce 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 comments received. There may be very slight negative economic impact in the areas closed by the amendment to this administrative regulation.

(b) Kentucky: No economic impacts are anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative was to allow musseling in the areas closed by this amendment. This alternative was rejected because Brush Creek Island and Manchester Islands, in the area closed to musseling by this amendment, have recently been declared National Wildlife Refuges. Commercial mussel harvest is incompatible with refuge purposes of preserving mussel communities for research and scientific study, environmental education, perpetuation of genetic diversity and possible transplantation and reintroduction of extirpated mussel species. There is also strong evidence that endangered mussel species exist in the areas closed by this amendment.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no public health issues. The biological diversity of Kentucky will be maintained by protecting threatened or endangered species.

(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: If the amendment to this administrative regulation were not implemented, commercial harvest of mussels would be allowed in national wildlife refuges, preventing or curtailing environmental programs on these areas.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes or regulations in conflict.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because protection of threatened or endangered species applies equally to all citizens.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:201. Fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.470, 150.990

STATUTORY AUTHORITY: KRS ~~[43A.350,]~~ 150.170, 150.470

NECESSITY AND FUNCTION: To establish size and creel limits to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. This amendment is necessary to adjust size or creel limits on Cave Run Lake, Lebanon City Lake, Lake Malone, Nolin River Lake and Rough River Lake. ~~It is necessary to promulgate a new administrative regulation to replace 301 KAR 1:200 because of extensive wording and format changes needed to comply with KRS Chapter 13A. Substantive changes from 301 KAR 1:200 effect white bass and striped bass size and creel limits at Dowdy Lake, sauger size limits at Kentucky and Barkley lake and their tailwaters, trout size and creel limits in a portion of the Cumberland River, crappie creel limits at Grayson lake and the use of shad for bait at several department-owned lakes.]~~

Section 1. Definitions. (1) "Artificial baits" means lures or flies made of wood, metal, plastic, feathers, preserved pork rind or similar inert materials and having no organic baits, such as insects, minnows, fish eggs, worms, corn, cheese, cut bait or a similar substance attached to the lure.

(2) "Daily limit" means the maximum number of a particular species or group of species a person may legally take in a day or have in possession while fishing.

(3) "Kentucky bass" means a largemouth bass, Kentucky bass or Coosa bass with a patch of teeth on its tongue.

(4) "Lake" means impounded waters.

(5) "Length" means the distance from the tip of a fish's lower jaw to the tip of its tail, measured with the fish laid flat on a rule and its tail lobes squeezed together.

(6) "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.

(7) "Single hook" means a hook with only one (1) point.

(8) "Size limit" means the minimum legal length of a fish.

(9) "Slot limit" means protecting fish within a specified minimum and maximum size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation and by 301 KAR 1:180, persons fishing in public or private waters shall observe the following creel, possession and size limits.

(a) Black bass: daily limit six (6), possession limit, twelve (12).

1. Largemouth bass, smallmouth bass or Coosa bass: size limit, twelve (12) inches.

2. Kentucky bass: no size limit.

(b) Rock bass: daily limit, fifteen (15), possession limit, thirty (30); no size limit.

(c) Walleye and their hybrids: daily limit ten (10), possession limit, twenty (20); size limit, fifteen (15) inches.

(d) Sauger: daily limit ten (10), possession limit twenty (20); no size limit.

(e) Muskellunge: daily and possession limit, two (2); size limit, thirty (30) inches.

(f) Chain pickerel: daily limit five (5), possession limit ten (10); no size limit.

(g) White bass and yellow bass, singly or in combination: daily limit thirty (30), possession limit sixty (60); no size limit.

(h) Striped bass and their hybrids: daily and possession limit, five (5); size limit, fifteen (15) inches.

(i) Crappie: daily limit, thirty (30), possession limit, sixty (60); no size limit.

(j) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit.

(k) Brook trout: daily and possession limit, two (2); size limit, ten (10) inches.

(2) Persons shall not remove grass carp from a lake owned and managed by the department.

(3) Persons catching illegal fish shall immediately return the fish, in the best possible physical condition, to the water from which it was taken.

(4) A person shall not remove any part of the head or tail of any fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.

(5) Persons who wish to possess sport fish below the size limit or beyond the possession limit shall:

(a) Obtain the fish from a licensed fish propagator or other legal source; and

(b) Retain a receipt or other written proof that the fish were legally acquired.

Section 3. Fishing Season. The fishing season is open year round.

Section 4. Exceptions to Statewide Administrative Regulations. Persons fishing in the waters listed in this section shall observe the following special administrative regulations. Except as specified in this section, all other provisions of this administrative regulation apply to these bodies of water.

(1) Bad Branch, Letcher County: artificial baits with single hooks only.

(2) Barkley Lake.

(a) Largemouth and smallmouth bass: size limit fourteen (14) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fourteen (14) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: ~~[after February 28, 1995,]~~ size limit, fourteen (14) inches.

(3) Barren River Lake and the Barren River upstream from Barren River Lake.

(a) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20), possession limit forty (40); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(b) Crappie: size limit, nine (9) inches.

(c) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.

(4) Bert Combs Lake: ~~[after February 28, 1995,]~~ persons shall not possess shad or use shad for bait.

(5) Boltz Lake: ~~[after February 28, 1995,]~~ persons shall not possess shad or use shad for bait.

(6) Briggs Lake: ~~[after February 28, 1995,]~~ persons shall not possess shad or use shad for bait.

(7) Buckhorn Lake: largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(8) Carpenter Lake: ~~[after February 28, 1995,]~~ persons shall not possess shad or use shad for bait.

(9) Carr Fork Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(10) Carter Caves Lake.

(a) Fishing during daylight hours only.

(b) Largemouth bass: daily and possession limit, one (1) fish; size limit, twenty (20) inches.

(c) ~~[After February 28, 1995,]~~ Persons shall not possess shad or

use shad for bait.

(11) Cave Run Lake: largemouth bass and smallmouth bass: through February 29, 1996, size limit, fifteen (15) inches. After February 29, 1996, slot limit - persons may keep fish less than thirteen (13) or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.

(12) Corinth Lake: ~~[after February 28, 1995,]~~ persons shall not possess shad or use shad for bait.

(13) Cumberland Lake.

(a) Largemouth and smallmouth bass: size limit fifteen (15) inches.

(b) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.

(c) Crappie: size limit, ten (10) inches.

(14) Cumberland River downstream from Barkley Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) ~~[After February 28, 1995,]~~ Sauger: size limit, fourteen (14) inches.

(15) Cumberland River downstream from the Highway 61 bridge. Trout: slot limit - persons may keep fish less than twelve (12) or greater than twenty (20) inches and shall release fish between twelve (12) and twenty (20) inches in length; ~~[After February 28, 1995, slot limit; fish between twelve (12) and twenty (20) inches shall be released;]~~ daily and possession limit, (4) four fish under twelve (12) inches and one (1) fish over twenty (20) inches. Persons shall not possess more than these trout limits while in this area, no matter where the fish were caught.

(16) Dale Hollow Lake.

(a) Smallmouth bass: daily limit, two (2); size limit, eighteen (18) inches.

(b) Walleye and their hybrids: daily limit, ten (10); size limit, sixteen (16) inches.

(c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.

(d) Muskellunge: daily limit, one (1).

(e) Rainbow trout and lake trout.

1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.

2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.

(17) Dewey Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: ~~[after February 28, 1995,]~~ daily and possession limit, five (5); size limit, fifteen (15) inches.

(18) Dix River for two (2) miles downstream from Herrington Lake Dam.

(a) Artificial baits only.

(b) Brown trout: size limit, fifteen (15) inches.

(19) Dix River upstream from Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20) possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches long or longer.

(20) Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - persons may keep fish less than twelve (12) or greater than sixteen (16) inches and shall release fish between twelve (12) and sixteen (16) inches. ~~[slot limit - fish below twelve (12) inches may be kept; fish between twelve (12) and sixteen (16) inches shall be released.]~~ The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.

(21) Elmer Davis Lake.

(a) Largemouth bass: slot limit - persons may keep fish less than twelve (12) or greater than sixteen (16) inches and shall release fish between twelve (12) and sixteen (16) inches. ~~[slot limit - fish below twelve (12) inches or greater than sixteen (16) inches may be kept;~~

~~black bass between twelve (12) and sixteen (16) inches shall be released.]~~

(b) ~~[After February 28, 1995,]~~ Persons shall not possess shad or use shad for bait.

(22) Fishtrap Lake.

(a) Largemouth bass or smallmouth bass: size limit, fifteen (15) inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(23) Game Farm Lakes.

(a) Largemouth bass and smallmouth bass: daily limit, two (2); size limit, fifteen (15) inches.

(b) Channel catfish: daily limit, three (3).

(c) ~~[After February 28, 1995,]~~ Persons shall not possess shad or use shad for bait.

(24) Grayson Lake.

~~[a)]~~ Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

~~[b) Crappie: no daily or possession limits through February 28, 1995. Beginning March 1, 1995, statewide daily and possession limits shall apply.]~~

(25) Greenbo Lake. ~~[After February 28, 1995,]~~ Persons shall not possess shad or use shad for bait.

(26) Green River Lake. Crappie: size limit, nine (9) inches.

(27) Guist Creek Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(28) Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: Daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches long or longer.

(29) Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass: size limit fourteen (14) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fourteen (14) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: ~~[after February 28, 1995,]~~ size limit, fourteen (14) inches.

(30) Lebanon City Lake. After February 29, 1996:

(a) Largemouth and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches; daily limit, fifteen (15).

(c) Bluegill and shellcrackers (singly or in aggregate): creel limit, thirty (30).

(d) Channel catfish: creel limit, five (5).

(31) Leary Lake.

(a) Fishing is permitted during daylight hours only.

(b) Largemouth bass: daily limit, one (1); size limit, fifteen (15) inches.

(c) Bluegill: daily limit, twelve (12).

(d) Channel catfish: daily limit two (2).

(32) ~~[(34)]~~ Lincoln Homestead Lake.

(a) Fishing is permitted during daylight hours only.

(b) Largemouth bass: daily limit three (3); size limit, fifteen (15) inches.

(c) Bluegill and redear sunfish: daily limit, ten (10) fish over seven (7) inches, singly or in combination; no limit on fish less than seven (7) inches.

(d) Channel catfish: daily limit, three (3).

(e) ~~[After February 28, 1995,]~~ Persons shall not possess shad or use shad for bait.

(33) ~~[(32)]~~ Lake Malone. Largemouth bass: through February 29, 1996, daily limit may include no more than two (2), and the possession limit no more than four (4), fish under twelve (12) inches. After

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February 29, 1996, slot limit - persons may keep fish less than twelve (12) or greater than fifteen (15) inches and shall release fish between twelve (12) and fifteen (15) inches.

(34) [(33)] Marion County Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) [After February 28, 1995,] Persons shall not possess shad or use shad for bait.

(35) [(34)] Martins Fork and its tributaries in Harlan County from the Left Fork upstream two and three-tenths (2.3) miles to the Cumberland Gap National Park boundary. Artificial baits with single hooks only.

(36) [(35)] Mauzy Lake. Largemouth bass; no size limit.

(37) [(36)] McNeely Lake. [After February 28, 1995,] Persons shall not possess shad or use shad for bait.

(38) [(37)] Mill Creek Lake. [After February 28, 1995,] Persons shall not possess shad or use shad for bait.

(39) [(38)] Nolin River Lake.

(a) Largemouth and smallmouth bass. After February 29, 1996, size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(40) [(39)] Ohio River.

(a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.

(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit may be fifteen (15) inches long or longer.

(41) [(40)] Paintsville Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(42) [(41)] Parched Corn Creek, Wolfe County. Artificial baits with single hooks only.

(43) [(42)] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 392. Artificial baits with single hooks only.

(44) [(43)] Lake Reba.

(a) Largemouth and smallmouth bass: size limit, fifteen (15) inches.

(b) [After February 28, 1995,] Persons shall not possess shad or use shad for bait.

(45) [(44)] Rough River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth and smallmouth bass: after February 29, 1996, size limit, fifteen (15) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(c) White bass: after February 29, 1996, for size and creel limit purposes anglers shall consider fish of the Morone family with an unseparated, U-shaped rear tooth patch on the tongue to be white bass.

(d) Hybrid striped bass: after February 29, 1996, for size and creel limit purposes anglers shall consider fish of the Morone family with a separated rear tooth patch on the tongue to be hybrid striped bass.

(46) [(45)] Shanty Hollow Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) [After February 28, 1995,] Persons shall not possess shad or use shad for bait.

(47) [(46)] Shillalah Creek, Bell County, outside the Cumberland Gap National Park. Artificial baits with single hooks only.

(48) [(47)] Spurlington Lake. [After February 28, 1995,] Persons shall not possess shad or use shad for bait.

(49) [(48)] Taylorsville Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: daily limit, fifteen (15), possession limit, thirty (30).

(c) White bass, yellow bass, striped bass and their hybrids, singly

or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(50) [(49)] Tennessee River downstream from Kentucky Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) Sauger: [after February 28, 1995,] size limit, fourteen (14) inches.

(51) [(50)] Yatesville Lake. Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 9, 1995

FILED WITH LRC: July 14, 1995 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995 at 9 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard shall notify this agency in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish & Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Contact Person: Peter Pfeiffer

(1) Type and number of entities affected: Approximately one million anglers fish Kentucky waters each year. Only a fraction of those will be affected by the provisions of the amendments to 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 comments received. This amendment to an existing administrative regulation should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received. This amendment to an existing administrative regulation should 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 amendment to an existing administrative regulation will not affect 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: This amendment to an existing administrative regulation will create no additional direct or indirect costs or savings.

2. Continuing costs or savings: Same as for 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:

To the extent that this administrative regulation improves fishing, the sale of fishing licenses and local tourist revenue could be positively impacted.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments received. This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact in the geographical areas where implemented.

(b) Kentucky: This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: At every body of water affected by the amendment to this administrative regulation, the alternative chosen was considered the most viable means of protecting fishery resources while allowing optimum angling opportunity for the species involved.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will allow outdoor recreation while protecting the ecological balance of Kentucky's waters.

(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: Fishing size and creel limits prevent overfishing and population imbalances between predator and prey species. Without the size and creel limits imposed by this administrative regulation, both the recreational fishery and ecological balance in Kentucky's waters would suffer.

(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 was used to the extent that specific regulations are applied to different bodies of water in an effort to create maximum recreational fishing opportunities while maintaining adequate fish populations and favorable environmental conditions. In other instances, 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 Waste Management
(Amendment)**

401 KAR 42:011. Scope of Underground Storage Tank Program. [Definitions of terms used in 401 KAR Chapter 42, program scope, and interim prohibition.]

RELATES TO: KRS 224.10, 224.60, 40 CFR Part 280 Subpart A, Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40

CFR Part 280 Subpart A, Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that [which] provide for the prevention, abatement, and control of contaminants that [which] may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting [releases], corrective action[s], closure, financial responsibility and other standards [requirements] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that [which] implements federal requirements for UST systems. [underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations.] This chapter identifies requirements for UST systems [underground storage tanks]. This administrative regulation establishes the scope of the cabinet's Underground Storage Tank Program, including provisions for exclusions, deferrals, and interim prohibitions. [essential terms pertaining to the Underground Storage Tank Program and establishes interim prohibition requirements for deferred underground storage tank systems.]

Section 1. Applicability, Exclusions and Deferrals. [definitions and interim prohibition requirements for the Underground Storage Tank Program are governed by 40 CFR Part 280, Subpart A(1990).] The requirements of this chapter apply to all owners and operators of UST systems, except as provided in subsections (1) and (2) of this section. Any UST system listed in subsection (2) of this section shall meet the requirements of Section 2 of this administrative regulation.

(1) Exclusions. The following UST systems are excluded from the requirements of this chapter:

(a) UST systems containing wastes identified as hazardous in 401 KAR Chapter 31, and UST systems containing mixtures of hazardous waste and other regulated substances;

(b) Wastewater treatment tank systems that are part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 USC 1251 et seq.);

(c) Equipment and machinery containing regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;

(d) UST systems having a capacity of 110 gallons or less;

(e) UST systems containing a de minimis concentration of regulated substances;

(f) Emergency spill or overflow containment UST systems that are emptied immediately after use; and

(g) UST systems excluded from the definition of "underground storage tank" provided in KRS 224.60-100.

(2) Deferrals. This subsection identifies UST systems that are deferred from compliance with some of the requirements of 401 KAR Chapter 42.

(a) 401 KAR 42:040 does not apply to UST systems that store fuel solely for use by emergency power generators.

(b) 401 KAR 42:020, 401 KAR 42:030, 401 KAR 42:040, and 401 KAR 42:050 do not apply to the following UST systems:

1. Wastewater treatment tank systems that are not part of a wastewater treatment facility regulated under the Clean Water Act, as amended (33 USC 1251 et seq.);

2. UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, as amended (42 USC 2011 et seq.);

3. UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under Appendix A of 10 CFR Part 50;

4. Airport hydrant fuel distribution systems; and

5. UST systems with field-constructed tanks.

Section 2. Interim Prohibition for Deferred UST Systems. (1) Except as provided in subsection (2) of this section, no person shall install a UST system listed in Section 1(2) of this administrative regulation for the purpose of storing regulated substances unless the system (whether of single- or double-wall construction):

(a) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(b) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release of any stored substance; and

(c) Is constructed or lined with material that is compatible with the stored substance.

(2)(a) A UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life.

(b) Owners and operators shall maintain records that demonstrate compliance with paragraph (a) of this subsection for the remaining life of the tank.

(3) The document incorporated by reference in Section 3 of this administrative regulation shall be used in meeting the requirements of subsections (1) and (2) of this section.

Section 3. Incorporation by Reference. (1) The following document is hereby incorporated by reference: The National Association of Corrosion Engineers Standard RP0285-95, Item Number 21030, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection" (Revised February 1995).

(2) The document referenced in subsection (1) of this section is available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 31, 1995, at 7 p.m. eastern time in the State Board Room on the first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 26, 1995. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 26, 1995 and arrangements for payment of the transcript costs are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on August 31, 1995. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for electronic comments is any version of WordPerfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should WordPerfect or 3.5 inch diskettes not be available. 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 the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and

activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation affects owners and operators of service stations and other facilities with underground storage tank (UST) systems. Currently, there are approximately 39,000 registered UST systems in Kentucky and many more UST systems exist that are not registered. This administrative regulation establishes applicability, exceptions, deferrals, and interim prohibitions for underground storage tank systems. The requirements in this administrative regulation are consistent with federal underground storage tank requirements of 40 CFR Part 280 Subpart A, 40 CFR part 281, and 42 USC 6991 et seq.

2. Direct and indirect costs or savings on 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: No public comments were received concerning the cost of living and employment that this administrative regulation may impose. The amendments to this administrative regulation adopt federal language for UST applicability, exceptions, and deferrals and also adopt federal language for the interim prohibition for deferred UST systems. The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. Therefore, there will be no effect on the cost of living or employment as a result of these amendments.

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 concerning the cost of doing business that this administrative regulation may impose. The amendments to this administrative regulation adopt federal language for UST applicability, exceptions, and deferrals and also adopt federal language for the interim prohibition for deferred UST systems. The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. There will be no effect on the cost of doing business as a result of these amendments.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received concerning the compliance, reporting, and paperwork requirements that this administrative regulation may impose. The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. There will be no effect on the compliance, reporting, and paperwork requirements as a result of these amendments.

2. Second and subsequent years: There will be no effect on the compliance, reporting, and paperwork requirements as a result of these amendments for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There are no costs or savings to the cabinet associated with these amendments.

2. Continuing costs or savings: There are no costs or savings to the cabinet associated with these amendments.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

b. Reporting and paperwork requirements: The cabinet's reporting and paperwork requirements will not change as a result of the amendments to this administrative regulation.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation does not distinguish between UST systems owned by private entities and those owned by the government. Therefore, all levels of government - state, county, and local - will be required to comply with this administrative regulation if they own UST systems. For a discussion of the impact on these entities, see items (1) and (2) of this Regulatory Impact Analysis.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for implementation and enforcement of this administrative regulation is the Underground Storage Tank Grant. This grant is funded 75% from the federal government and 25% from UST owner fees. There are no general fund moneys used to implement and enforce this administrative regulation.

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 administrative regulation will be implemented: This administrative regulation will be implemented state-wide. Therefore, please refer to item "b" below.

b. Kentucky: No public comments were received concerning the economic impacts that this administrative regulation may impose. The amendments to this administrative regulation adopt federal language for UST applicability, exceptions, and deferrals and also adopt federal language for the interim prohibition for deferred UST systems. The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. Therefore, there will be no economic impacts as a result of these amendments.

7. Assessment of alternative methods; reasons why alternatives were rejected: The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. Under the constraints of KRS Chapter 13A there were no alternatives to promulgating this administrative regulation.

8. Assessment of expected benefits of the administrative regulation: The amendments to this administrative regulation adopt federal language for UST applicability, exceptions, and deferrals and also adopt federal language for the interim prohibition for deferred UST systems. The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. The amendments allow a regulated person to identify applicable requirements related to UST applicability, exceptions, and deferrals without having to refer to 40 CFR Part 280.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. Therefore, there will be no effect on public health and environmental welfare as a result of these amendments.

b. State whether a detrimental effect on the environment and public health would result if not implemented: The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. Therefore, there will be no effect on public health and environmental welfare as a result of these amendments.

c. If detrimental effect would result, explain detrimental effect: There will be no effect on public health and environmental welfare as a result of these amendments.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or governmental policy. One commenter requested that the cabinet identify the extent to which

Sections 1 and 2 of this administrative regulation differ from 40 CFR Sections 280.10 and 280.11. The cabinet notes, in response to this comment, there is no difference between 40 CFR Sections 280.10 and 280.11 and Sections 1 and 2 of this administrative regulation. Exceptions would be minor changes made in compliance with KRS Chapter 13A. The amendments to this administrative regulation adopt federal language for UST applicability, exceptions, and deferrals and also adopt federal language for the interim prohibition for deferred UST systems. The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. The amendments allow a regulated person to identify applicable requirements related to UST applicability, exceptions, and deferrals without having to refer to 40 CFR Part 280.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements.

12. TIERING: Is tiering applied? This administrative regulation does apply tiering. Exceptions, deferrals and interim prohibition requirements are tiered according to age of UST systems, type of UST systems, and UST volume.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.06-105 also requires the cabinet to adopt a regulatory program that implements federal regulatory requirements for underground storage tanks. Pursuant to these mandates, this administrative regulation establishes applicability, exceptions, deferrals, and interim prohibitions for underground storage tank systems. The requirements in this administrative regulation are consistent with federal underground storage tank requirements of 40 CFR Part 280 Subpart A, 40 CFR Part 281, and 42 USC 6991 et seq.

2. State compliance standards: This administrative regulation establishes applicability, exceptions, deferrals, and interim prohibitions for underground storage tank systems. This administrative regulation identifies underground storage tank systems that are excluded from 401 KAR Chapter 42, which governs underground storage tanks, and establishes interim prohibition requirements for all deferred systems.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. 40 CFR Part 280 establishes general underground storage tank system standards applicable to facilities across the United States. The federal requirements are general in nature and they defer to the state regulatory agencies to establish detailed, state-specific standards. This administrative regulation identifies systems that are excluded from 401 KAR Chapter 42 and establishes interim prohibition requirements for all deferred systems.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the cabinet to establish minimum standards for underground

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storage tanks to protect the public health and the environment. KRS 224.60-137 requires that the cabinet establish standards based on a corrective action study conducted for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet justifies deviation from the standards recommended in the study. Additionally, the federal program looks to the states to establish program details consistent with the state's needs and certain broad, federal criteria. This administrative regulation identifies systems that are excluded from 401 KAR Chapter 42 and establishes interim prohibition requirements for all deferred systems.

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 any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by establishing minimum construction and performance standards, leak detection, recordkeeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. The agencies referenced in item 2 of this fiscal note will be subject to these requirements. This administrative regulation identifies underground storage tank systems that are excluded from 401 KAR Chapter 42 administrative regulations, identifies underground storage tank systems that are deferred from specific requirements in 401 KAR Chapter 42, and establishes interim prohibition requirements for all deferred systems.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because the proposed amendments to this administrative regulation are a clarification of existing standards and do not impose new standards, there will be no increase in cost to state, county, or local governments as a result of the proposed amendments.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Division of Waste Management (Amendment)

401 KAR 42:020. Performance standards for new UST systems.

RELATES TO: KRS 224.10, 224.60, 40 CFR Part 280 Subpart B [Appendix II], Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 CFR Part 280 Subpart B [Appendix II], Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that [which] provide for the prevention,

abatement, and control of contaminants that [which] may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting [releases], corrective action[s], closure, financial responsibility, and other standards [requirements] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that [which] implements federal requirements for UST systems. [underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations.] This chapter identifies requirements for UST systems. [underground storage tanks.] This administrative regulation establishes requirements concerning performance standards, notification, and alternatives for upgrading existing UST systems.

Section 1. Adoption of Federal Regulations. (1) The requirements concerning performance standards, notification, and alternatives for upgrading UST systems are governed by 40 CFR Part 280, Subpart B (1994 [1990]) [and Appendix II (1990)].

(2) 40 CFR 280.22(b) allows for state forms to be used in lieu of federal forms for notification of UST systems. The document incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of this administrative regulation and 401 KAR 42:200. [underground storage tanks.]

Section 2. Incorporation by Reference. (1) The following document is hereby incorporated by reference: "Notification of Underground Storage Tank System Form", DEP Form 5024 (July 1995).

(2) The document referenced in subsection (1) of this section is available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays. [The notification form for underground storage tanks in Kentucky is being incorporated by reference into this section. This form became effective in November 1990, and is available for distribution and inspection from the Underground Storage Tank Program, Division of Waste Management, 18 Reilly Road, Frankfort, Kentucky 40601. The business hours of the division are from 8 a.m. to 4:30 p.m. Monday through Friday.]

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 31, 1995, at 7 p.m. eastern time in the State Board Room on the first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 26, 1995. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 26, 1995 and arrangements for payment of the transcript costs are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on August 31, 1995. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for electronic comments is any version of WordPerfect on 3.5 inch diskettes; however, any other format would be greatly appreciated.

ed, should WordPerfect or 3.5 inch diskettes not be available. 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 the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation affects owners and operators of service stations and other facilities with underground storage tank (UST) systems. Currently, there are approximately 39,000 registered UST systems in Kentucky and many more UST systems exist that are not registered. This administrative regulation establishes requirements for performance standards, notification, and alternatives for upgrading UST systems.

2. Direct and indirect costs or savings on 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: No public comments were received concerning the effect on the cost of living and employment that this administrative regulation may impose. The amendments to this administrative regulation do not establish new requirements. There will be no effect on the cost of living and employment as a result of these amendments. The Notification of Underground Storage Tank System Form, incorporated by reference in this administrative regulation provides clarity of existing notification requirements and provides the cabinet with the means to accurately track UST system status and activities.

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 concerning the cost of doing business that this administrative regulation may impose. The amendments to this administrative regulation do not establish new requirements. Therefore, there will be no effect on the cost of doing business as a result of these amendments. The "Notification of Underground Storage Tank System Form", incorporated by reference in this administrative regulation, provides clarity of existing notification requirements and provides the cabinet with the means to accurately track UST system status and activities.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received concerning the compliance, reporting, and paperwork requirements that this administrative regulation may impose. The amendments to this administrative regulation do not establish new requirements. There will be no effect on the compliance, reporting, and paperwork requirements as a result of these amendments. The "Notification of Underground Storage Tank System Form", incorporated by reference in this administrative regulation, provides clarity of existing notification requirements and provides the cabinet with the means to accurately track UST system status and activities.

2. Second and subsequent years: There will be no effect on the compliance, reporting, and paperwork requirements as a result of these amendments for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings associated with these amendments.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will incur some additional expenses in printing and distributing the amended form incorporated by reference in this administrative regulation; however, this expense should be minor. There are no additional costs or savings to the cabinet associated with these amendments.

2. Continuing costs or savings: The costs instituted during the first year will continue for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings to the cabinet associated with these amendments.

b. Reporting and paperwork requirements: The amendments to this administrative regulation do not establish new requirements. Therefore, there will be no effect on the reporting and paperwork requirements as a result of these amendments. The "Notification of Underground Storage Tank System Form", incorporated by reference in this administrative regulation, provides the cabinet with the means to accurately track UST system activities including construction, leak detection, substances stored, and other items pertaining to UST systems.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation does not distinguish between UST systems owned by private entities and those owned by the government. Therefore, all levels of government - state, county, and local - will be required to comply with this administrative regulation if they own UST systems. For a discussion of the impact on these entities, see items (1) and (2) of this Regulatory Impact Analysis.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for implementation and enforcement of this administrative regulation is Underground Storage Tank Grant. This grant is funded 75% from the federal government and 25% from UST owner fees. There are no general fund moneys used to implement and enforce this administrative regulation.

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 administrative regulation will be implemented: This administrative regulation will be implemented state-wide. Therefore, please refer to item "b" below.

b. Kentucky: No public comments were received concerning the economic impacts that this administrative regulation may impose. The amendments to this administrative regulation do not establish new requirements. Therefore, there will be no economic impact as a result of these amendments. The "Notification of Underground Storage Tank System Form", incorporated by reference in this administrative regulation, provides the cabinet with the means to accurately track UST system activities including construction, leak detection, substances stored, and other items pertaining to UST systems.

7. Assessment of alternative methods; reasons why alternatives were rejected: The amendments to this administrative regulation do not establish new requirements. The "Notification of Underground Storage Tank System Form", incorporated by reference in this administrative regulation, provides clarity of existing notification requirements and provides the cabinet with the means to accurately track UST system status and activities. The goal of these amendments are to provide clarity to the regulated community. Under the constraints of KRS Chapter 13A, there were no alternative to promulgating these amendments to this administrative regulation.

8. Assessment of expected benefits of the administrative regulation: The amendments to this administrative regulation do not establish new requirements. The "Notification of Underground Storage Tank System Form", incorporated by reference in this administrative regulation, provides clarity of existing notification requirements and

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provides the cabinet with the means to accurately track UST system status and activities.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. Therefore, there will be no effect on public health and environmental welfare as a result of these amendments.

b. State whether a detrimental effect on the environment and public health would result if not implemented: The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. Therefore, there will be no effect on public health and environmental welfare as a result of these amendments.

c. If detrimental effect would result, explain detrimental effect: There will be no effect on public health and environmental welfare as a result of these amendments.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or governmental policy. 40 CFR 280.22(b) allows for state forms to be used in lieu of federal forms for notification of underground storage tank systems.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: The cabinet has no additional information or comments regarding the amendments to this administrative regulation.

12. TIERING: Is tiering applied? Tiering was applied. As required by state and federal law, only underground storage tank systems regulated under 401 KAR Chapter 42 and 40 CFR Part 280 must be registered.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.06-105 also requires the cabinet to adopt a regulatory program that implements federal regulatory requirements for underground storage tanks. Pursuant to these mandates, this administrative regulation establishes requirements concerning performance standards, notification, and alternatives for upgrading underground storage tank systems. The requirements in this administrative regulation are consistent with federal underground storage tank requirements of 40 CFR Part 280 Subpart B, 40 CFR Part 281, and 42 USC 6991 et seq.

2. State compliance standards: This administrative regulation proposes to incorporate by reference an amended notification form for registration of underground storage tank systems in compliance with 401 KAR 42:020. This updated form will provide the Division of Waste Management the ability to track tank system activities including construction, leak detection, substances stored, and other items pertaining to UST systems.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate? There is no federal mandate for this administrative regulation. 40 CFR Part 280 establishes general underground storage tank system standards applicable to facilities across the United States. The federal requirements are general in nature and they defer to the state regulatory agencies to establish detailed, state-specific standards. This administrative regulation proposes to incorporate by reference an amended notification form for registration of underground storage tank systems regulated under 401 KAR Chapter 42. This updated form will provide the Division of Waste Management the ability to track tank system activities which will include construction, leak detection, substances stored, and other items pertaining to UST systems.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the cabinet to establish minimum standards for underground storage tanks to protect the public health and the environment. KRS 224.60-137 requires that the cabinet establish standards based on a corrective action study conducted for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet justifies deviation from the standards recommended in the study. Additionally, the federal program looks to the states to establish program details consistent with the state's needs and certain broad, federal criteria. This administrative regulation proposes to incorporate by reference an amended notification form for registration of underground storage tank systems regulated under 401 KAR Chapter 42. This updated form will provide the Division of Waste Management the ability to track tank system activities which will include construction, leak detection, substances stored, and other items pertaining to UST systems.

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 any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. This administrative regulation proposes to incorporate by reference the "Notification of Underground Storage Tank System Form", DEP Form 5024 (July 1995). All owners or operators of underground storage tank systems regulated under 401 KAR Chapter 42 must submit this form to the cabinet to register their tank systems. The agencies referenced in item 2 of this fiscal note will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because the proposed amendments to this administrative regulation only amend an existing form and do not impose new standards, there will be no increase in cost to state,

county, or local governments.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:040. Release detection.

RELATES TO: KRS 224.10, 224.60, 40 CFR Part 280 Subpart D, Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 CFR Part 280 Subpart D, Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that [which] provide for the prevention, abatement, and control of contaminants that [which] may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting [releases], corrective action[s], closure, financial responsibility, and other standards [requirements] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that [which] implements federal requirements for UST systems. ~~underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations.~~ This chapter identifies requirements for UST systems. ~~underground storage tanks.~~ This administrative regulation establishes the requirements for release detection and recordkeeping for all UST systems.

Section 1. Adoption of Federal Regulations. (1) The requirements for release detection and recordkeeping for UST ~~underground storage tank~~ systems are governed by 40 CFR Part 280 Subpart D (1994 ~~1990~~).

(2) The documents incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of subsection (1) of this section.

Section 2. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

(a) "Underground Storage Tank System Site Assessment Outline for External Release Detection Methods (Groundwater, Vapor, and Interstitial Monitoring)" (July 1995); and

(b) "Kentucky Underground Storage Tank System (External Release Detection) Monitoring Well Form", DEP Form 8047 (July 1995).

(2) The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, KY 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

Section 3. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if warranted.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 31, 1995, at 7 p.m. eastern time in the State Board Room on the first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 26, 1995. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 26, 1995 and arrangements for payment of the transcript costs are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on August 31, 1995. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for electronic comments is any version of WordPerfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should WordPerfect or 3.5 inch diskettes not be available. 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 the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation affects owners and operators of service stations and other facilities with underground storage tank (UST) systems. Currently, there are approximately 39,000 registered UST systems in Kentucky and many more UST systems exist that are not registered. This administrative regulation establishes requirements for release detection and record-keeping for all regulated UST systems.

2. Direct and indirect costs or savings on 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: No public comments were received concerning the cost of living and employment that this administrative regulation may impose. The amendments to this administrative regulation do not establish new requirements. There will be no effect on the cost of living and employment as a result of these amendments. The amendments to this administrative regulation clarify existing standards for conducting a site assessment used to determine the appropriate leak detection methods for a UST facility.

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 concerning the costs or benefits that this administrative regulation may impose. The amendments to this administrative regulation do not establish new requirements. There will be no effect on the cost of doing business as a result of these

amendments. The amendments to this administrative regulation clarify existing standards for conducting a site assessment used to determine the appropriate leak detection methods for a UST facility.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: The "Underground Storage Tank System Site Assessment Outline for External Release Detection", to be incorporated by reference in this administrative regulation, requires that a Site Assessment Report Checklist be completed and submitted with the required Site Assessment Report. This checklist will effect compliance, reporting, and paperwork requirements, however costs, if any, should be minor.

2. Second and subsequent years: The costs instituted by the first year will continue for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings associated with these amendments.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will incur some additional expenses in printing and distributing the "Underground Storage Tank System Site Assessment Outline for External Release Detection", incorporated by reference in this administrative regulation; however, this expense should be minor. There are no additional costs or savings to the cabinet associated with these amendments.

2. Continuing costs or savings: The costs instituted during the first year will continue for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings to the cabinet associated with these amendments.

b. Reporting and paperwork requirements: The amendments to this administrative regulation do not establish new requirements. Therefore, there will be no effect on the reporting and paperwork requirements as a result of these amendments. The amendments to this administrative regulation clarify existing standards for conducting a site assessment used to determine the appropriate leak detection methods for a UST facility.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation does not distinguish between UST systems owned by private entities and those owned by the government. Therefore, all levels of government - state, county, and local - will be required to comply with this administrative regulation if they own UST systems. For a discussion of the impact on these entities, see items (1) and (2) of this Regulatory Impact Analysis.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for implementation and enforcement of this administrative regulation is Underground Storage Tank Grant. This grant is funded 75% from the federal government and 25% from UST owner fees. There are no general fund moneys used to implement and enforce this administrative regulation.

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 administrative regulation will be implemented: This administrative regulation will be implemented statewide. Therefore, please refer to item "b" below.

b. Kentucky: No public comments were received concerning the economic impacts that this administrative regulation may impose. The amendments to this administrative regulation do not establish new requirements. Therefore, there will be no economic impacts as a result of these amendments. The amendments to this administrative regulation clarify existing standards for conducting a site assessment used to determine the appropriate leak detection methods for a UST facility.

7. Assessment of alternative methods; reasons why alternatives

were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to promulgating this administrative regulation to institute the standards for KRS 224.60 related to release detection. The amendments to this administrative regulation do not establish new requirements. The amendments to this administrative regulation clarify existing standards for conducting a site assessment used to determine the appropriate leak detection methods for a UST facility.

8. Assessment of expected benefits of the administrative regulation: The amendments to this administrative regulation do not establish new requirements. The amendments to this administrative regulation clarify existing standards for conducting a site assessment used to determine the appropriate leak detection methods for a UST facility.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. Therefore, there will be no effect on public health and environmental welfare as a result of these amendments.

b. State whether a detrimental effect on the environment and public health would result if not implemented: The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements. Therefore, there will be no effect on public health and environmental welfare as a result of these amendments.

c. If detrimental effect would result, explain detrimental effect: There will be no effect on public health and environmental welfare as a result of these amendments.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or governmental policy. The amendments to this administrative regulation do not establish new requirements, but clarify and standardize existing requirements of KRS 224.60 and 40 CFR Part 280 Subpart D.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: The cabinet has no additional information or comments regarding the amendments to this administrative regulation.

12. TIERING: Is tiering applied? Tiering was applied. As required by state and federal law, only underground storage tank systems regulated under 401 KAR Chapter 42 and 40 CFR Part 280 must comply with release detection requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.06-105 also requires the cabinet to adopt a regulatory program that implements federal regulatory requirements for underground storage tanks. Pursuant to these mandates, this administrative regulation establishes requirements for release detection and recordkeeping for underground storage tank systems. The requirements in this administrative regulation are consistent with federal underground storage tank requirements of 40 CFR Part 280 Subpart D, 40 CFR Part 281, and 42 USC 6991 et seq.

2. State compliance standards: This administrative regulation

proposes to incorporate by reference the document "Underground Storage Tank System Site Assessment outline for External Release Detection" (July 1995). All owners or operators of underground storage tank systems regulated under 401 KAR Chapter 42 will be required to follow this outline to determine if the proposed leak detection method is appropriate for the site and will be sufficient to meet the requirements of 40 CFR Part 280 Subpart D.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. 40 CFR Part 280 establishes general underground storage tank system standards applicable to facilities across the United States. The federal requirements are general in nature and they defer to the state regulatory agencies to establish detailed, state-specific standards. This administrative regulation clarifies standards required for the site assessment used in determining the appropriate leak detection methods to be used at the underground storage tank facility. This administrative regulation proposes to incorporate by reference the document "Underground Storage Tank System Site Assessment Outline for External Release Detection" (July 1995). All owners or operators of underground storage tank systems regulated under 401 KAR Chapter 42 will be required to follow this outline to determine if the proposed leak detection method is appropriate for the site and will be sufficient to meet the requirements of 40 CFR Part 280 Subpart D.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the cabinet to establish minimum standards for underground storage tanks to protect the public health and the environment. KRS 224.60-137 requires that the cabinet establish standards based on a corrective action study conducted for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet justifies deviation from the standards recommended in the study. Additionally, the federal program looks to the states to establish program details consistent with the state's needs and certain broad, federal criteria. This administrative regulation clarifies standards required for the site assessment used in determining the appropriate leak detection methods to be used at the underground storage tank facility. This administrative regulation proposes to incorporate by reference the document "Underground Storage Tank System Site Assessment Outline for External Release Detection" (July 1995). All owners or operators of underground storage tank systems regulated under 401 KAR Chapter 42 will be required to follow this outline to determine if the proposed leak detection method is appropriate for the site and will be sufficient to meet the requirements of 40 CFR Part 280 Subpart D.

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 any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum

construction and performance standards, leak detection, recordkeeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. This administrative regulation proposes to incorporate by reference the "Underground Storage Tank System Site Assessment Outline for External Release Detection" (July 1995). All owners or operators of underground storage tank systems regulated under 401 KAR Chapter 42 must adhere to this outline to determine if the proposed leak detection method is appropriate for the site and if it will be sufficient to meet the requirements of 40 CFR Part 280 Subpart D. The agencies referenced in item 2 of this fiscal note will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because the proposed amendments to this administrative regulation clarify existing requirements and do not impose new standards, there will be no increase in cost to state, county, or local governments.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 42:060[E], Release response and corrective action for UST systems containing petroleum or hazardous substances.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 CFR Part 280 Subpart F, Part 281, 42 USC 6991 to 6991c [H]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137, 40 CFR Part 280 Subpart F, Part 281, 42 USC 6991c [EFFECTIVE: February 15, 1994]

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that [which] provide for the prevention, abatement, and control of contaminants that [which] may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting [releases], corrective action[e], closure, financial responsibility, and other standards [requirements] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that [which] implements federal requirements for UST systems. [underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations.] This chapter identifies requirements for UST systems [underground storage tanks]. This administrative regulation establishes the requirements for release response, site characterization, corrective action, and public participation.

Section 1. Adoption of Federal Regulation. (1) The requirements for release response, site characterization, corrective action and public participation for UST systems [underground storage tanks] are governed by 40 CFR Part 280 Subpart F (1994 [4000]).

(2) The documents incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements

of subsection (1) of this section.

Section 2. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

(a) "Underground Storage Tank System Site Check Outline" (July 1995 ~~January 1994~~); and

(b) "Underground Storage Tank System Site Investigation Outline" (July 1995 ~~January 1994~~);

(c) "Underground Storage Tank System Corrective Action Plan Outline" (July 1995);

(d) "Underground Storage Tank System Release Response and Initial Abatement Requirements Outline" (July 1995); and

(e) "UST Groundwater Sample Analyses Form", DEP Form 2013 (July 1995).

(2) The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

Section 3. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if warranted.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 31, 1995, at 7 p.m. eastern time in the State Board Room on the first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 26, 1995. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 26, 1995 and arrangements for payment of the transcript costs are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on August 31, 1995. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for electronic comments is any version of WordPerfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should WordPerfect or 3.5 inch diskettes not be available. 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 the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation affects owners and operators of service stations and other facilities with underground storage tank (UST) systems. Currently, there are approximately 39,000 registered UST systems in Kentucky and many more UST systems exist that are not registered. Cabinet records indicate that approximately 16,000 UST systems have released constituents into the environment and are currently conducting corrective action activities. This administrative regulation establishes requirements for release response, site characterization, corrective action, and public participation.

2. Direct and indirect costs or savings on 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: One commentor stated that corrective action requirements established in this administrative regulation, may improperly shift costs resulting from contamination to innocent third parties. The cabinet notes, in response to this comment, that KRS 224.60-137 requires the cabinet to establish corrective action standards for a release into the environment from a petroleum storage tank. These standards are to be based upon a study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission. As required by the statute, this administrative regulation is based on this study and is designed to be protective of human health, safety, and the environment. KRS 224.60 and 401 KAR Chapter 42 requires the person responsible for a release to take corrective action as established in this administrative regulation.

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 concerning the costs of doing business that this administrative regulation may impose. Any additional costs that may be associated with the costs of doing business are specified in item "c" below.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: Several commentors stated that the requirement for a professional engineer or professional geologist to sign documents creates an unnecessary expense. Several commentors stated that this administrative regulation will impose undue reporting and paperwork requirements, which should not be required. Several commentors stated that some of the corrective action checklists found in "The Underground Storage Tank System Corrective Action Plan Outline", incorporated by reference in this administrative regulation, may require unnecessary investigation and monitoring to determine the effectiveness of the remedial system. Another commentor stated that monitoring reports, required to be submitted quarterly, imposes an unnecessary burden and should only be required to be submitted semiannually. One commentor stated that DEP Form 2013 creates unnecessary paperwork and increases the cost of a remedial project. The cabinet notes, in response to these comments, that it cannot relegate its responsibilities under KRS Chapter 224 to the certification programs of state law. For example, KRS Chapter 322A contains the statutory requirements that certain work be performed by registered professional geologists. Those programs buttress, but do not diminish, the need for plans and critical data to be submitted for cabinet review. This administrative regulation standardizes the reporting requirements for corrective action and release response. This will allow responsible parties to avoid submitting duplicative or unnecessary reports, which currently occurs in some situations. The standardization of reporting requirements also assures that responsible parties can submit all the information that

the cabinet needs at one time, rather than speculating what the cabinet will require and waiting for a deficiency letter to identify additional needs. Time frames for the submittal of monitoring reports have been established to provide the cabinet with the ability to determine if a corrective action and release response action is effective in remediating the release. DEP Form 2013 is designed to allow all groundwater analytical data, received by the state, to be entered into a single database so this information can be utilized by all departmental programs. This form was developed to be convenient in that information from numerous wells may be included on a single form. This form may be used in the reports as a summary of analyses; the summary of analyses is included in almost all reports received. Therefore, the cabinet feels this form is necessary and justified.

2. Second and subsequent years: The compliance, reporting, and paperwork requirements instituted during the first year will continue for the second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings associated with these amendments.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will incur some additional expenses in printing and distributing the new documents incorporated by reference in this administrative regulation; however, this expense should be minor. There are no additional costs or savings to the cabinet associated with these amendments.

2. Continuing costs or savings: The costs instituted during the first year will continue for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings to the cabinet associated with these amendments.

b. Reporting and paperwork requirements: There will be no effect on the reporting and paperwork requirements on the cabinet as a result of these amendments. DEP Form 2013 is designed to allow all groundwater analytical data received by the state, to be entered into a single database in order that this information can be utilized by all departmental programs. This form was developed to be convenient in that information from numerous wells may be included on a single form.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation does not distinguish between UST systems owned by private entities and those owned by the government. Therefore, all levels of government - state, county, and local - will be required to comply with this administrative regulation if they own UST systems. For a discussion of the impact on these entities, see items (1) and (2) of this Regulatory Impact Analysis.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for implementation and enforcement of this administrative regulation is Leaking Underground Storage Tank Grant. This grant is funded 90% from the federal government and 10% from UST owner fees. There are no general fund moneys used to implement and enforce this administrative regulation.

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 administrative regulation will be implemented: This administrative regulation will be implemented state-wide. Therefore, please refer to item "b" below.

b. Kentucky: No public comments were received concerning the economic impacts that this administrative regulation may impose.

7. Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to promulgating this administrative regulation to institute the standards for KRS 224.60 related to release response and corrective action.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation will standardize the process for responding to a release and completing all reports necessary to provide the cabinet with the ability to determine if corrective action and release response actions were effective in remediating the release.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented state-wide. Because the standards established in this administrative regulation are risk based, this will result in the possibility of some additional incidences of cancer and other health problems caused from leaving contamination in place. However, KRS 224.60-137 requires the cabinet to establish corrective action standards for a release into the environment from a petroleum storage tank. These standards are required to be based on a study performed for the Petroleum Storage Tank Environmental Fund Commission. As required by the statute, this administrative regulation is based on this study. This administrative regulation will expedite the identification of release sites and standardize requirements for initial abatement response, characterization of the site, and corrective action. The cabinet believes that the standardization of these requirements will speed site remediation and thus be more protective of public health and environmental welfare within the Commonwealth. The overall benefit to Kentucky and its citizens will be to decrease the number of overall health threats posed by releases.

b. State whether a detrimental effect on the environment and public health would result if not implemented: A detrimental effect on the environment and public health would result if this administrative regulation is not implemented. For an explanation see item "c" below.

c. If detrimental effect would result, explain detrimental effect: Releases from UST systems can result in immediate chronic and acute health risks to both the environment and the public. Explosive hazards caused by a release and exposure to the released constituents can cause a detrimental effect on the environment and public health. This administrative regulation will expedite the identification of release sites and standardize requirements for initial abatement response, characterization of the site, and corrective action. The cabinet believes that the standardization of these requirements will speed site remediation and thus be more protective of public health and environmental welfare within the Commonwealth. The overall benefit to Kentucky and its citizens will be to decrease the number of overall health threats posed by releases.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or governmental policy. The amendments to this administrative regulation clarify existing requirements of KRS 224.60 and 40 CFR Part 280 Subpart F.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: This administrative regulation is based on the study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission, authorized by KRS 224.60-137.

12. TIERING: Is tiering applied? Tiering was applied. This administrative regulation establishes a tiered approach for response to a release from a UST system. This tiered approach includes steps to: perform a site check to determine if a release is present; if a release is present, conduct a site characterization to determine the extent of a release; and initiate corrective action procedures to remediate the effects of the release.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate:

There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.06-105 also requires the cabinet to adopt a regulatory program that implements federal regulatory requirements for underground storage tanks. KRS 224.60-137 is a state mandate that requires the cabinet to promulgate regulations to establish standards for corrective action to protect human health and the environment, that shall be based upon the study performed by the Petroleum Storage Tank Environmental Assurance Fund Commission. Pursuant to these mandates, this administrative regulation establishes the requirements for release response, site characterization, corrective action, and public participation for underground storage tank systems. The requirements in this administrative regulation are consistent with federal underground storage tank requirements of 40 CFR Part 280 Subpart F, 40 CFR Part 281, and 42 USC 6991 et seq.

2. State compliance standards: This administrative regulation establishes the requirements for release response, site characterization, corrective action, and public participation for underground storage tank systems. This administrative regulation proposes to incorporate by reference various forms and outlines required to assess sites for suspected or confirmed release into the environment. "Underground Storage Tank System Site Check Outline" is a document used when conducting a site check for releases at underground storage tank systems. The document will help ensure that standard requirements are met in site check reports, in an effort to circumvent avoidable delays in processing such plans. "Underground Storage Tank System Site Investigation Outline" is a document to be followed in preparation of a site investigation report to document the full extent of contamination from a release at a Underground Storage Tank System. "Underground Storage Tank System Corrective Action Plan Outline" is a document to be followed in developing a corrective action plan in response to a release of a regulated substance from an underground storage tank. The purpose of the corrective action plan is to outline the proposal for remediation of soils, air, and water impacted by a release. The document will help ensure that standard requirements are met in an effort to circumvent avoidable delays in processing such plans. "Underground Storage Tank System Release Response and Initial Abatement Requirement Outline" is a document to be used when responding to a confirmed release of a regulated substance from an underground storage tank. This document identifies the minimum requirements for initial response and abatement of a release to help prevent migration and minimize potential adverse affects to human health, safety, and the environment. "UST Groundwater Sample Analyses Form" DEP Form 2013 is a form that must be completed and submitted to the cabinet for every groundwater sample collected and analyzed during the release corrective action process. This document will help ensure that standard requirements are met in an effort to expedite remediation and allow the cabinet to maintain a multi-programmatic groundwater database.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. 40 CFR Part 280 establishes general underground storage tank system standards applicable to facilities across the United States. The federal requirements are general in nature and they defer to the state regulatory agencies to establish

detailed, state-specific standards. This administrative regulation provides clarification and standardization of procedures to meet the requirements of 40 CFR Part 280. This administrative regulation proposes to incorporate by reference various forms and outlines required to assess sites for suspected or confirmed release into the environment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the cabinet to establish minimum standards for underground storage tanks to protect the public health and the environment. KRS 224.60-137 requires that the cabinet establish standards based on a corrective action study conducted for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet justifies deviation from the standards recommended in the study. Additionally, the federal program looks to the states to establish program details consistent with the state's needs and certain broad, federal criteria. This administrative regulation provides clarification and standardization of procedures to meet the requirements of 40 CFR Part 280. This administrative regulation proposes to incorporate by reference various forms and outlines required to assess sites for suspected or confirmed release into the environment.

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 any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. This administrative regulation incorporates by reference various forms and outlines for conducting initial abatement, site check, site investigation, and corrective action. These forms and outlines are must be complied with while assessing sites for suspected or confirmed releases into the environment. The agencies referenced in item 2 of this fiscal note will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because the proposed amendments to this administrative regulation clarify existing requirements and do not impose new standards, there will be no increase in cost to state, county, or local governments.

Other Explanation: None

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 42:070[E]. Out-of-service UST systems, temporary closure and permanent [and] closure of UST systems, and change in service of UST systems.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 CFR Part 280 Subpart G, Part 281, 42 USC 6991 to 6991c [i]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137, 40 CFR Part 280 Subpart G, Part 281, 42 USC 6991c [EFFECTIVE: February 15, 1994]

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that [which] provide for the prevention, abatement, and control of contaminants that [which] may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting [releases], corrective action[s], closure, financial responsibility, and other standards [requirements] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that [which] implements federal requirements for UST systems. [underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations.] This chapter identifies requirements for UST systems. [underground storage tanks.] This administrative regulation establishes the requirements for out-of-service UST systems, temporary and permanent closure of UST systems, and change in service of UST systems. [release detection and recordkeeping for all UST systems.]

Section 1. Applicability. [Adoption of Federal Regulations. The requirements for out-of-service UST systems and closure are governed by 40 CFR Part 280 Subpart G (1990).] (1)(a) This administrative regulation shall apply to any owner or operator of a UST system that has a release confirmed on or after January 1, 1996, or has submitted a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) (incorporated by reference in Section 2 of this administrative regulation) that has been received by the Underground Storage Tank Branch of the Division of Waste Management on or after January 1, 1996.

(b) The owners and operators of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received between April 18, 1994 and January 1, 1996 shall comply with the closure requirements in existence at the time the Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received by the Underground Storage Tank Branch of the Division of Waste Management, unless a written request, signed by the owner or operator, is received by the cabinet. This request shall indicate that the owners and operators intend to close the site as specified in subsection (2) of this section and Sections 3 through 7 of this administrative regulation.

(c) The owners and operators of a UST system for which a Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received by the Underground Storage Tank Branch of the Division of Waste Management prior to April 18, 1994 shall comply with the closure requirements in existence at the time the Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) was received by the Under-

ground Storage Tank Branch of the Division of Waste Management, unless a written request, signed by the owner or operator, is received by the cabinet. This request shall indicate that the owners and operators intend to close the site as specified in subsection (2) of this section and Sections 3 through 7 of this administrative regulation, or as specified in 401 KAR 42:071.

(d) If the cabinet determines that a UST system that closed before December 22, 1988 poses a current or potential threat to human health, safety, or the environment, the owner or operator shall assess the excavation zone and close the UST system in accordance with subsection (2) of this section and Sections 3 through 7 of this administrative regulation.

(2) The documents incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of this administrative regulation.

Section 2. Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

(a) "Underground Storage Tank System Closure Outline" (July 1995 [January 1994]);

(b) "Notice of Intent to Permanently Close Underground Storage Tank(s) Form", DEP Form 5025 (July 1995 [January 1994]); and

(c) "Closure Assessment Report Form", DEP Form 4058 (July 1995 [November 1990]);

(d) "Kentucky Underground Storage Tank Assessment Well Form", DEP Form 5033 (July 1995);

(e) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks" (December 1987);

(f) American Petroleum Institute Publication 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks" (May 1994); and

(g) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks" (April 1992).

(2) The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502)564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

Section 3. Temporary Closure. (1) If a UST system is temporarily closed, the owners and operators shall continue operation and maintenance of corrosion protection and release detection in accordance with 401 KAR 42:030. If a release is suspected or confirmed, the owners and operators shall comply with 401 KAR 42:050 and 401 KAR 42:060. Release detection is not required as long as the UST system is empty.

(2) If a UST system is temporarily closed for more than three (3) months, the owners and operators shall comply with the following requirements:

(a) Leave vent lines open and functioning;

(b) Cap and secure all other lines, pumps, man ways, and ancillary equipment; and

(c) Submit an amended Notification of Underground Storage Tank System Form (DEP Form 5024) (incorporated by reference in 401 KAR 42:020) to the Underground Storage Tank Branch of the Division of Waste Management indicating that the UST system has changed to temporary closure status.

(3) If a UST system is temporarily closed for more than twelve (12) months, the owners and operators shall permanently close the UST system in accordance with Section 4 of this administrative regulation if it does not meet either the performance standards in 401 KAR 42:020 (for new UST systems) or the upgrading requirements in 401 KAR 42:020 (for existing UST systems, except that the spill and overfill equipment requirements do not have to be met). The owners and operators shall permanently close the substandard UST system at the end of this twelve (12) month period, unless the cabinet

provides an extension of the twelve (12) month temporary closure period. The owners and operators shall complete a closure assessment, in accordance with Section 5 of this administrative regulation, before applying for an extension.

Section 4. Permanent Closure and Changes in Service. (1)(a) Owners and operators shall notify the Division of Waste Management of their intent to permanently close or make a change in service for a UST system at least thirty (30) days prior to beginning either the permanent closure or change in service under subsections (2) and (3) of this section. This notice shall be submitted on the Notice of Intent to Permanently Close Underground Storage Tank System Form (DEP Form 5025) (incorporated by reference in Section 2 of this administrative regulation) or on a cabinet-approved form containing the same information. Initial abatement action shall not alleviate the owners and operators from notifying the cabinet of the intent to permanently close a UST system; however, the cabinet may specify a shorter notification time prior to permanent closure.

(b) The Notice of Intent to Permanently Close Underground Storage Tank System Form shall only be valid for twelve (12) months following signature by the UST system owner, operator, or authorized representative. The closure assessment required under Section 5 of this administrative regulation shall be performed after submitting notification to the cabinet, but prior to completing the permanent closure or change in service.

(2) To permanently close a UST system, the owners and operators shall empty and clean the UST system by removing all tank contents and residual tank materials. All UST systems permanently taken out of service shall be either removed from the ground or filled with an inert solid material.

(3) Continued use of a UST system to store a nonregulated substance shall constitute a change in service. Before a change in service, the owners and operators shall empty and clean the UST system by removing the tank contents and residual tank materials. The owners and operators shall also conduct a closure assessment in accordance with Section 5 of this administrative regulation.

Section 5. Assessing the Site at a Temporary Closure, Permanent Closure or Change in Service. (1)(a) Before completing permanent closure or change in service of a UST system, or at the end of the twelve (12) month temporary closure period identified in Section 3(3) of this administrative regulation, the owners and operators shall measure for the presence of a release where contamination is most likely to be present. In selecting sample types, sample locations, and measurement methods, the owners and operators shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. The requirements of this paragraph shall be satisfied if one (1) of the external release detection methods allowed in 401 KAR 42:040 is operating in accordance with the requirements in 401 KAR 42:040 at the time of closure and indicates that no release has occurred during the life of the UST system.

(b) The closure assessment required by paragraph (a) of this subsection shall be performed in accordance with the requirements of the Underground Storage Tank System Closure Outline (incorporated by reference in Section 2 of this administrative regulation). The Closure Assessment Report Form (DEP Form 4058) (incorporated by reference in Section 2 of this administrative regulation) shall be received by the Underground Storage Tank Branch of the Division of Waste Management within ninety (90) days after UST system removal, closure in place, or change in service.

(2) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (1) of this section, or by any other manner, the owners and operators shall begin initial response, initial abatement, site check, initial site characterization, free product removal, investigations for soil and

groundwater contamination, corrective action, and public participation, in accordance with 401 KAR 42:060.

(3) The handling, transportation, and disposal of any regulated substance from a UST system and any contaminated soils, backfill materials, groundwater, cleaning liquids, and other similar materials removed from the UST system or facility shall be performed in accordance with applicable requirements of 401 KAR Chapters 30 through 49.

Section 6. Closure Records. (1) In accordance with 401 KAR 42:030, the owners and operators shall maintain records that demonstrate compliance with closure requirements under Section 5 of this administrative regulation. The results of the closure assessment required by Section 5 of this administrative regulation shall be maintained for at least three (3) years after receipt of the closure letter indicating that no further action is required for the permanent closure or change in service.

(2) The records required by subsection (1) of this section shall be maintained by either the owner or operator who closed the UST system or by the current owner or operator of the facility. If the records cannot be maintained at the facility, they shall be mailed to the Underground Storage Tank Branch of the Division of Waste Management.

Section 7. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if warranted.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 31, 1995, at 7 p.m. eastern time in the State Board Room on the first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 26, 1995. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 26, 1995 and arrangements for payment of the transcript costs are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on August 31, 1995. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for electronic comments is any version of WordPerfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should WordPerfect or 3.5 inch diskettes not be available. 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 the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Manage-

ment, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation affects owners and operators of service stations and other facilities with underground storage tank (UST) systems. Currently, there are approximately 39,000 registered UST systems in Kentucky and many more UST systems exist that are not registered. Cabinet records indicate that approximately 16,000 UST systems have released constituents into the environment and are currently conducting corrective action activities. This administrative regulation establishes requirements for temporary closure, permanent closure, or a change in UST service.

2. Direct and indirect costs or savings on 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: No public comments were received concerning the effects on the cost of living and employment in the geographical area that this administrative regulation may impose. Any additional costs that may be associated with the effect on the cost of living and employment are specified in item "c" below.

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 concerning the effect on the cost of doing business that this administrative regulation may impose. Any additional costs that may be associated with the cost of doing business are specified in item "c" below.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: Several commentors stated that this administrative regulation will impose undue reporting and paperwork requirements, which should not be required. Several commentors stated that the requirement for a professional engineer or professional geologist to sign documents creates an unnecessary expense. Another commentor stated that hiring a professional engineer to produce a site map drawn to scale will increase the cost of closure. Another commentor stated that the requirement for sampling every 250 cubic yards of excavated material is overly burdensome and unnecessary. This commentor also stated that while the Petroleum Storage Tank Environmental Assurance Fund Commission (PSTEAF) may have an interest in retaining this requirement for the purposes of reimbursement, it should be addressed by the commission and not the Underground Storage Tank Branch. The cabinet notes, in response to these comments, that it cannot relegate its responsibilities under KRS Chapter 224 to the certification programs of state law. KRS Chapter 322A contains the statutory requirements that certain work be performed by registered professional geologists. KRS 322A.010 defines "public practice of geology" as "the performance of service to the public in connection with the geological description, location, or evaluation of earth material, liquids, and gases and the natural processes acting upon them..." KRS 322A.090(1) states that, with limited exceptions, "it shall be unlawful for any person other than a registered geologist or a subordinate under the direction of a registered geologist to prepare any geologic reports or documents that are required by statute or administrative regulation." KRS 322A.090(2) states that "no person shall engage in the public practice of geology, or offer to publicly practice geology, in the Commonwealth, as defined in KRS 322A.010, or to use or otherwise assume, or advertise in any way any title or description tending to convey the impression that the person is a registered geologist,

unless the person has been duly registered under the provisions of this chapter." KRS 322A.080 exempts from the registration requirements registered professional engineers who apply geology to the practice of engineering and office and employees of the United States or state or local governments while engaged in providing geological services for their employers. KRS 322A.990 states that any nonexempt individual publicly practicing geology without being registered is guilty of a Class B misdemeanor. Under the statutory provisions, the cabinet is obligated to require that persons performing UST closure work be geologists registered under KRS Chapter 322A or engineers registered under KRS Chapter 322. This administrative regulation standardizes the reporting requirements for UST system closure. This will allow responsible parties to avoid submitting duplicative or unnecessary reports, which currently occurs in some situations. The standardization of reporting requirements also assures that responsible parties can submit all the information that the cabinet needs at one time, rather than speculating what the cabinet will require and waiting for a deficiency letter to identify additional needs. The 250 cubic yard sampling requirement for excavated material has been amended based on public comments. If the excavated material is disposed at a permitted landfill or landfarm facility, only a copy of the analytical results from sampling required by the permitted facility shall be submitted to the UST Branch of the Division of Waste Management. If disposal of the soil is by any other means, then analytical results from a sample collected for every 500 cubic yards of material, is required.

2. Second and subsequent years: The compliance, reporting, and paperwork requirements instituted during the first year will continue for the second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings associated with these amendments.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will incur some additional expenses in printing and distributing the new documents incorporated by reference in this administrative regulation; however, this expense should be minor. There are no additional costs or savings to the cabinet associated with these amendments.

2. Continuing costs or savings: The costs instituted during the first year will continue for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings to the cabinet associated with these amendments.

b. Reporting and paperwork requirements: There will be no effect on the reporting and paperwork requirements on the cabinet as a result of these amendments.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation does not distinguish between UST systems owned by private entities and those owned by the government. Therefore, all levels of government - state, county, and local - will be required to comply with this administrative regulation if they own UST systems. For a discussion of the impact on these entities, see items (1) and (2) of this Regulatory Impact Analysis.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for implementation and enforcement of this administrative regulation is the Leaking Underground Storage Tank Grant. This grant is funded 90% from the federal government and 10% from UST owner fees. There are no general fund moneys used to implement and enforce this administrative regulation.

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 administrative regulation will be implemented: This administrative regulation will be implemented statewide. Therefore, please refer to item "b" below.

b. Kentucky: Two commentors believe that the requirements for a professional engineer or geologist to sign all CAR documents is unnecessary, too expensive, and will take the people who are Fire Marshal certified out of business. The cabinet notes in response to these comments, that due to statutory requirements as specified in item "2.c" of this Regulatory Impact Analysis, that the cabinet is obligated to require that persons performing UST closure work be geologists registered under KRS Chapter 322A or engineers registered under KRS Chapter 322.

7. Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to promulgating this administrative regulation to institute the standards for KRS 224.60 related to closure of UST systems.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation will standardize the process for closure of UST systems and completion of all reports necessary to provide the cabinet with the ability to determine if corrective action and release response actions are necessary to remediate a release.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented state-wide. Because the standards established in this administrative regulation are risk based, this will result in the possibility of some additional incidence of cancer and other health problems caused from leaving contamination in place. However, KRS 224.60-137 requires the cabinet to establish corrective action standards for a release into the environment from a petroleum storage tank. These standards are required to be based on a study performed for the Petroleum Storage Tank Environmental Fund Commission. As required by the statute, this administrative regulation is based on this study. This administrative regulation will expedite the identification of release sites and standardize requirements for closure and corrective action. The cabinet believes that the standardization of these requirements will speed site remediation and thus be more protective of public health and environmental welfare within the Commonwealth. The overall benefit to Kentucky and its citizens will be a decrease in the number of overall health threats posed by releases.

b. State whether a detrimental effect on the environment and public health would result if not implemented: A detrimental effect on the environment and public health would result if this administrative regulation is not implemented. For an explanation see item "c" below.

c. If detrimental effect would result, explain detrimental effect: Releases from UST systems can result in immediate chronic and acute health risks to both the environment and the public. Explosive hazards caused by a release and exposure to the released constituents can cause a detrimental effect on the environment and public health. This administrative regulation will expedite the identification of release sites and standardize requirements for closure and corrective action. The cabinet believes that the standardization of these requirements will speed site remediation and thus be more protective of public health and environmental welfare within the Commonwealth. The overall benefit to Kentucky and its citizens will be to decrease the number of overall health threats posed by releases.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: One commentor stated to the extent that Sections 3, 4, 5, and 6 differ from the requirements of 40 CFR Sections 280.70, 280.71, 280.72, and 280.73, that those differences should be discussed and explained in the Regulatory Impact Analysis. This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or governmental policy. The amendments to this administrative regulation clarify existing requirements of KRS 224 Chapter 60 and 40 CFR Part 280 Subpart G.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: This administrative regulation is based on the study performed for the PSTEAFC, authorized by KRS 224.60-137.

12. TIERING: Is tiering applied? Tiering was applied. This administrative regulation establishes a tiered approach for response to a release encountered during closure from a UST system. This tiered approach includes steps to: perform closure activities; if a release is present, conduct a site characterization to determine the extent of a release; and initiate corrective action procedures to remediate the effects of the release.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-105 also requires the cabinet to adopt a regulatory program that implements federal regulatory requirements for underground storage tanks. KRS 224.60-137 is a state mandate that requires the cabinet to promulgate regulations to establish standards for corrective action to protect human health and the environment, that shall be based upon the study performed by the Petroleum Storage Tank Environmental Assurance Fund Commission. Pursuant to these mandates, this administrative regulation establishes the requirements for out-of-service underground storage tank systems, temporary closure, and permanent closure of underground storage tank systems. The requirements in this administrative regulation are consistent with federal underground storage tank requirements of 40 CFR Part 280 Subpart G, 40 CFR Part 281, and 42 USC 6991 et seq.

2. State compliance standards: This administrative regulation provides clear standards for an appropriate assessment of an underground storage tank site as well as disposal procedures to be used during underground storage tank closure required meet the requirements of 40 CFR Part 280 Subpart G. This administrative regulation proposes to incorporate by reference various forms and outlines required to assess a site for temporary closure, permanent closure, or a change in underground storage tank service. These updated forms and outlines will provide the Division of Waste Management with necessary information to ensure compliance with the closure requirements of 401 KAR Chapter 42.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. 40 CFR Part 280 establishes general underground storage tank system standards applicable to facilities across the United States. The federal requirements are general in nature and they defer to the state regulatory agencies to establish detailed, state-specific standards. This administrative regulation provides clear standards for an appropriate assessment of an underground storage tank site as well as disposal procedures to be used during underground storage tank closure required meet the requirements of 40 CFR Part 280 Subpart G. This administrative regulation proposes to incorporate by reference various forms and outlines required to assess a site for temporary closure, permanent closure, or a change in underground storage tank service. These updated forms and outlines will provide the Division of Waste Management with necessary information to ensure compliance with

the closure requirements of 401 KAR Chapter 42.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the cabinet to establish minimum standards for underground storage tanks to protect the public health and the environment. KRS 224.60-137 requires that the cabinet establish standards based on a corrective action study conducted for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet justifies deviation from the standards recommended in the study. Additionally, the federal program looks to the states to establish program details consistent with the state's needs and certain broad, federal criteria. This administrative regulation provides clear standards for an appropriate assessment of an underground storage tank site as well as disposal procedures to be used during underground storage tank closure required meet the requirements of 40 CFR Part 280 Subpart G. This administrative regulation proposes to incorporate by reference various forms and outlines required to assess a site for temporary closure, permanent closure, or a change in underground storage tank service. These updated forms and outlines will provide the Division of Waste Management with necessary information to ensure compliance with the closure requirements of 401 KAR Chapter 42.

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 any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. This administrative regulation incorporates by reference various forms and outlines that establish requirements for assessing a site at temporary closure, permanent closure, or a change in underground storage tank service and requirements for performing closure activities, such as safe tank entry, tank cleaning, and tank interior lining. The agencies referenced in item 2 of this fiscal note will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because the proposed amendments to this administrative regulation clarify existing requirements and do not impose new standards, there will be no increase in cost to state, county, or local governments.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department For Environmental Protection Division Of Waste Management (Amendment)

401 KAR 42:080[E]. Classification of petroleum underground storage tank systems and listing of associated cleanup levels.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 CFR Part 280 Subparts F, G, Part 281, 42 USC 6991 to 6991c [i]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137, 40 CFR Part 280 Subparts F, G, Part 281, 42 USC 6991c

[EFFECTIVE: February 15, 1994]

NECESSITY AND FUNCTION: KRS 224.60-105 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations on underground storage tank (UST) systems to protect public health and the environment. The statute recognizes that the administrative regulations may distinguish between types, classes, and ages of UST systems. [underground storage tanks.] KRS 224.60-137 requires the cabinet to adopt standards for corrective action for a release into the environment from a petroleum UST system. This chapter identifies requirements for UST systems. This administrative regulation establishes facility classification and corrective action standards for petroleum UST systems. [storage tank. The corrective action standards are to be protective of human health and the environment and based upon a study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet states in detail why it did not accept a recommendation from the study. This administrative regulation complies with these requirements by establishing a classification scheme for petroleum underground storage tank systems and cleanup levels for benzene, toluene, ethylbenzene, and xylene released into the environment from tank systems containing gasoline, kerosene, jet fuel, or aviation fuel. The classification scheme and the cleanup levels are consistent with recommendations contained in the study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission, except as specified in the Regulatory Impact Analysis for this administrative regulation.]

Section 1. Scope and Applicability. [(4)] The document incorporated by reference in Section 2 of this administrative regulation sets forth a classification scheme for all petroleum UST [underground storage tanks] systems. The document also establishes cleanup levels for petroleum constituents. The [benzene, toluene, ethylbenzene, and xylene released into the environment from tank systems containing gasoline, kerosene, jet fuel, or aviation fuel. Specific] cleanup levels for [these] petroleum constituents at a particular facility are determined by the classification of the UST system. [petroleum underground storage tank system are dependent upon the particular category into which the tank system is classified.]

(1)(a) Subsection (2) of this section and Section 2 of this administrative regulation [(2) The provisions of this administrative regulation] shall apply to UST systems for which a [any] "Notice of Intent to Permanently Close Underground Storage Tank System [(e)] Form" (DEP Form 5025) (incorporated by reference in 401 KAR 42:070) is received by the Underground Storage Tank Branch of the Division of Waste Management [cabinet] on or after January 1, 1996 and to UST systems for which a release is confirmed after January 1, 1996. [April 18, 1994, and]

(b) Subsection (2) of this section and Section 2 of this administrative regulation shall apply to UST systems for which a [these] closure notice[(e)] was received by the Underground Storage Tank Branch of the Division of Waste Management prior to January 1, 1996 [April 18, 1994] as follows:

1. ~~[(a)]~~ For any "Notice of Intent to Permanently Close Underground Storage Tank System Form" (DEP Form 5025) received ~~[by the cabinet]~~ prior to January 1, 1996 ~~[April 18, 1994]~~, but for which a closure letter ~~had [has]~~ not been issued by the cabinet prior to that date, the UST systems ~~[tanks]~~ addressed in that notice may be closed under this administrative regulation if the owner or operator submits to the Underground Storage Tank Branch of the Division of Waste Management ~~[cabinet]~~ a letter indicating their commitment [his desire] to close the UST system [have the closure processed] pursuant to this administrative regulation.

2. ~~[(b)]~~ The letter referenced in subparagraph 1 of this paragraph ~~[(a) of this subsection]~~ shall contain the identification number for the site; the name, address, and phone number of the facility or company where [at which] the UST system is [tanks are] located; the name, address, and phone number of the tank owner; and an explicit statement of the action being requested. The letter shall be signed by the owner or operator. The request shall apply to all UST systems ~~[tanks]~~ referenced in the closure notice received by the Underground Storage Tank Branch of the Division of Waste Management ~~[cabinet]~~ prior to January 1, 1996 ~~[April 18, 1994]~~.

(2) The document incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of this administrative regulation.

Section 2. Incorporation by Reference. (1) The following document is hereby incorporated by reference: "Petroleum Underground Storage Tank System Facility Classification Outline" (July 1995 [January 1994]).

(2) The document referenced in subsection (1) of this section is available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Ky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 31, 1995, at 7 p.m. eastern time in the State Board Room on the first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 26, 1995. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 26, 1995 and arrangements for payment of the transcript costs are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on August 31, 1995. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for electronic comments is any version of WordPerfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should WordPerfect or 3.5 inch diskettes not be available. 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 the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public

hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation affects owners and operators of service stations and other facilities with underground storage tank (UST) systems. Currently, there are approximately 39,000 registered UST systems in Kentucky and many more UST systems exist that are not registered. Cabinet records indicate that approximately 16,000 UST systems have released constituents into the environment and are currently conducting corrective action activities. This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum.

2. Direct and indirect costs or savings on 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: One commentor opposed the adoption of any regulatory scheme which acts to shift the burdens of pollution from those parties who benefitted from the use of the property which resulted in the contamination, to third parties whose lands or water supplies are consigned to remain contaminated or threatened with contamination because of the intentional decision not to require responsible parties to completely abate the contamination of land and water resources resulting from their current or past activities. The cabinet notes in response to this comment that KRS 224.60-137 requires the cabinet to establish corrective action standards for a release into the environment from a petroleum storage tank. These standards are to be based upon a study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission. As required by the statute, this administrative regulation is based on this study and is designed to be protective of human health, safety, and the environment. KRS 224.60 and 401 KAR Chapter 42 requires the person responsible for a release to take corrective action as established in this administrative regulation.

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 concerning the costs of doing business that this administrative regulation may impose. Any additional costs that may be associated with the costs of doing business are specified in item "c" below.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commentor stated that the 10 ppm cleanup level for nPAH in Class III, Soil Table 1, appears to be inappropriate due to its limited mobility and low toxicity. Another commentor stated that most UST facilities will fall under Class III and that Class III involves clean closure. Forcing owners and operators to classify for clean closure is overly burdensome. Another commentor wished the cabinet to identify the differences between the study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission (PSTEAF) and this administrative regulation. One commentor stated that the requirements for a professional engineer or professional geologist to complete closure activities creates an unnecessary expense. The cabinet notes in response to these comments, Class III does not necessarily involve clean closure. Class III establishes cleanup levels, through classification, which may or

may not be achieved at closure. All cleanup levels for petroleum constituents, with the exception of groundwater levels, are identical to the cleanup numbers within the study performed for the PSTAFC, as required by KRS 224.60-137. Groundwater numbers were not within the study, and have been developed by the Risk Assessment Branch of the Department for Environmental Protection. The cabinet cannot relegate its responsibilities under KRS Chapter 224 to the certification programs of state law. KRS Chapter 322A contains the statutory requirements that certain work be performed by registered professional geologists. KRS 322A.010 defines "public practice of geology" as "the performance of service to the public in connection with the geological description, location, or evaluation of earth material, liquids, and gases, and the natural processes acting upon them..." KRS 322A.090(1) state that, with limited exceptions, "it shall be unlawful for any person other than a registered geologist or a subordinate under the direction of a registered geologist to prepare any geologic reports or documents that are required by statute or administrative regulation." KRS 322A.090(2) state that "no person shall engage in the public practice of geology, or offer to publicly practice geology, in the Commonwealth, as defined in KRS 322A.010, or to use or otherwise assume, or advertise in any way any title or description tending to convey the impression that the person is a registered geologist, unless the person has been duly registered under the provisions of this chapter." KRS 322A.080 exempts from the registration requirements registered professional engineers who apply geology to the practice of engineering and office and employees of the United States or state or local governments while engaged in providing geological services for their employers. KRS 322A.990 states that any nonexempt individual publicly practicing geology without being registered is guilty of a Class B misdemeanor. Under the statutory provisions, the cabinet is obligated to require that persons performing UST closure work be geologists registered under KRS Chapter 322A or engineers registered under KRS Chapter 322.

2. Second and subsequent years: The compliance, reporting, and paperwork requirements instituted during the first year will continue for the second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings associated with these amendments.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will incur some additional expenses in printing and distributing the new documents incorporated by reference in this administrative regulation; however, this expense should be minor. There are no additional costs or savings to the cabinet associated with these amendments.

2. Continuing costs or savings: The costs instituted during the first year will continue for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings to the cabinet associated with these amendments.

b. Reporting and paperwork requirements: There will be no effect on the reporting and paperwork requirements on the cabinet as a result of these amendments.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation does not distinguish between UST systems owned by private entities and those owned by the government. Therefore, all levels of government - state, county, and local - will be required to comply with this administrative regulation if they own UST systems. For a discussion of the impact on these entities, see items (1) and (2) of this Regulatory Impact Analysis.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for implementation and enforcement of this administrative regulation is the Leaking Underground Storage Tank Grant. This grant is funded 90% from the federal government and 10% from UST owner fees. There are no general fund moneys used to implement and enforce this administrative regulation.

tive regulation.

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 administrative regulation will be implemented: This administrative regulation will be implemented state wide. Therefore, please refer to item "b" below.

b. Kentucky: One commentor stated that the requirements for a professional engineer or professional geologist to complete closure activities creates an unnecessary expense. The cabinet notes in response to this comment, that due to the statutory requirements as specified in item "2.c" of this Regulatory Impact Analysis, that the cabinet is obligated to require that persons performing UST closure work be geologists registered under KRS Chapter 322A or engineers registered under KRS Chapter 322.

7. Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to promulgating this administrative regulation to institute the standards for KRS 224.60 related to closure of UST systems.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented state wide. Because the standards established in this administrative regulation are risk based, this will result in the possibility of some additional incidence of cancer and other health problems caused from leaving contamination in place. However, KRS 224.60-137 requires the cabinet to establish corrective action standards for a release into the environment from a petroleum storage tank. These standards are required to be based on a study performed for the Petroleum Storage Tank Environmental Fund Commission. As required by the statute, this administrative regulation is based on this study. This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum. This will expedite the identification of release sites and standardize requirements for closure and corrective action. The cabinet believes that the standardization of these requirements will speed site remediation and thus be more protective of public health and environmental welfare within the Commonwealth. The overall benefit to Kentucky and its citizens will be to decrease the number of overall health threats posed by releases.

b. State whether a detrimental effect on the environment and public health would result if not implemented: A detrimental effect on the environment and public health would result if this administrative regulation is not implemented. For an explanation see item "c" below.

c. If detrimental effect would result, explain detrimental effect: Releases from UST systems can result in immediate chronic and acute health risks to both the environment and the public. Explosive hazards caused by a release and exposure to the released constituents can cause a detrimental effect on the environment and public health. This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum. This will expedite the identification of release sites and standardize requirements for closure and corrective action. The cabinet believes that the standardization of these requirements will speed site remediation and thus be more protective of public health and environmental welfare within the Commonwealth. The overall benefit to Kentucky and its citizens will be to decrease the number of overall health threats posed by releases.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or governmental policy.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: This administrative regulation is based on the study performed for the PSTEAFC, authorized by KRS 224.60-137.

12. TIERING: Is tiering applied? Tiering was applied. This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum. This classification scheme is tiered based on site specific factors such as soil type, geology, hydrology, and potential receptors. This classification scheme is the foundation for a tiered approach for response to a release from a UST system. This tiered approach includes steps to: identify the presence of a release; if a release is present, conduct a site characterization to determine the extent of a release; and initiate corrective action procedures to remediate the effects of a release.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-105 also requires the cabinet to adopt a regulatory program that implements federal regulatory requirements for underground storage tanks. KRS 224.60-137 is a state mandate that requires the cabinet to promulgate regulations to establish standards for corrective action to protect human health and the environment that shall be based upon the study performed by the Petroleum Storage Tank Environmental Assurance Fund Commission. Pursuant to these mandates, this administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum. The requirements in this administrative regulation are consistent with the federal requirements of 40 CFR Part 280 Subpart F and G, 40 CFR Part 281, and 42 USC 6991 et seq.

2. State compliance standards: This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum in compliance with KRS 224.60-137. This administrative regulation proposes to incorporate by reference a document to establish a site classification and to determine the appropriate site specific cleanup levels. All owners or operators of underground storage tank systems regulated under 401 KAR Chapter 42 must adhere to this outline to classify a site and to determine appropriate site-specific cleanup levels for released constituents.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. 40 CFR Part 280 establishes general underground storage tank system standards applicable to facilities across the United States. The federal requirements are general in nature and they defer to the state regulatory agencies to establish detailed, state-specific standards. This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum in compliance with KRS 224.60-137. This administrative regulation proposes to incorporate by reference a document to establish a site classification

and to determine the appropriate site specific cleanup levels. All owners or operators of underground storage tank systems regulated under 401 KAR Chapter 42 must adhere to this outline to classify a site and to determine appropriate site-specific cleanup levels for released constituents.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the cabinet to establish minimum standards for underground storage tanks to protect the public health and the environment. KRS 224.60-137 requires that the cabinet establish standards based on a corrective action study conducted for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet justifies deviation from the standards recommended in the study. Additionally, the federal program looks to the states to establish program details consistent with the state's needs and certain broad, federal criteria. This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum in compliance with KRS 224.60-137. This administrative regulation proposes to incorporate by reference a document to establish a site classification and to determine the appropriate site specific cleanup levels. All owners or operators of underground storage tank systems regulated under 401 KAR Chapter 42 must adhere to this outline to classify a site and to determine appropriate site-specific cleanup levels for released constituents.

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 any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. This administrative regulation proposes to incorporate by reference the "Underground Storage Tank System Facility Classification Outline" (July 1995). All owners or operators of underground storage tank systems regulated under 401 KAR Chapter 42 must adhere to this outline to classify a site and determine appropriate site-specific cleanup levels for released constituents. The agencies referenced in item 2 of this fiscal note will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): The proposed amendments to this administrative regulation clarifies existing requirements and establishes new standards for the remediation of gasoline, diesel fuel, oil, and lead constituents. The classification of a facility in the "Petroleum Underground Storage Tank System Facility Classification Outline" is based on site specific information. Because the classification of a facility establishes levels for the remediation of released constituents, cleanup expenditures may increase or decrease based on this

proposed administrative regulation. This increase or decrease in expenditures will effect any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 42:090. Financial responsibility.

RELATES TO: KRS 224.10, 224.60, 40 CFR Part 280 Subpart H, Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 CFR Part 280 Subpart H, Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that [which] provide for the prevention, abatement, and control of contaminants that [which] may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting [releases], corrective action[s], closure, financial responsibility, and other standards [requirements] to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that [which] implements federal requirements for UST systems. ~~underground storage tanks and to promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations.~~ This chapter identifies requirements for UST systems. [underground storage tanks]. This administrative regulation establishes requirements for demonstrating financial responsibility for [taking] corrective action and for compensation of [compensating] third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of UST systems [underground storage tanks] containing petroleum.

Section 1. Adoption of Federal Regulations. The requirements for demonstrating financial responsibility for [taking] corrective action and for compensation of [compensating] third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of UST systems [underground storage tanks] containing petroleum are governed by 40 CFR Part 280 Subpart H (1994 ~~1990~~).

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 31, 1995, at 7 p.m. eastern time in the State Board Room on the first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 26, 1995. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 26, 1995 and arrangements for payment of the transcript costs are made by

that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on August 31, 1995. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for electronic comments is any version of WordPerfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should WordPerfect or 3.5 inch diskettes not be available. 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 the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation affects owners and operators of service stations and other facilities with underground storage tank (UST) systems. Currently, there are approximately 39,000 registered UST systems in Kentucky and many more UST systems exist that are not registered. This administrative regulation establishes financial responsibilities for owners and operators of regulated underground storage tank systems.

2. Direct and indirect costs or savings on 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: No public comments were received concerning the effect on the cost of living or employment that this administrative regulation may impose.

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 concerning the costs of doing business that this administrative regulation may impose.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received concerning the costs of doing business that this administrative regulation may impose. This administrative regulation adopts federal language of 40 CFR Part 280 Subpart H which establishes financial responsibilities for owners and operators of regulated underground storage tank systems. This administrative regulation allows owners and operators of regulated underground storage tank systems additional options to meet the financial responsibility requirements.

2. Second and subsequent years: The compliance, reporting, and paperwork requirements instituted during the first year will continue for the second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings associated with these amendments.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There are no costs or savings to the cabinet associated with these amendments.

2. Continuing costs or savings: There are no costs or savings to the cabinet associated with these amendments for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings to the cabinet associated with these amendments.

b. Reporting and paperwork requirements: There will be no effect on the reporting and paperwork requirements on the cabinet as a result of these amendments.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation does not distinguish between UST systems owned by private entities and those owned by the government. Therefore, all levels of government - state, county, and local - will be required to comply with this administrative regulation if they own UST systems. For a discussion of the impact on these entities, see items (1) and (2) of this Regulatory Impact Analysis.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for implementation and enforcement of this administrative regulation is the Underground Storage Tank Grant. This grant is funded 75% from the federal government and 25% from UST owner fees. There are no general fund moneys used to implement and enforce this administrative regulation.

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 administrative regulation will be implemented: This administrative regulation will be implemented state-wide. Therefore, please refer to item "b" below.

b. Kentucky: No public comments were received concerning the economic impact that this administrative regulation may impose. This administrative regulation adopts federal language of 40 CFR Part 280 Subpart H which establishes financial responsibilities for owners and operators of regulated underground storage tank systems. This administrative regulation allows owners and operators of regulated underground storage tank systems additional options to meet the financial responsibility requirements.

7. Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to promulgating this administrative regulation to institute the standards for KRS 224.60 related to financial assurance for UST systems.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation adopts federal language of 40 CFR Part 280 Subpart H that establishes financial responsibilities for owners and operators of regulated UST systems. This administrative regulation allows owners and operators of regulated UST systems additional options to meet the financial responsibility requirements.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented state-wide. This administrative regulation requires an owner or operator of a UST system to maintain financial assurance, that will assure funds are available for the remediation of a release from an UST system. This will protect both public health and the environmental welfare from unremediated releases.

b. State whether a detrimental effect on the environment and public health would result if not implemented: A detrimental effect on the environment and public health would result if this administrative regulation is not implemented. For an explanation see item "c" below.

c. If detrimental effect would result, explain detrimental effect: Releases from UST systems can result in immediate chronic and acute health risks to both the environment and the public. Explosive hazards caused by a release and exposure to the released constituents can cause a detrimental effect on the environment and public health. This administrative regulation requires an owner or operator of a UST system to maintain financial assurance, that will assure

funds are available for the remediation of a release from an UST system. The cabinet believes that these requirements will assure finances for remediation and thus be more protective of public health and environmental welfare within the Commonwealth. The overall benefit to Kentucky and its citizens will be to decrease the number of overall health threats posed by releases.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or governmental policy. The requirements in this administrative regulation are consistent with federal requirements of 40 CFR Part 280 Subpart H, 40 CFR Part 281, and 42 USC 6991 et seq.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: The cabinet has no additional information or comments regarding the amendments to this administrative regulation.

12. TIERING: Is tiering applied? Tiering was applied. As required by state and federal law, only underground storage tank systems regulated under 401 Chapter 42 and 40 CFR Part 280 must demonstrate financial assurance.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.06-105 also requires the cabinet to adopt a regulatory program that implements federal regulatory requirements for underground storage tanks. Pursuant to these mandates, this regulation establishes requirements for demonstration of financial responsibility, for taking corrective action, and for compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of underground storage tanks containing petroleum. The requirements in this administrative regulation are consistent with federal requirements of 40 CFR Part 280 Subpart H, 40 CFR Part 281, and 42 USC 6991 et seq.

2. State compliance standards: This administrative regulation proposes to include revised federal language of 40 CFR Part 280 Subpart H which establishes financial responsibilities for owners and operators of regulated underground storage tank systems. This administrative regulation allows owners and operators of regulated underground storage tank systems additional options to meet the financial responsibility requirements.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. 40 CFR Part 280 establishes general underground storage tank system standards applicable to facilities across the United States. The federal requirements are general in nature and they defer to the state regulatory agencies to establish detailed, state-specific standards. This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum in compliance with KRS 224.60-137. This administrative regulation proposes to

include revisions to federal language of 40 CFR Part 280 Subpart H which establishes financial responsibilities for owners and operators of regulated underground storage tank systems. This administrative regulation allows owners and operators of regulated underground storage tank systems additional options to meet the financial responsibility requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the cabinet to establish minimum standards for underground storage tanks to protect the public health and the environment. KRS 224.60-137 requires that the cabinet establish standards based on a corrective action study conducted for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet justifies deviation from the standards recommended in the study. Additionally, the federal program looks to the states to establish program details consistent with the state's needs and certain broad, federal criteria. This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and cleanup levels for petroleum in compliance with KRS 224.60-137. This administrative regulation proposes to include revisions to federal language of 40 CFR Part 280 Subpart H which establishes financial responsibilities for owners and operators of regulated underground storage tank systems. This administrative regulation allows owners and operators of regulated underground storage tank systems additional options to meet the financial responsibility requirements.

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 any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. This administrative regulation proposes to include revisions to federal language of 40 CFR Part 280 Subpart H which establishes financial responsibilities for owners and operators of regulated underground storage tank systems. The agencies referenced in item 2 of this fiscal note will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): This administrative regulation will not increase or decrease state, county, or local expenditures.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (Amendment)

401 KAR 42:200. Underground storage tank system owner registration fees.

RELATES TO: KRS 224.10, 224.60

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-100, 224.60-105

NECESSITY AND FUNCTION: KRS 224.60-150 [1990 Kentucky Acts Chapter 370 Section 10] states that the cabinet shall levy and collect an annual fee [in the amount] of thirty (30) dollars per underground storage tank (UST) system [tank] from owners or operators of UST systems [underground storage tanks] containing regulated substances for the purpose of funding the administration of the Underground Storage Tank Branch of the Division of Waste Management [section]. This administrative regulation establishes provisions for the payment of an annual [tank] registration fee.

Section 1. Applicability. This administrative regulation shall apply to all owners and ~~or~~ operators of UST systems [underground storage tanks] used to store regulated substances ~~[as defined in 401 KAR 42:011].~~

Section 2. New Notifications. (1) The current owner of a UST system shall notify the cabinet of the existence of the UST system by completing a Notification of Underground Storage Tank System Form (DEP Form 5024) in accordance with 401 KAR 42:020. This form (incorporated by reference in 401 KAR 42:020) shall be submitted to the Division of Waste Management, Underground Storage Tank Branch, 14 Reilly Road, Frankfort, Kentucky 40601 no later than thirty (30) days after installation of the UST system. Upon acceptance of the completed form, the cabinet shall assign a facility identification number and shall notify the owner, in writing, of the identification number.

(2) A fee of thirty (30) dollars per UST system, payable to the Kentucky State Treasurer, shall be submitted to the Underground Storage Tank Branch along with the initial Notification of Underground Storage Tank System Form.

Section 3. Amended Notifications. (1) The owner or operator shall submit an amended Notification of Underground Storage Tank System Form, that specifically indicates all amendments, within thirty (30) days of any change to the following items:

- (a) Ownership of the UST system;
- (b) Description of the UST System; or
- (c) Financial responsibility.

(2) If amending the Notification of Underground Storage Tank System Form for an existing UST system, no fee shall be required.

(3) If amending the Notification of Underground Storage Tank System Form to include one (1) or more additional UST systems, the amended form shall be accompanied by payment of any annual registration fees that may be due. Fees due shall be calculated at a rate of thirty (30) dollars for each additional UST system for each year (July 1 through June 30) the UST system was in the ground. The fee for any year (July 1 through June 30) shall be due if the UST system was in the ground on July 1 of that year. Fees shall not be due for years prior to the one (1) beginning July 1, 1990.

(4) If an unregistered UST system is discovered during permanent closure activities, an amended Notification of Underground Storage Tank System Form shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management to register the newly discovered UST system. A one (1) time registration fee of thirty (30) dollars shall be submitted for each discovered UST system within

thirty (30) days after discovery. Registration fees for previous years are not required.

~~[Section 2. Registration Schedule. (1) Owners or operators of underground storage tanks used to store regulated substances shall submit an initial registration on a schedule determined by the cabinet. Subsequent annual registrations shall be submitted to the cabinet at least thirty (30) days before the expiration date shown on the registration. The registration shall include:~~

- ~~(a) Name of tank owner or operator;~~
- ~~(b) Address of tank owner;~~
- ~~(c) Site name and location of tanks;~~
- ~~(d) Facility identification number assigned by the cabinet upon notification of underground storage tank required by KRS 224.60-105;~~
- ~~(e) Number of tanks currently in use at the facility; and~~
- ~~(f) Contact person and phone number.~~
- ~~(2) A fee of thirty (30) dollars per tank shall be submitted with the registration and made payable to the Kentucky State Treasurer.~~
- ~~(3) An owner or operator who has not received a facility identification number may obtain one by registering with the cabinet according to KRS 224.60-105. Upon submittal of registration, the cabinet shall assign a facility identification number to the owner or operator.~~

Section 3. Modification of Registration. (1) If an owner or operator desires to modify a facility by installing new tanks, he shall submit a modification to the registration. A thirty (30) dollar per tank fee shall be submitted with the modification for each new tank.

(2) No fee is charged if an owner or operator submits a request for modification for other information.]

Section 4. Changes of Ownership. (1) If ownership of a UST system changes, the new owner shall complete and submit an amended Notification of Underground Storage Tank System Form to indicate the new ownership. The form shall include the previously assigned facility identification number and shall be submitted to the Underground Storage Tank Branch within thirty (30) days after the transaction.

(2) If an owner sells a UST system, the seller shall advise the new owner of the obligation to submit an amended Notification of Underground Storage Tank System Form to the Underground Storage Tank Branch that indicates the change in ownership. Also, the seller shall submit, to the Underground Storage Tank Branch within thirty (30) days after the transaction, a copy of the properly executed deed or other mutually executed legal document supporting the sale of the UST system, along with a letter indicating the facility name as registered with the cabinet, the facility location, and the facility identification number.

(3) Any unpaid registration fees shall be the responsibility of the new owner.

Section 5. Annual Registration Fee and Certificate of Notification.

(1) The owner or operator shall pay a thirty (30) dollar annual registration fee for each UST system that is in the ground on July 1 of a year (July 1 through June 30). This fee shall not be required for UST systems that have been permanently closed in accordance with 401 KAR 42:070 or 401 KAR 42:071. Payment shall be submitted to the Underground Storage Tank Branch of the Division of Waste Management (payable to the Kentucky State Treasurer) within thirty (30) days after receipt of an invoice from the cabinet specifying the required payment.

(2) Annual registration fees submitted beginning with the July 1, 1993 year will be acknowledged with a Certificate of Notification (DEP Form 6052). The certificate shall be posted in a conspicuous location at the facility, and it shall expire one (1) year from the date of issuance.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 31, 1995, at 7 p.m. eastern time in the State Board Room on the first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 26, 1995. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 26, 1995 and arrangements for payment of the transcript costs are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on August 31, 1995. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for electronic comments is any version of WordPerfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should WordPerfect or 3.5 inch diskettes not be available. 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 the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation affects owners and operators of service stations and other facilities with underground storage tank (UST) systems. Currently, there are approximately 39,000 registered UST systems in Kentucky and many more UST systems exist that are not registered. This administrative regulation establishes requirements and time frames for submittal of registration and annual fees for owners and operators of regulated underground storage tank systems. This administrative regulation does not establish new requirements, but clarifies existing requirements.

2. Direct and indirect costs or savings on 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: No public comments were received concerning the effect on the cost of living or employment that this administrative regulation may impose.

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 concerning the costs of doing business that this administrative regulation may impose.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were

received concerning the compliance, reporting, and paperwork requirements that this administrative regulation may impose. KRS 224.60-150 requires the cabinet to levy and collect annual fees from owners of underground storage tank systems containing regulated substances. This administrative regulation establishes requirements and time frames for submittal of registration and annual fees for owners and operators of regulated underground storage tank systems. This administrative regulation does not establish new requirements, but clarifies existing requirements.

2. Second and subsequent years: The compliance, reporting, and paperwork requirements instituted during the first year will continue for the second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings associated with these amendments.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: There are no costs or savings to the cabinet associated with these amendments.

2. Continuing costs or savings: There are no costs or savings to the cabinet associated with these amendments for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings to the cabinet associated with these amendments.

b. Reporting and paperwork requirements: There will be no effect on the reporting and paperwork requirements on the cabinet as a result of these amendments.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation does not distinguish between UST systems owned by private entities and those owned by the government. Therefore, all levels of government - state, county, and local - will be required to comply with this administrative regulation if they own UST systems. For a discussion of the impact on these entities, see items (1) and (2) of this Regulatory Impact Analysis.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for implementation and enforcement of this administrative regulation is the Underground Storage Tank Grant. This grant is funded 75% from the federal government and 25% from UST owner fees. There are no general fund moneys used to implement and enforce this administrative regulation.

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 administrative regulation will be implemented: This administrative regulation will be implemented state-wide. Therefore, please refer to item "b" below.

b. Kentucky: No public comments were received concerning the economic impact that this administrative regulation may impose. KRS 224.60-150 requires the cabinet to levy and collect annual fees from owners of underground storage tank systems containing regulated substances. This administrative regulation establishes requirements and time frames for submittal of registration and annual fees for owners and operators of regulated underground storage tank systems. This administrative regulation does not establish new requirements, but clarifies existing requirements.

7. Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to promulgating this administrative regulation to institute the standards for KRS 224.60 related to time frames for submittal of registration and annual fees for UST systems.

8. Assessment of expected benefits of the administrative regulation: KRS 224.60-150 requires the cabinet to levy and collect annual fees from owners of underground storage tank systems containing regulated substances. This administrative regulation establishes requirements and time frames for submittal of registration

and annual fees for owners and operators of regulated underground storage tank systems. This administrative regulation does not establish new requirements, but clarifies existing requirements.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented state-wide. This administrative regulation establishes requirements and time frames for submittal of registration and annual fees for owners and operators of regulated underground storage tank systems. This administrative regulation does not establish new requirements, but clarifies existing requirements. This administrative regulation directly effects public health and environmental welfare to the extent that funding from annual fees is used to provide technical oversight for compliance and corrective action of UST systems.

b. State whether a detrimental effect on the environment and public health would result if not implemented: A detrimental effect on the environment and public health would result if this administrative regulation is not implemented. For an explanation see item "c" below.

c. If detrimental effect would result, explain detrimental effect: Annual fees fund 25% of the state's UST program concerning notification and technical compliance, and funds 10% of the state's UST program concerning release corrective action. Releases from UST systems can result in immediate chronic and acute health risks to both the environment and the public. Explosive hazards caused by a release and exposure to the released constituents can cause a detrimental effect on the environment and public health. To the extent that annual fees are used to fund portions of the state's UST program that provides technical oversight for compliance and corrective action of UST systems, a detrimental effect on the environment and public health may result if this administrative regulation is not implemented.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or governmental policy. KRS 224.60-150 requires the cabinet to levy and collect annual fees from owners of underground storage tank systems containing regulated substances. This administrative regulation establishes requirements and time frames for submittal of registration and annual fees for owners and operators of regulated underground storage tank systems. This administrative regulation does not establish new requirements, but clarifies existing requirements.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: This administrative regulation does not establish new requirements, but clarifies existing requirements.

12. TIERING: Is tiering applied? Tiering was applied. As required by state and federal law, only owners and operators of underground storage tank systems regulated under 401 Chapter 42 and 40 CFR Part 280 must comply with the requirements and time frames for submittal of registration and annual fees.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.06-105 also requires the cabinet to adopt a regulatory program that implements federal regulatory requirements for underground

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storage tanks. KRS 224.60-150 requires the cabinet to levy and collect annual fees from owners of underground storage tank systems containing regulated substances.

2. State compliance standards: This administrative regulation proposes to establish requirements and time frames for submittal of registration and annual fees for owners and operators of underground storage tank systems.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. KRS 224.60-150 requires the cabinet to levy and collect annual fees from owners of underground storage tank systems containing regulated substances. This administrative regulation proposes to clarify requirements and time frames for submittal of registration and annual fees for owners and operators of underground storage tank systems.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the cabinet to establish minimum standards for underground storage tanks to protect the public health and the environment. This administrative regulation proposes to clarify requirements and time frames for submittal of registration and annual fees for owners and operators of underground storage tank systems.

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 any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. This administrative regulation proposes to establish requirements and time frames for submittal of registration and annual fees. The agencies referenced in item 2 of this fiscal note will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): This administrative regulation clarifies existing requirements and will not increase or decrease state, county, or local expenditures.

Other Explanation: None

JUSTICE CABINET Department of Corrections (Amendment)

501 KAR 2:020. Definitions.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: To provide adequate information and guidance on the housing of Class D felons in county jails.

Section 1. Definitions. (1) "Assessment [A] classification center (A/C center)", see CPP 17.3.

(2) "Class D felon" means an inmate convicted of a Class D felony with an indeterminate sentence of five (5) years or less which is not a sexual offense enumerated in KRS 197.410(1) and who was sentenced after July 13, 1992.

(3) "Classification branch manager", see CPP 18.6.

(4) "Community center program manager", see CPP 25.6.

(5) "Educational good time", see CPP 15.3 and CPP 20.1.

(6) "Escape", see KRS 520.010.

(7) "Forfeited good time", see CPP 25.6.

(8) "Furlough", see CPP 25.4.

(9) "Jail", see KRS 441.005(1).

(10) "Meritorious good time", see CPP 25.6.

(11) "Minimum custody", see CPP 18.5.

(12) "Medium custody", see CPP 18.5.

(13) "Statutory good time", see CPP 25.6.

(14) "Waiver" means that a county is exempt under KRS 532.100 from housing any Class D felons.

(15) "First Incarceration Shock Treatment Program (FIST)" means the boot camp program operated at Roederer Correctional Complex.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: July 7, 1995

FILED WITH LRC: July 7, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 24, 1995 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Susan Alley, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Susan Alley

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

JUSTICE CABINET
Department of Corrections
(Amendment)

501 KAR 2:040. Waivers.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This proposed administrative regulation is necessary to provide the process for counties to request waivers from the department for housing Class D felons in county jails.

Section 1. Request for Waivers; Effect of Waivers. (1) The waiver request shall be signed by both the county judge executive and jailer.

(2) The waiver shall remain in effect until the county notifies the department in writing to terminate the waiver.

Section 2. Controlled Intake. (1) Class D felons in these counties with waivers shall be considered controlled intake inmates and be processed through the A/C center in accordance with CPP 17.3. The department may also transfer a Class D felon directly from a county with a waiver to a county jail which houses Class D felons when space is available.

(2) A computer listing shall be maintained at [Upon transfer to] the A/C center on Class D felons convicted in counties granted waivers. Except as set forth in subsection (3) of this section as jail beds become available and within the funding limits approved by the legislature, the community center program manager shall transfer the felon to a county jail. [shall have their names placed on a waiting list for placement in another jail by the community center program

manager.]

(3) The only exceptions shall be inmates for whom the department has received orders from the sentencing court directing that the inmates [who entered into plea agreements with the courts in order to] serve their sentence in the county jail. These inmates shall serve their sentences in the county jail and [shall] be processed in accordance with [procedures outlined in] 501 KAR 2:060. [The department may also transfer a Class D felon directly from a county with a waiver to a county jail which houses Class D felons when space is available.]

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: July 7, 1995

FILED WITH LRC: July 7, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 24, 1995 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Susan Alley, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Susan Alley

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

JUSTICE CABINET
Department of Corrections
(Amendment)

501 KAR 2:050. Transfer requests.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This proposed administrative regulation is needed to provide the process for eligible counties to request transfer of Class D felons from county jails to the state prison system.

Section 1. Eligibility. Counties not requesting waivers shall be eligible to house qualified Class D felons as funded by the legislature unless the department through its minimum jail standards enforcement procedures outlined in KRS 441.075 orders a county jail to cease housing Class D felons.

Section 2. Transfer to State Prison System Upon Reaching Funding Limit. When the number of Class D felons in county jails has exceeded the number of jail beds funded by the legislature, the Department of Corrections shall begin transferring Class D inmates to the state prison system. Class D inmates shall be transferred out of jails based on each jail's proportion of Class D inmates compared to the number of Class Ds statewide. Jailers shall be consulted as to which Class D inmates may be transferred to the state prison system.

Section 3. [2-] Transfer Requests. (1) Counties not seeking waivers may request the department to have a Class D felon transferred to the state system if one (1) or more of the four (4) conditions enumerated in KRS 532.100 are present. The county jailer shall request the transfer on a "Request for Transfer" form incorporated herein by reference. The form shall be submitted to the Division of Local Facilities, which ~~who~~ shall review the form and forward it with a recommendation to the commissioner.

(2) The commissioner or his designee shall approve or deny the request.

(a) If approved, a copy of the form shall be forwarded to the Classification Branch Manager [A/C center] so that an appropriate transfer can be arranged.

(b) If the commissioner denies the request, a copy of the form shall be returned to the jailer who may follow the appeal process cited in KRS 532.100(5).

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: July 7, 1995

FILED WITH LRC: July 7, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 24, 1995 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Susan Alley, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Susan Alley

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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JUSTICE CABINET Department of Corrections (Amendment)

501 KAR 2:060. Procedures for housing of Class D felons.

RELATES TO: KRS 196.035, 197.020, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY AND FUNCTION: This proposed administrative regulation is necessary to provide procedures for the housing of Class D felons in county jails.

Section 1. Submission of Documents. In county jails housing Class D felons, the jailer shall forward to the A/C center the following documents within ten (10) working days of receipt of the judgment on all Class D felons for whom a transfer has not been requested:

- (1) Pictures with negative;
- (2) Fingerprints;
- (3) Detainers;
- (4) Incident and disciplinary reports; and
- (5) Body I.D. sheet.

Section 2. Custody Assignment. (1) The A/C center staff shall, within ten (10) working days of receipt of the presentence investigation and the judgment documents, review the inmate file and assign a custody to the Class D felon.

(2) The inmate file shall be forwarded to Offender Records Branch ~~[Section]~~, Central Office, which shall audit the file within five (5) working days of receipt.

(3) Offender records ~~[The section]~~ shall forward the file to the Director of Local Facilities who shall notify the jailer of the custody assignment.

(4) If the custody assigned is minimum or community, the Class D felon may participate in programs offered outside the jail ~~[in accordance with the following terms: community service work program]~~ under the direct supervision of an assigned individual ~~[who shall complete any training programs specified by the department]~~.

(5) If the custody assigned is restricted, medium, close, or maximum, the Class D felon shall not be eligible to participate in programs outside the secure perimeter of [released from] the jail.

(6) The jailer may request the department to review the assignment ninety (90) days from the date of the last assignment. Additional custody reviews may be completed as deemed necessary by the Classification Branch Manager.

~~Section 3. [Preparole Progress Reports. Probation and parole staff assigned to work with the county jail shall prepare parole progress reports on Class D felons as outlined in CPP 19.40.]~~

~~Section 4.] Transportation. Jail staff shall be responsible for the transportation of Class D felons except as specified in KRS 431.215 and 441.510.~~

Section 4. ~~[5.]~~ Release Procedures. (1) The release of Class D felons shall follow the procedure outlined in CPP 25.6.

(2) Jail staff shall not release a Class D felon to other counties, another state or to federal authorities without advance notice and approval of [te] the Director of Local Facilities.

(3) Jail staff shall notify the Director of Local Facilities or the A/C center of any detainers or holds lodged against the Class D felon by another jurisdiction.

~~[(4) A Class D felon shall not be released to the custody of another state or to federal authorities without approval from the Department of Corrections or the Office of the Governor.]~~

Section 5. Transfer to FIST Program. (1) Jailers shall provide inmates with information concerning the program during their

orientation at the jail.

(2) Any inmate interested in the program shall sign a volunteer form and return it to the AC center.

(3) Staff at the AC center shall review the files to determine if the inmate meets the basic eligibility criteria for the program. If the basic criteria have been met, the inmate shall be transferred to the AC center for additional tests. If the inmate does not meet physical and psychological requirements, he shall be returned to the jail of origin.

Section 6. Furlough Program. (1) The authority and responsibility of monitoring and granting furloughs shall be the responsibility of the community center program manager.

(2) Eligibility for furloughs shall be determined as follows [pursuant to KRS 197.140 and the following]:

(a) Furloughs of Class D felons shall be a privilege, not a right.

(b) Class D felons who are minimum custody shall be eligible to be considered for a forty-eight (48) hour furlough each quarter not to exceed eight (8) furlough days each calendar year. There shall be a minimum of sixty (60) days between furloughs.

(c) Class D felons who are community custody shall be eligible to be considered for a forty-eight (48) hour furlough every thirty (30) days after their initial furlough.

(d) All Class D felons shall have spent at least sixty (60) days in the county jail since the date of the custody assignment prior to being considered for a furlough.

(e) Class D felons on whom a felony detainer has been received shall not be eligible for a furlough.

(f) Class D felons receiving more than a one (1) month deferment at a Parole Board hearing shall wait an additional thirty (30) days from the date of the deferment before being eligible for a furlough.

(g) Inmates and their families shall show evidence of an ability and willingness to pay all expenses while on furlough.

(h) Inmates shall indicate their destination and means of transportation on their application.

(i) Overnight furloughs shall be allowed to verified family members only.

(j) Any requested exceptions shall have the community center program manager's approval ~~[and shall be presented with specific written justification]~~. Applications shall follow procedures outlined in CPP 25.6.

Section 7. Escape. Escape procedures to be followed are cited in CPP 25.6.

Section 8. Medical Needs. The department shall pay jails a set per diem not less than one (1) dollar and seventy-five (75) cents to cover routine medical expenses except those incurred as a result of an admission to a hospital with at least one (1) night stay or those resulting from outpatient surgery in which a general anesthesia is used. [Medical needs of Class D felons shall follow the procedures cited in CPP 25.6.]

Section 9. Inmate Pay. Inmates on work assignments shall be paid in accordance with CPP 19.3. [Work Projects. Utilization of Class D felons for work projects shall follow the procedures cited in CPP 25.6.]

Section 10. Good Time. Statutory and meritorious good time shall follow procedures outlined in CPP 25.6.

~~[Section 11. Monthly Reports. Monthly reports shall follow procedures outlined in CPP 25.6.]~~

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: July 7, 1995

FILED WITH LRC: July 7, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regula-

ADMINISTRATIVE REGISTER - 344

tion has been scheduled for August 24, 1995 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Susan Alley, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Susan Alley

(1) Type and number of entities affected: 44 jails which house Class D inmates and 1300 Class D inmates in those jails.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

DEPARTMENT OF CORRECTIONS (Amendment)

501 KAR 6:080. Department of Corrections Manuals.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards 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 are incorporated by reference on July 14, 1995 ~~June 14, 1994~~ and hereinafter shall be referred to as Department of Corrections Manuals. 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 week-days from 8 a.m. to 4:30 p.m.

Offender Records Manual - None

Stock Procedure Manual - None

Food Services Manual - None

Classification Manual - (Amended 7/14/95) ~~(Amended 6/14/94)~~

Diet Manual - None

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 24, 1995, at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Susan Alley, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Susan Alley

(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and visitors to all state correctional institutions.

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

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the administrative regulations are included in the operational budget.

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

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

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

(4) Assessment of alternative methods; reasons why alternatives

were rejected: None

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(6) Any additional information or comments: None

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. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Department of Fiscal Management
(Amendment)

601 KAR 9:074. Kentucky highway use license, records and taxes.

RELATES TO: KRS 138.655 to 138.725

STATUTORY AUTHORITY: KRS 138.725

NECESSITY AND FUNCTION: KRS 138.725 makes the Department of Vehicle Regulation responsible for the application of the Kentucky motor carrier taxes covered by KRS 138.655 to 138.725. This administrative regulation provides procedures for licensees to follow in order to comply with the statutes.

Section 1. Definitions. (1) "Registration" means the registration of each of the vehicles operated by the licensee for the purpose of a tax imposed by KRS 138.660. Proof of this registration is the motor vehicle identification card issued by the Department of Vehicle Regulation and carried in the cab of the vehicle.

(2) "Current registration period" means the quarterly period for which the tax under KRS 138.660 is due or required to be reported on the quarterly tax return.

(3) ~~"Combined license weight" means the declared combined maximum gross weight of the vehicle and any towed unit for registration purposes for the current registration period, or the highest actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration period.~~

~~(4) "Declared gross weight" means the combined license weight.~~

~~(4) "Department" means the Department of Vehicle Regulation.~~

(5) "Gross weight" means the unladen weight of the vehicle and any towed unit plus the maximum load to be carried by it on the highways of the Commonwealth of Kentucky.

Section 2. Application for Kentucky Highway Use License. (1) Every motor carrier as defined in KRS 138.655(5) shall apply for and obtain a license from the department before using or continuing to use the public highways in the state. The application shall be on form TC 95-200, "Application for Kentucky Highway Use License" last revised in September, 1993. The form is incorporated by reference as a part of this administrative regulation. [Forms prescribed and furnished by the Department of Vehicle Regulation.]

(2) The department shall issue a Kentucky Highway Use (KYU) license number to each qualified motor carrier, ~~[and the department shall cause this license number to be displayed on each motor vehicle identification card issued by it.]~~

~~(2) An applicant who only wants to transport exempt commodities~~

~~(see 601 KAR 1:090 and KRS 281.625) or who only wants to operate in Kentucky in intrastate commerce shall apply on form TC 95-14, "Application for Irregular Route Truck Certificate" last revised in September, 1988. This form is hereby incorporated by reference.~~

~~(3) An applicant for registration of operating authority who operates in interstate commerce or who is exempt from the Interstate Commerce Commission regulations shall apply on form TC 95-12, "FORM A, Uniform Application for Registration of Operating Authority Issued by ICC or Those Carriers Exempt From ICC Regulations" last revised in October, 1985. This form is hereby incorporated by reference.~~

~~(4) An applicant for registration who operates exclusively as a private carrier transporting his own commodities shall apply on form TC 95-200, "Application for Kentucky Highway Use License" last revised in August, 1988. This form is hereby incorporated by reference.]~~

(3) The form ~~[(5) All of the forms]~~ incorporated by reference as part of this section may be viewed, copied, or obtained from the Division of Motor Carriers free of charge. The Division of Motor Carriers is on the third floor of the State Office Building in Frankfort, Kentucky. Its mailing address is P.O. Box 2007, Frankfort, Kentucky 40602. Its telephone number is (502) 564-4540. Its business hours are 8 a.m. to 4:30 p.m. local prevailing time on all weekdays except state holidays.

Section 3. Bonds-cash Deposit. (1)(a) Every motor carrier and heavy equipment motor carrier, pursuant to the provisions of KRS 138.655 to 138.725 shall file with the department at the time of application for a license a corporate bond, cash bond, or security approved by the department.

(b) The applicant for the license shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee.

(c) The bond shall be conditioned as required in KRS 138.670, and the department shall administer the bond as provided in KRS 138.670.

(2) Proof of the highway use bond may be filed on form TC 95-201, "Kentucky Highway Use Bond" last revised in March, 1985. This form is hereby incorporated by reference.

(3) The form incorporated by reference as part of this section may be viewed, copied, or obtained from the Division of Motor Carriers free of charge. The Division of Motor Carriers is on the third floor of the State Office Building in Frankfort, Kentucky. Its mailing address is P.O. Box 2007, Frankfort, Kentucky 40602. The telephone number is (502) 564-4540. Its business hours are 8 a.m. to 4:30 p.m. local prevailing time on all weekdays except state holidays.

Section 4. Registration for Highway Use Tax. (1) Proof of licensing pursuant to Section 2 of this administrative regulation ~~[registration]~~ shall be required of all motor carriers as defined in KRS 138.655(5) prior to operating a motor vehicle on the public highways of Kentucky.

(2) The applicant for the license in Section 2 of this administrative regulation shall apply to the department for a motor vehicle identification card pursuant to the provisions of ~~The application shall meet the requirements established in~~ 601 KAR 9:040, ~~[and shall be on form TC 95-38, "Application for Kentucky Vehicle Identification Card for Year _____" last revised in April, 1989. This form is hereby incorporated by reference.]~~

~~(2) A motor vehicle identification card, which is issued by the department, shall contain the name and address of the person or company under whose authority the vehicle is being operated, the identification of the vehicle, and other information as may be requested, including, but without limitation, the KYU license number issued to the applicant for the use of the public highways of Kentucky. The identification card shall show the vehicle combined license weight or the actual combined gross weight of the vehicle and any towed unit when operated on the public highways of the state during the current~~

registration period.

(3) ~~The motor vehicle identification card shall be displayed in the cab of the vehicle at all times. Failure to display the identification card shall constitute a violation of KRS 138.665.~~

(4) ~~The form incorporated by reference as part of this section may be viewed or obtained from the Division of Motor Carriers free of charge. The Division of Motor Carriers is on the third floor of the State Office Building in Frankfort, Kentucky. Its mailing address is P.O. Box 2007, Frankfort, Kentucky 40602. The telephone number is (502) 564-4540. Its business hours are 8 a.m. to 4:30 p.m. local prevailing time on all weekdays except state holidays.~~

Section 5. Communications, Business Names and License Address. (1) All licensees shall immediately report any change in principal business address, legal status or business name to the department.

(2) All motor carrier operations shall be conducted in the name in which the license is ~~and the motor vehicle identification cards are~~ issued or the duly assumed business name of the licensee, as it appears on the license.

(3) All licensees ~~shall [are required to]~~ use the name utilized in the application for the license in all documents relating to their operations and in all correspondence with the department.

(4) All correspondence with the department shall be addressed as follows: Kentucky Department of Vehicle Regulation, Division of Motor Carriers, Post Office Box 2007, Frankfort, Kentucky 40602.

Section 6. Instruments Filed Become Permanent Records. All bonds filed with the department as required by statute are permanent records and cannot be returned to licensee or removed from the custody of the department as long as the licensee is subject to the Kentucky Statutes.

Section 7. Kentucky Highway Use License for Leased Vehicles.

(1)(a) Any person leasing or renting a commercial motor vehicle to a lessee who is engaged in for-hire or private carriage, where the operator of the ~~[such]~~ vehicle is required to have a Kentucky Highway Use License may obtain the license by making application to the department and complying with the appropriate administrative regulations.

(b) Any lessor with a Kentucky Highway Use License may entitle the lessee to operate the leased or rented vehicle under the lessor's license.

(2)(a) If the lessor allows the lessee to operate under the lessor's license the lease shall be carried in the vehicle ~~and the required motor vehicle identification card shall be in the lessor's name~~ and the lessor shall make the required quarterly reports and pay all taxes which may become due by virtue of the operation of the motor vehicle.

(b) A lessor of motor vehicle equipment who makes an application for a license under this section shall furnish the department a copy of the standard lease or rental agreement as well as the address of the place of business where the lessor's records are maintained.

(c) A current list of all lessees who lease equipment from the lessor and who will use the lessor's Kentucky Highway Use License shall be filed with the department. This list shall contain the following:

1. Name of the lessee;
2. The lessee's address; and
3. The number of vehicles leased to each lessee ~~and other pertinent information which the department may require~~.

(d) The list required by this section shall be updated and kept current ~~[on a semiannual basis by the lessor]~~.

(2) ~~A carrier or motor carrier as defined in KRS 281.011 leasing a motor vehicle shall be required to obtain the Kentucky Highway Use License and the lessee shall be responsible to make the required quarterly reports and to pay any tax which may become due.~~

Section 8. Authorized Deductions on Quarterly Returns. (1) Every person licensed as a motor carrier may deduct on his quarterly tax return the amount of tax paid on fuel at the time of purchase, provided;

(a) The purchase is made in Kentucky; ~~and~~

(b) The Kentucky motor fuel tax has been paid; and

(c) ~~[provided]~~ The fuel is used to propel a motor vehicle subject to the provisions of KRS 138.660.

(2) The tax credits, and tax refunds, authorized by KRS 138.695 to be granted to a taxpayer for all mileage and fuel taxes imposed under KRS 138.655 through 138.725 shall not exceed in amount the actual amount of the subject taxes paid by the taxpayer, exclusive of any applicable interest thereon due the taxpayer by operation of law.

(3) A valid receipt meeting the following criteria shall be obtained as evidence of purchase from the person making the sale or delivery.

~~[(1) A valid receipt shall meet the following criteria:]~~

(a) The purchase receipt shall be the original prepared by a station or vendor located in the Commonwealth of Kentucky and shall have an imprinted Kentucky address. Receipts that have an imprinted Kentucky address, but include other station locations outside of Kentucky shall be [are] invalid.

(b) The following shall be included on the receipt:

1. Name and station location of the vendor;
2. Date of purchase;
3. Number of gallons purchased;
4. Type of fuel purchased;
5. Company unit number of vehicle or registration number of unit;

and

6. Licensee's name.

(c) The name and address of the vendor shall be preprinted or imprinted, which includes, but is not restricted to, credit card machines. Station receipts that are identified only by impressed rubber stamp markers or handwritten shall [are] not be valid.

(2) Other documents such as computer records, ledgers, and journals may be accepted as evidence of valid fuel purchase receipts, if ~~the [such]~~ records contain the same information as required in subsection (1) of this section, provided the [such] records meet acceptable auditing tests.

(3) Bulk or storage purchasers of fuel shall maintain a withdrawal or disbursement record when the [such] fuel is used in taxable highway or road units. This record shall be kept on all units fueling from this tank showing the unit fueled, gallons withdrawn, and the date of withdrawal. Tax on bulk purchases shall be paid at the time of purchase in accordance with KRS 138.220 and 234.320. If a motor carrier uses tax free bulk storage fuel to fuel taxable units (highway units), tax shall [will] be levied on total fuel purchased for bulk storage.

(a) Any use of fuel from a tax-free storage tank without adequate records to prove no on-highway use of the fuel shall be taxable. Approved location of tax-free storage shall be issued by the Revenue Cabinet before tax-free fuel is purchased.

(b) Credit for fuel purchase receipts other than for the taxable units shall not be allowed.

(4) In instances where fuel is purchased by trip-leased units and the lessee is responsible for the Kentucky highway tax, all receipts shall be made in the name of the lessee. Receipts made out in the name other than the person or company responsible for the fuel tax shall be invalid.

(5) The operators of certain motor vehicles including, but not limited to, mixers, pumps, load lifts, refrigeration equipment, that utilize power takeoff equipment and similar devices which involve consumption of fuel from the same tanks that are permanently attached to and are part of the power unit and serve to power the operation of the motor vehicles upon the highways ~~[Operators of these types of motor vehicles utilizing such equipment]~~, may adjust the miles per gallon entry on their Kentucky highway use tax returns to reflect fuel actually consumed by the [such] power takeoff equip-

ment in operations over the highway, provided, however, that any adjustment claimed therefor shall ~~must~~ be substantiated by adequate records, and is subject to audit by the Transportation Cabinet.

Section 9. Cancellation of License. If a motor carrier fails to comply with the terms of KRS 138.655 to 138.725, or the administrative regulations promulgated pursuant to these statutes ~~these administrative regulations~~, its Kentucky Highway Use Tax License may be cancelled. Reasons for cancellation include, but are not limited to, the following:

(1) Failure to file tax return thirty (30) days after the due date. The licensee shall be mailed a second notice or reminder and be given fifteen (15) days to file the return if he has not filed his tax return within thirty (30) days after the due date. If the licensee fails to comply with the second notice, the license will be subject to cancellation.

(2) Failure to pay additional taxes assessed by the department.

(3) Failure by a licensee to produce records after written demand for them ~~[such may result in cancellation of the license and any other penalties applicable by law]~~. Each succeeding day shall constitute a separate violation until the records are produced at the place stated in the demand.

Section 10. Procedure upon Cancellation of License. (1) Upon cancellation of Kentucky Highway Use License in accordance with the provisions of KRS 138.675 and after notice to the carrier by mailing the same to the address on file in the department, the carrier shall immediately return to the department the license and all motor vehicle identification cards issued to the carrier.

(2) Failure to return the license and cards or the operation of a motor vehicle displaying a motor vehicle identification card after notice of revocation of the highway use license shown thereon, shall be a violation of KRS 138.675.

Section 11. Tax Liability and Protest Procedures. (1) The licensee shall be mailed a supplemental tax statement, if additional tax is found to be owed as the result of an audit or found as the result of an examination of licensee's tax return.

(2) The licensee shall ~~within [has]~~ forty-five (45) days ~~to~~ pay the supplemental tax or in writing protest to the department per KRS 131.110 ~~[in writing]~~ any assessment or tax liability imposed by the department.

(3) A protest shall be accompanied by a supporting statement identifying specific adjustments being protested and setting forth the reasons upon which the protest is being made.

(4) ~~(2)~~ If the licensee so desires, he may, within thirty (30) days, protest directly to the Kentucky Board of Tax Appeals.

(5) ~~(3)~~ The department shall acknowledge receipt of the protest and if protest is acceptable, a tax conference shall be set between the department and licensee within sixty (60) days of the protest.

(6) The department shall notify the licensee within thirty (30) days its decision to deny or accept the reasons of the protest.

(7) If denied, the licensee may protest to the Kentucky Board of Tax Appeals.

(8) ~~(4)~~ If the licensee ~~failed~~ ~~[faile]~~ to pay the tax statement or file a protest with the department within forty-five (45) days and did not file a protest with the Kentucky Board of Tax Appeals within thirty (30) days, a reminder shall be sent to licensee demanding payment within fifteen (15) days.

(9) If within fifteen (15) days, the taxes have not been remitted to the department, a demand shall be made against the licensee's surety bond.

(10) Any balance of unpaid taxes shall be submitted to the Transportation Cabinet's legal counsel for collection.

Section 12. Penalties. In addition to any other penalties which may be imposed under KRS 138.990 and any other applicable laws,

the licensee shall be subject to the civil penalties provided for in KRS 138.715.

Section 13. Inspection. Any motor vehicle enforcement officer or state police officer may inspect the motor vehicle identification card, license registration, driver's log, lease, trip sheet or shipping document to determine if the vehicle is qualified to operate on the highways of the Commonwealth of Kentucky. The law enforcement officer may also weigh vehicles to determine if the gross weight conforms to the licensed weight on the motor vehicle identification card.

Section 14. Records Disposition. The department shall retain the active file of KYU tax returns for at least five (5) years. An inactive KYU license shall be retained two (2) years after cancellation.

Section 15. Reinstatement of License. If the carrier desires to be reinstated after cancellation, the carrier shall:

(1) Prove to the department that sufficient records are being and will be maintained to file accurate Kentucky Highway Use Tax returns.

(2) Submit quarterly returns for all missed periods.

(3) Pay all taxes for missed returns plus penalties and interest.

(4) Provide a replacement bond if its previous bond has been cancelled.

(5) Provide evidence of insurance, operating authority, and other items required by KRS Chapter 281, if applicable to the carrier.

Section 16. Maintenance of Records. (1) Every motor carrier reporting and paying taxes under a cooperative agreement entered into pursuant to KRS 177.979 shall keep and maintain records of all coal shipments over the state maintained public highways. Each licensee shall also maintain weight tickets, bona fide third party documents or other documents to accurately verify tonnage that will reflect the true tonnage transported over ~~the [said]~~ highways and the distance that ~~the [such]~~ tonnage was transported over ~~the [such]~~ highway. The weight ticket or third party document shall include but not be limited to the following:

(a) Name and identification number of the mine owner, severer, processor, broker or shipper.

(b) Name and KYU number of person transporting coal.

(c) Transporter's assigned unit vehicle number.

(d) Points of origin and destination.

(2) Every motor carrier required to report and pay taxes under the provisions of KRS 138.660 shall keep and maintain records on each motor vehicle operated on Kentucky highways. The records shall include vehicle type, declared gross weight, actual weight, number of axles, mileage operated in Kentucky as reported on trip sheets and driver logs, fuel purchases, and use and other disposition of gasoline and special fuels.

(3) All records shall be maintained for five (5) years for audit and tax purposes.

NORRIS BECKLEY, Commissioner

GLENN MITCHELL, Commissioner

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: June 6, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 29, 1995 at 10 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by August 24, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the

administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 24, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on August 29, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All 30,000 motor carriers operating in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: There is a reduction in the number of forms which must be completed by the motor carrier industry. However, the reduction is not significant enough to result in a cost savings.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Unknown. It is possible that the removal of the individual motor carrier vehicle cab card will make it harder for the Transportation Cabinet to evaluate the activities of a particular motor carrier. If this occurs, it will be easier for the carriers which are inclined to not report all tax liability to more easily hide taxable activities.

1. First year: Unknown

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:

See (3)(a)

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The changes to this administrative regulation were necessitated by the changes to federal law regarding Single State (Insurance) Registration. The other administrative regulations affected by the change in federal law were amended last year. This one was overlooked and is just now being accomplished.

(8) Assessment of expected benefits:

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

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

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

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None at the present time. The administrative regulation will have to be amended again in early 1996 to comply with an additional federal mandate regarding the collection and auditing of motor fuel taxes.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. The recordkeeping, audit and licensing requirements should be the same for all motor carriers operating in Kentucky.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Vehicle Enforcement (Amendment)

603 KAR 5:072. Mandatory annual bus inspection.

RELATES TO: KRS 189.231, Chapter 281

STATUTORY AUTHORITY: KRS 189.231, 281.600

NECESSITY AND FUNCTION: KRS 189.231 authorizes the Secretary of Transportation to restrict or regulate traffic on state-maintained highways in such manner as is reasonably necessary to promote the safety and convenience of the traveling public. KRS 281.600 authorizes the Department of Vehicle Regulation to promulgate administrative regulations regarding safety requirements for and method of operation of motor vehicles. This administrative regulation sets forth the requirement that buses undergo a safety inspection at least once each year. It further provides notice that the annual safety inspection of buses subject to 601 KAR 1:005 shall be performed pursuant to that administrative regulation rather than this one.

Section 1. Definition. "Bus" shall mean all motor vehicles that are required to be registered under the terms of KRS 186.050 or 186.060, designed and used for carrying passengers and having provisions for more than nine (9) passengers including the driver. "Bus" shall not include motor vehicles operated by any common school system, motor vehicles operated under a city bus certificate required by KRS Chapter 281 when operating within the corporate limits of a city, and regular route bus operators operating under a certificate required by KRS Chapter 281.

Section 2. Annual Inspections. ~~[The Transportation Cabinet shall require that]~~ All buses be inspected annually by Transportation Cabinet, Department of Vehicle Regulation personnel for compliance with the minimum vehicle safety equipment standards established under Federal Motor Carrier Safety Regulations adopted by the United States Department of Transportation as 49 Code of Federal Regulations, Part 393, and adopted by Kentucky Administrative Regulation 601 KAR 1:005.

(2) The annual inspection shall be performed by the Division of Motor Vehicle Enforcement. The inspection may take place at any of Kentucky's weigh stations or arrangements may be made by contacting the Division of Motor Vehicle Enforcement at (502) 564-3276.

Section 3. Proof of Inspection. (1) When a bus passes an inspection, the Transportation Cabinet shall issue to the bus owner a decal and a document showing that the bus has passed.

(2) The decal shall be affixed to the lower right-hand corner of the front windshield of the bus.

(3) The document showing the bus has passed inspection shall be carried in the bus at all times.

(4) Any law enforcement officer can require the operator of a bus to produce the current document showing the bus has passed

inspection.

~~[Section 3. Proof of Inspection. Proof of a passed inspection shall be shown to the appropriate county clerk before first time or renewal of any bus registration.]~~

~~Section 4. Random Inspections. In addition to the mandatory annual inspection, buses are subject to the provisions of 601 KAR 1:005 including random safety inspections.]~~

Section 4. [5.] Out-of-service Sticker. (1) If a bus is determined to be out of compliance with the minimum safety requirements, employees of the Transportation Cabinet may affix to it an out-of-service sticker pursuant to the provisions of 601 KAR 1:005 ~~[notice that the bus does not comply].~~

(2) Correction of the noncompliance item shall be required before the bus is further operated.

Section 5. Exceptions. (1) Buses subject to the annual mandatory Motor Carrier Safety Inspection Program set forth in 601 KAR 1:005, Section 2(9) shall be exempt from the requirements of this administrative regulation.

(2) Buses subject to any of the provisions of 601 KAR 1:005 shall continue to be governed by that administrative regulation.

NORRIS BECKLEY, Commissioner

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: June 13, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 29, 1995 at 1:30 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by August 24, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you have a disability for which the Transportation Cabinet needs to make an accommodation, notify Sandra G. Pullen by August 24, 1995. The request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on August 29, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, Room 1003, State Office Building, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: The operators of all buses in the Commonwealth of Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: Since the federal govern-

ment has implemented an inspection program for the larger buses, they will no longer be required to undergo this mandatory annual inspection. With the Transportation Cabinet amending the administrative regulation to make it applicable only to the buses not covered by 601 KAR 1:005 and its associated federal regulations, the owners of the larger buses will not be required to undergo 2 annual inspections. Only one will be necessary, as has been the case since the 1980's. However, the smaller bus owners will be required to take the bus to a weigh station for the inspection, the county highway garages no longer have sufficient personnel available to perform a comprehensive safety inspection.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body: As with the effect on the bus owners, the Transportation Cabinet will continue to only perform one annual inspection per bus. Without this amendment, the larger buses would be required to undergo two annual inspections.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal Motor Carrier Safety Grant Program funds and road funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The idea of not amending this administrative regulation at all was rejected since to leave it alone would require the owners of larger buses to undergo 2 annual inspections. The idea of repealing the administrative regulation outright was rejected because then the smaller buses would have not been subject to any inspections. During the life of the bus inspection program, as many problems have been discovered with the smaller buses as with the larger. The Transportation Cabinet believes that they should all continue to be inspected.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Yes, the administrative regulation is tiered by only being applicable to a small group of buses.

TRANSPORTATION CABINET
Department of Highways
Department of Vehicle Regulation
Division of Operations
Division of Motor Carriers
(Amendment)

603 KAR 5:110. Permits for moving overdimensional manufactured homes and boats ~~[house-trailers]~~.

RELATES TO: KRS 189.270

STATUTORY AUTHORITY: KRS 189.270

NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue permits for the movement of manufactured homes and boats ~~[house-trailers]~~ exceeding legal dimensions but which do not exceed sixteen (16) feet in width. This administrative regulation establishes for manufactured homes and boats ~~[house-trailers]~~ the permit application procedures within the Transportation Cabinet and establishes movement requirements necessary in the interest of highway safety and convenience.

Section 1. Definitions. (1) "Boat" means a vehicle used for movement on the water and the trailer on which it is placed for transporting the vehicle on the highway.

(2) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it does not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(3) ~~[(2)]~~ "Fully-controlled limited access highway" means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets and which shall not have an at-grade highway crossing or intersection.

(4) "Manufactured home" ~~[(3) "House-trailer"]~~ means a mobile home or house trailer ~~[manufactured home]~~ but does not mean a modular home.

(5) ~~[(4)]~~ "National holiday" means the following:

- (a) New Year's Day;
- (b) Memorial Day (as observed on the last Monday in May);
- (c) Independence Day;
- (d) Labor Day;
- (e) Thanksgiving Day; and
- (f) Christmas Day.

(6) ~~[(5)]~~ "Overdimensional" means that the towing motor vehicle combined with the manufactured home or boat ~~[house-trailer]~~ exceeds the dimension limits set forth in 603 KAR 5:070.

Section 2. Permit Application. (1) Application for a permit to move an overdimensional manufactured home or boat ~~[house-trailer]~~ on a Kentucky state-maintained highway shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622.

(2) A single trip permit application or request shall specify the following:

- (a) The year and make of the towing vehicle;
- (b) The towing vehicle's license plate number;
- (c) The maximum weight for which the vehicle is registered;
- (d) The state of registration of the vehicle;
- (e) Name and address of the owner;
- (f) The dates of travel;
- (g) The serial number of the manufactured home or hull identification number of the boat ~~[house-trailer]~~; and
- (h) The specific routes of travel requested.

(3) If the towing vehicle for which a single trip permit is being applied is registered in a state other than Kentucky, the vehicle shall be either:

- (a) Apportioned registered to operate in Kentucky; or

(b) In compliance with KRS 281.752.

(4) An annual permit application or request shall in writing specify the following information relating to the motor vehicle:

- (a) Year and make;
- (b) Vehicle identification number;
- (c) License plate number;
- (d) The maximum weight for which it is registered;
- (e) The state of apportioned registration, if not registered in Kentucky;

(f) Name and address of the motor carrier operating or the owner of the towing vehicle; and

(g) Whether the motor carrier operating the towing vehicle is a for-hire or private carrier.

(5) If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.

(6) The application for an annual permit shall contain a certification by the applicant that he is aware of the safety requirements in the movement of overdimensional manufactured homes or boats ~~[house-trailers]~~ and shall at all times comply with them.

Section 3. Permit Required. Until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:

(1) A manufactured home or boat ~~[house-trailer]~~ of a width greater than eight and one-half (8 1/2) feet shall not be towed on any highway listed in 603 KAR 5:070, Section 5 ~~[3]~~(1);

(2) A manufactured home or boat ~~[house-trailer]~~ with a width greater than eight (8) feet shall not be towed on any state-maintained highway not listed in 603 KAR 5:070, Section 5 ~~[3]~~(1); and

(3) A manufactured home ~~[house-trailer]~~ with a combined length of manufactured home ~~[house-trailer]~~ and towing vehicle greater than sixty-five (65) feet shall be towed upon any Kentucky highway.

(4) A boat with a combined length of boat, boat trailer, and towing vehicle greater than sixty-five (65) feet shall not be towed upon any Kentucky highway.

Section 4. Annual Permits. (1) A permit shall not be issued for the movement of a manufactured home or boat ~~[house-trailer]~~ in excess of sixteen (16) feet in width inclusive of the usual and ordinary overhang. Mirrors on the towing vehicle shall not be considered in making the determination of width.

(2) Prior to a movement of a manufactured home or boat ~~[house-trailer]~~ under the provisions of an annual permit, the permit holder shall scout and evaluate the entire route proposed to be used for the movement of the overdimensional manufactured home or boat ~~[house-trailer]~~. The evaluation shall include, but not be limited to, the following:

- (a) Highway width;
- (b) Shoulder width and surface type;
- (c) Bridge width;
- (d) Curves;
- (e) Turns to be negotiated;
- (f) Construction zones;
- (g) Obstructions;
- (h) Access control;
- (i) Traffic volume; and
- (j) Other routes available which might be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overdimensional manufactured home or boat ~~[house-trailer]~~, and if there would be any place on the proposed route which would be too narrow, have curves or turns too sharp or have other obstacles which would prevent the route from safely accommodating the move of the manufactured home or boat ~~[house-trailer]~~. The route selected by the permit holder

shall be the safest available.

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overdimensional manufactured home or boat ~~[house-trailer]~~, the permit holder shall either:

- (a) Select a different route; or
- (b) Contact the appropriate highway district office for clearance to move that manufactured home or boat ~~[house-trailer]~~ over that specific route.

(5) If the highway district office does not issue clearance for the use of a route whose adequacy is in doubt, that route shall not be used.

(6) An annual permit shall not be issued or used for the movement of a manufactured home or boat ~~[house-trailer]~~:

- (a) If the length of the manufactured home or boat ~~[house-trailer]~~ exceeds eighty (80) feet in length; or
- (b) If the height of the combination manufactured home or boat ~~[house-trailer]~~ and towing vehicle exceeds thirteen and one-half (13.5) feet.

(7) Acceptance and use of the annual permit is the permit holder's acceptance of the liability associated with the move of the overdimensional manufactured home or boat ~~[house-trailer]~~.

Section 5. Single Trip Permits. (1) A single trip permit shall not be valid for more than ten (10) days.

(2) A single trip permit shall not be issued for any manufactured home or boat ~~[house-trailer]~~ which exceeds eighty (80) feet in length or sixteen (16) feet in width inclusive of the usual and ordinary overhang. Mirrors on the towing vehicle shall not be considered in making the determination of width.

(3) A single trip permit shall specify the highways to be used in the movement of the manufactured home or boat ~~[house-trailer]~~.

Section 6. Permit Costs. (1) The overdimensional permit fees for the movement of a manufactured home or boat ~~[house-trailer]~~ as set forth in KRS 189.270, shall apply to the towing vehicle; and

(2) The cost shall not be prorated.

Section 7. Escort Vehicles. (1) When traveling under the provisions of either a single trip or annual permit, the permit holder shall provide escort vehicles as follows:

(a) On a highway of four (4) or more lanes:

1. If the manufactured home or boat ~~[house-trailer]~~ exceeds twelve (12) feet in width and is fourteen (14) feet or less in width, he shall provide one (1) rear escort vehicle; or

2. If the manufactured home or boat ~~[house-trailer]~~ exceeds fourteen (14) feet in width, he shall provide one (1) front and one (1) rear escort vehicles.

(b) No more than one (1) mile after exiting a highway of four (4) or more lanes or on a highway of less than four (4) lanes:

1. If the manufactured home or boat ~~[house-trailer]~~ exceeds ten and one-half (10.5) feet in width and is twelve (12) feet or less in width, he shall provide one (1) front escort vehicle; or

2. If the manufactured home or boat ~~[house-trailer]~~ exceeds twelve (12) feet in width, he shall provide one (1) rear and one (1) front escort vehicles.

(2)(a) On open highways escort vehicles shall be spaced approximately 300 feet from the towing vehicle and manufactured home or boat ~~[house-trailer]~~, except as provided in Section 8 of this administrative regulation.

(b) In cities or congested areas this distance shall be shortened to protect other traffic.

(3) An escort vehicle's headlamps shall be lit at all times.

(4) The towing unit shall maintain radio contact with each required escort vehicle.

(5) Each required escort vehicle shall display one (1) of the following:

(a) An amber strobe or flashing light mounted on the roof of the

escort vehicle; or

(b) A warning sign which:

- 1. Is clearly legible;
- 2. States "OVERSIZE LOAD" or "WIDE LOAD" in black letters on a yellow background; and
- 3. Is placed:
 - a. On the front of a front escort;
 - b. On the rear of a rear escort; or
 - c. The top of the escort vehicle so that it is visible from both the front and rear.

Section 8. Traffic Control. (1) If a manufactured home or boat ~~[house-trailer]~~ while crossing a bridge would encroach on any other lane of traffic:

(a) All approaching traffic shall be stopped; and

(b) All trailing traffic shall be prevented from attempting to pass the manufactured home or boat ~~[house-trailer]~~ until the manufactured home or boat ~~[house-trailer]~~ has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

(2) An overdimensional manufactured home or boat ~~[house-trailer]~~ shall slow the movement of other traffic as little as possible. If traffic backs up either behind or in front of the manufactured home or boat ~~[house-trailer]~~ being moved, the escort vehicles and manufactured home or boat ~~[house-trailer]~~ shall exit the highway wherever there is sufficient space to do so.

Section 9. Flags, Lights and Signs. (1)(a) Red or orange fluorescent flags at least eighteen (18) inches square shall be displayed on both sides of the towing vehicle or manufactured home or boat ~~[house-trailer]~~ at the widest extremity and two (2) more at the extreme rear of the manufactured home or boat ~~[house-trailer]~~ to indicate maximum width.

(b) The flags shall be securely fastened to the manufactured home or boat ~~[house-trailer]~~ by at least one (1) corner or securely mounted on a staff.

(2)(a) Amber flashing lights may be used on both the escort and towing vehicles if the manufactured home's or boat's ~~[house-trailer's]~~ width does not exceed twelve (12) feet.

(b) If the manufactured home or boat ~~[house-trailer]~~ exceeds twelve (12) feet in width, all escort vehicles and the towing vehicle shall have an amber flashing light on the roof.

(3) The manufactured home or boat ~~[house-trailer]~~ shall be equipped with four (4) amber flashing lights.

(a) One (1) shall be located on each outermost front and each outermost rear corner of the manufactured home or boat ~~[house-trailer]~~ spaced not less than six (6) feet above the roadway.

(b) The permit holder may locate the two (2) front amber flashing lights on the truck mirrors rather than the front outermost corners of the manufactured home or boat ~~[house-trailer]~~ if the mirrors extend out as far as the outermost front corners of the manufactured home or boat ~~[house-trailer]~~.

(4) Each overdimensional manufactured home or boat ~~[house-trailer]~~ and towing vehicles shall be marked and lighted in accordance with those requirements set forth in 601 KAR 1:005. All running lights shall be on while the unit is in motion.

(5)(a) Oversize load signs shall be placed on the front of the towing vehicle and the rear of the manufactured home or boat ~~[house-trailer]~~ any time it is operating on a highway.

(b) Each warning sign:

1. Shall state in black letters on a yellow background, "OVERSIZE LOAD" or "WIDE LOAD"; and

2. Shall be at least seven (7) feet long and eighteen (18) inches high with a brush stroke of at least one and four-tenths (1.4) inches.

Section 10. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the annual permit to another towing vehicle may be obtained from the

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Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer per annual permit shall be allowed during the year of validity of the annual permit. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

Section 11. Presentation of Permits. (1) The appropriate overdimensional permit shall be carried in the towing vehicles at all times.

(2) The permit shall be presented, upon request, to any law enforcement officer or any authorized personnel of the Department of Vehicle Regulation for inspection.

(3) A copy of an annual permit shall only be considered authenticated by the Department of Vehicle Regulation if it has been embossed with a stamp by the Department of Vehicle Regulation.

(4) An unauthenticated photocopy of an annual permit shall not be valid.

Section 12. Permit Validity. (1) Permits shall be valid during:

(a) Daylight hours; and

(b) From Monday through Saturday noon for manufactured home or boat ~~house-trailer~~ twelve (12) feet wide or less.

(2) Travel shall not be permitted from noon of the day preceding a national holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

(4) Permits used for the movement of manufactured home or boat ~~house-trailer~~ more than twelve (12) feet in width shall not be valid on Saturday or Sunday.

(5) In Jefferson, Fayette, Boone, Kenton and Campbell Counties permits used for the movement of manufactured home or boat ~~house-trailer~~ fourteen (14) feet wide or less but more than twelve (12) feet wide shall only be valid between the hours of 9 a.m. and 3 p.m. and from 6 p.m. to one-half (1/2) hour after sundown, local prevailing time.

(6) Permits used for the movement of manufactured homes or boats ~~house-trailers~~ greater than fourteen (14) feet wide shall only be valid Monday through Friday between the hours of 9 a.m. and 3 p.m. and between 6 p.m. and one-half (1/2) hour after sundown local prevailing time.

(7) If satisfactory proof of an emergency is furnished the Division of Motor Carriers, moves may be authorized during the restricted hours.

(8) A permit shall not be valid if the combined gross weight of the towing vehicle and manufactured home or boat ~~house-trailer~~ exceeds the registered weight of the towing vehicle.

Section 13. Movement on Two (2) or Four (4) Lanes. Moves of manufactured homes or boats ~~house-trailer~~ more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Department of Vehicle Regulation, Division of Motor Carriers to be used to the unit's ultimate destination. The department shall deny movements on any routes deemed unsuitable for move.

Section 14. Weather Conditions. (1) Moves of manufactured homes or boats ~~house-trailers~~ more than twelve (12) feet wide shall not be made on any highway:

(a) When wind velocity exceeds twenty-five (25) MPH; or

(b) When adverse weather conditions would cause these moves to be dangerous;

(c) When the road is partially or fully covered by sleet, snow, or ice; or

(d) When visibility is unduly impaired by rain, sleet, snow, fog, or other adverse weather condition.

(2) Moves of manufactured homes or boats ~~house-trailers~~ which exceed fourteen (14) feet in width shall not be made:

(a) On two (2) lane highways when turf or dirt shoulders are soft

or muddy; or

(b) On any wet highway.

Section 15. Brakes. (1) The number, type, size and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat ~~house-trailer~~ shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet.

(2) Manufactured homes ~~house-trailers~~ which are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section.

(3) This certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met.

(4) This certificate shall be carried in the towing unit at all times and shall be presented upon request, to any law enforcement officer.

Section 16. Speed Limit. The speed limit for the movement of manufactured homes or boats ~~house-trailers~~ greater than twelve (12) feet wide shall be:

(1) On interstate and other fully controlled limited access highways, forty-five (45) MPH.

(2) On other highways, thirty-five (35) MPH, unless posted minimum speed exceeds this, then the speed limit may be increased to the minimum posted speed.

Section 17. Liability of the Permit Holder. The permit holder shall be responsible to pay for or replace any sign, traffic control device, guardrail or other property damaged or destroyed during the move of the manufactured home or boat ~~house-trailer~~.

NORRIS BECKLEY, Commissioner

J.M. YOWELL, P.E., State Highway Engineer

JERRY ANGLIN, Deputy Secretary and Commissioner

DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: July 3, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 29, 1995 at 9 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by August 24, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 24, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on August 29, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All overdimensional boats and manufactured homes transported on the highways of the

Commonwealth of Kentucky.

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

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

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: none

(4) Assessment of anticipated effect on state and local revenues:

None

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The permits for the transportation of overdimensional boats have contained specific safety requirements since the Transportation Cabinet began issuing the larger boat movement permits. The safety requirements for the transportation of other vehicles had gradually been added to the appropriate administrative regulations. When this administrative regulation was amended to reflect a statutory change in terminology (house trailers to manufactured homes), the cabinet decided to include the transportation of overdimensional boats with manufactured homes since statutorily they are allowed the same width and have the same safety problems.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Yes. Different sizes of overdimensional vehicles being moved on Kentucky's highways need different associated safety items to protect the traveling public.

**WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(Amendment)**

780 KAR 2:010. Administration of area vocational education schools.

RELATES TO: KRS 151B.025, 151B.030, 151B.110, 151B.145
STATUTORY AUTHORITY: KRS 151B.025, 151B.030

NECESSITY AND FUNCTION: To establish administrative functions of the Kentucky TECH System of state-operated vocational technical [authority for administration of area vocational education] schools.

Section 1. The overall administration of Kentucky TECH [area vocational education] schools shall be under the direction of the Department for Technical Education with approved policies and procedures at the discretion of the commissioner. ~~[Director of the Kentucky Tech System.]~~

Section 2. Administration of state-operated area technology centers and regional technology centers, shall be managed through regions. All programs, services and activities shall be directly related to the strategic plan of the Workforce Development Cabinet, Department for Technical Education, Office of Kentucky TECH, and the Kentucky State Plan for Vocational Technical Education. [Area vocational education schools defined as "a public specialized high school" and as a "department of a public high school" constructed as an addition to the high school facility which is owned and operated by a single local school district for the benefit of only one (1) high school shall be directly administered by a local board of education being responsible for the education program in the area served by the school.]

Section 3. Area technology centers may be operated by either:

(1) The Department for Technical Education; or

(2) The local board of education that holds title to the facility. [Area vocational education schools defined as a "department of a public high school" constructed as a separate facility to serve two (2) or more high schools in two (2) or more local school districts and as a "public vocational or technical school" shall be directly administered by the Department for Adult and Technical Education, Kentucky Tech System, through the regional staff for vocational education which is responsible for the vocational programs in the region in which the school is located.]

Section 4. The Department for Technical Education may provide programs for postsecondary residents in correctional institutions who are under the supervision of the Justice Cabinet through a memorandum of agreement with the Department of Corrections. [Area vocational education schools defined as a "department or division of a public junior college or community college or university" shall be directly administered by the appropriate board of trustees or board of regents being responsible for the operation of the institution of higher education constructing the facility.]

~~**Section 5.** Area vocational education schools defined as a "department of a public high school" constructed as a separate facility to serve two (2) or more high schools in a single local school district and as a "department of a public high school" constructed as a separate facility to serve only one (1) high school for a single local school district may be operated by either:~~

~~(1) The Department for Adult and Technical Education, Kentucky Tech System, through the regional staff for vocational education which is responsible for the vocational education programs in the region in which the school is located; or~~

~~(2) The local board of education that holds title to the facility when it has demonstrated in its application and operation plan that it has the ability to provide the financial and supervisory resources necessary to maintain the vocational programs at the level that they would be operated by the Department for Adult and Technical Education, Kentucky Tech System, through the regional staff for vocational education, which is under the direction of the Director of Kentucky Tech.]~~

J. LARRY STINSON, Chairman

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APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: The KY TECH System of state-operated vocational technical schools.

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

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

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

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

(1) First year following implementation: 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 new or additional reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional funds required.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. N/A

2. State compliance standards. N/A

3. Minimum or uniform standards contained in the federal mandate. N/A

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 2:020. ~~[Occupational]~~ Appeals ~~process~~ ~~[officer]~~.

RELATES TO: KRS 151B.025, 151B.030, 151B.110

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY AND FUNCTION: The State Board for Adult and Technical Education finds it necessary to promulgate administrative regulations providing for appeal from the suspension or expulsion order.

Section 1. There is hereby established within the Office of Kentucky TECH ~~[Department of Adult and Technical Education]~~ the student ~~[occupational]~~ appeals officer. The appeals officer shall be the executive director ~~[Ombudsman]~~ for the Office of Kentucky TECH or designee.

Section 2. ~~[An applicant or]~~ A student of vocational-technical education ~~[services]~~ who is dissatisfied with the decision of a ~~[vocational]~~ regional hearing process may appeal to the State Board for Adult and Technical Education ~~[occupational appeals officer]~~ concerning decisions of ~~[enrollment]~~ suspension or expulsion ~~[of vocational students who are attending any program subject to the control of the State Board for Adult and Technical Education]~~.

Section 3. The student ~~[or applicant]~~ shall have twenty (20) school days from the date of the regional hearing in which to file a notice of appeal with the Secretary of the State Board for Adult and Technical Education. The notice of appeal shall designate the administrative action or order from which the appeal is taken.

Section 4. The administrative agency or vocational region from which the appeal has been taken shall file the complete record of all action including any official transcript with the Secretary of the State Board for Adult and Technical Education.

Section 5. The appeals officer or designee shall notify the parties within ten (10) school days after the filing of the appeal of the date, time and place of the hearing. The hearing shall be set within twenty (20) school days after the date of the notice, unless the parties mutually agree to another time.

Section 6. The hearing shall be conducted by the appeals officer ~~[ombudsman]~~ or the ~~[his]~~ designee and he shall not be bound by formal rules of evidence.

Section 7. The appellant shall have the burden of proof at the hearing and shall introduce proof in support of the appeal as the first

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order of proof. The appellee shall then submit its proof. The appellant may then submit rebuttal proof. All witnesses shall be subject to cross-examination.

Section 8. The appeals officer or designee shall then hear oral arguments and ~~for~~ may request written briefs allowing a reasonable time for the submission thereof.

Section 9. The hearing shall be transcribed by an official court reporter.

Section 10. The appeals officer or designee shall make findings of fact, conclusions of law and recommendations to the State Board for Adult and Technical Education at its next regular or special meeting. The board shall within thirty (30) school days of receipt thereof make a final determination of the case.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: All students potentially who are dissatisfied with decisions concerning suspension or expulsion who attend the KY TECH schools.

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

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

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

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

(1) First year following implementation: 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 additional.

(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 additional required.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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. None

WORKFORCE DEVELOPMENT CABINET

State Board for Adult and Technical Education (Amendment)

780 KAR 2:030. Steering and advisory committees for Kentucky TECH schools primarily serving secondary students.

RELATES TO: KRS 151B.025, 151B.110

STATUTORY AUTHORITY: KRS 151B.025

NECESSITY AND FUNCTION: KRS 151B.025 and KRS 151B.110, respectively, gives the State Board for Adult and Technical Education the function and authority to develop and adopt policies and administrative regulations by which the Department for ~~Adult and~~ Technical Education is to be governed in planning, coordinating, administering, supervising, operating, and evaluating the education programs, services, and activities within the department. This administrative regulation establishes responsibilities of steering and other advisory committees for Kentucky TECH schools ~~[vocational education facilities serving secondary students]~~.

Section 1. Each Kentucky TECH ~~[vocational education]~~ facility serving secondary students ~~[that is operated by the Department for Adult and Technical Education]~~ shall have a ~~[n official]~~ steering committee appointed in accordance with Kentucky TECH policies and procedures. The steering committee ~~[by the Commissioner for the Department for Adult and Technical Education. It]~~ shall provide organized and regular ~~[systematic]~~ contact with and participation by representatives from each ~~[responsible leaders in the cooperating]~~ local school district~~[s]~~. The steering committee shall be composed of persons from the following categories:

(1) The principal of the technology center (chairman) ~~[vocational school]~~;

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- (2) The superintendent or designee of each cooperating school district;
- (3) A board member from each cooperating school district;
- (4) One (1) principal from each cooperating school district;
- (5) Representative from each site-based council [A lay citizen from each cooperating school district];
- (6) One (1) or more representatives of the local labor market area [A member of the Regional Advisory Committee on Vocational Education]; and
- (7) A guidance counselor from each cooperating school district.

Section 2. The steering committee may [shall be authorized to] consult, counsel, and advise [with] the principal of the Kentucky TECH [vocational education] facility, the regional executive director of vocational education and staff, the Executive Director of Kentucky TECH, and the Commissioner of the Department for Technical Education on [all] matters pertaining to the operation of the school and may include: [-

Section 3. ~~The steering committee shall consult, counsel, and advise with the administrators responsible for the operation of the secondary program at the school on such things as:~~

- (1) Annual and long-range program planning [for the school];
- (2) Operation and [Procedures to be followed in implementing the program plans; and
- (3)] management procedures;
- (3) [in handling the details pertaining to secondary program operations.

Section 4. ~~The management procedures referred to in the preceding section of this regulation include such areas as determining the~~ Programs to be offered;

- (4) Curriculum development;
- (5) [employment of personnel;] In-service training of personnel;
- (6) Enrollment quotas for secondary school students from the different participating local school districts;
- (7) Discipline of students;
- (8) Class and school schedules;
- (9) Transportation of students;
- (10) Equipping and maintaining the facilities;
- (11) Program evaluation;
- (12) Student counseling and guidance; and
- (13) Records and reports[, and other areas of concern pertaining to the operation of the center].

[Section 5. The steering committee shall be used to provide for active exchange of information, views, problem identification, and future requirements for program improvements. It shall serve as a forum for the resolution of issues, identification of needs, and the development of common understandings and approaches, and serve as a catalyst for cooperative support and assistance. The committee shall supplement and assist, but not supplant, administrative and program responsibilities assigned to the Commissioner for Adult and Technical Education.]

Section 3. [6-] The steering committee shall have a minimum of one (1) regularly scheduled meeting per semester [school year] and called meetings as needed.

[Section 7. The principal of the vocational school shall develop and distribute a well-planned agenda to each member of the steering committee prior to each meeting.

Section 8. When the membership of a steering committee, as established by Section 1 of this administrative regulation, exceeds twenty-one (21) persons, the commissioner shall reasonably limit each cooperating school district's assigned membership in Section

~~1(3), (4), (5), and (7) of this administrative regulation so that membership on the committee is limited to twenty-one (21).]~~

Section 4. Program advisory committees shall be organized at the program level. The membership of these committees shall be representative of the businesses and industries for which the program provides education and training. Members shall represent the various levels of management and labor of the business or industry. Program advisory committees shall have at least two (2) meetings per year. The program advisory committees shall counsel, advise, and consult with the program staff on:

- (1) Implementation of curriculum;
- (2) Safety;
- (3) Equipment needs;
- (4) Projects for student learning;
- (5) Advocacy of the program in the community;
- (6) Recruitment of students;
- (7) Work-based learning; and
- (8) Job placement of students.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Principals, superintendents, local board members, site-based council members, guidance counselors, and business and industry representative who serve on KY TECH steering and advisory committees.

(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

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- (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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
- (a) Geographical area in which administrative regulation will be implemented: None
- (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
- (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
- (b) State whether a detrimental effect on environment and public health would result if not implemented: None
- (c) If detrimental effect would result, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None
2. State compliance standards. None
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? None
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 2:040. Live work projects~~[selection of]~~.

RELATES TO: KRS 151B.025, 151B.110

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY AND FUNCTION: KRS 151B.025 gives the State Board for Adult and Technical Education the function and authority to develop and adopt policies and administrative regulations by which the Department for ~~[Adult and]~~ Technical Education shall ~~[be to]~~ be governed in planning, coordinating, administering, supervising, operating, and evaluating education programs, services, and activities. This administrative regulation establishes the procedures for accepting live work projects in Kentucky TECH ~~[state-operated area vocational education]~~ facilities.

Section 1. Definition. "Live work" is a project completed for an individual or organization which meets a curriculum requirement.

Section 2. Kentucky TECH ~~[1. State-operated vocational technical schools [and area vocational education centers] shall be permitted to accept live work projects when the administrative and instructional staffs deem them [these necessary and] appropriate for training purposes [the vocational education of the students].~~

Section 3. Kentucky TECH ~~[2. State-operated area vocational]~~

schools accepting live work shall adhere to the following standards:

(1) All services performed ~~[in a school shop]~~ shall be documented on work ~~[standard shop]~~ order forms approved ~~[provided]~~ by the Office of Kentucky Tech.

(2) The school administrator ~~[principal or coordinator of the facility]~~ shall be responsible for all unused work ~~[shop]~~ order forms and assigning and recording all services performed in a work ~~[shop]~~ order log book ~~[that shall be maintained as a ready reference]~~.

(3) Individuals or organizations requesting ~~[committing]~~ live work ~~[to a school shop]~~ shall be provided a copy of the school's policy ~~[policies]~~ for accepting and performing live work. Persons committing live work shall sign the policy form indicating that they understand the policies and agree with them.

(4) Live work ~~[shop]~~ orders shall be approved and initialed by the school administrator ~~[principal or coordinator of the school]~~ and by the instructor of the class. No live work shall be approved for an instructor in his program for his own personal use.

(5) A ~~[shop]~~ fee shall be charged for live work projects requiring more than one (1) hour labor consistent with the [tuition and] fees established by the State Board for Adult and Technical Education in compliance with 780 KAR 2:140.

(6) Persons or organizations for whom live work is accepted shall purchase the necessary materials for the job to be completed. With the permission of the person or organization, the school may purchase the materials and recover the costs of the materials plus twenty (20) percent for handling.

(7) ~~[(6)]~~ No payment shall be handled by an instructor. Live work ~~[shop]~~ orders shall not be released until payment for parts, supplies, and other cost items has been made and documented by ~~[the]~~ authorized personnel in the school.

(8) Students shall be exempt from the shop fee but shall not be exempt from the reimbursement or purchase of materials. Projects of family members or other individuals shall not be accepted in the names of students.

(9) ~~[(7)]~~ School employees and members of the State Board for Adult and Technical Education shall not guarantee or be liable for any live work ~~[performed in the vocational shops]~~, nor shall they be responsible for the theft or loss of any article or articles that may be left in the schools ~~[vocational shops]~~ for any reasons.

Section 4. ~~[3.]~~ No Kentucky TECH ~~[state-operated vocational]~~ school shall be obligated to accept any live work projects. Live ~~[Neither shall any]~~ work shall not be done which is of a production nature and in competition with business or industry or ~~[nor shall any live work be done]~~ for the purpose of making a profit.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room; Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street,

ADMINISTRATIVE REGISTER - 358

Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: All KY TECH schools that accept live work as part of their instructional 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. 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: Live work fees and cost of materials plus 20% handling will be used under this 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 2:060. Suspension and expulsion of students.

RELATES TO: KRS 151B.025, 151B.110

STATUTORY AUTHORITY: KRS 151B.110

NECESSITY AND FUNCTION: KRS 151B.110 gives the State Board for Adult and Technical Education all necessary power and authority in administering the state's vocational education program, and KRS 158.150 sets forth the grounds and procedures for suspension and expulsion from the state's common schools. This administrative regulation establishes the procedure for the suspension and expulsion ~~[for disciplinary reasons]~~ of students from Kentucky TECH ~~[state vocational technical]~~ schools for disciplinary reasons ~~[and area vocational education centers]~~ and largely adopts the grounds and procedures for such set forth in KRS 158.150.

Section 1. Teachers and administrators employed in ~~[by]~~ a Kentucky TECH ~~[state vocational technical]~~ school ~~[or an area vocational education center]~~ shall be responsible for the supervision and discipline of students during the time they are in attendance at a state-operated vocational-technical facility.

Section 2. All students shall comply with policies of the Kentucky TECH ~~[state-operated vocational]~~ school in which they are enrolled. Willful disobedience or defiance of the authority of ~~[the]~~ teachers or administrators; assault, ~~[or]~~ battery or abuse of other students or school personnel; ~~[the]~~ threat of force or violence; ~~[the]~~ use or possession of illicit drugs or alcohol; stealing, destroying or defacing school or personal property; possessing or using dangerous weapons or instruments; ~~[excessive unexcused absenteeism]~~ or other incorrigible bad conduct on school property or at school-sponsored activities constitutes cause for disciplinary suspension or expulsion ~~[from a state-operated vocational school]~~.

Section 3. Secondary ~~[school]~~ students who are subject to disciplinary action shall be referred by the school administrator ~~[principal]~~ of a Kentucky TECH ~~[state vocational technical]~~ school ~~[or the coordinator of an area vocational education center]~~ to the principal of the parent school in which the student is enrolled. ~~[However]~~ The Kentucky TECH school administrator ~~[vocational school principal]~~ or his designee shall have the authority to immediately suspend secondary students for a maximum of three (3) days, without action by the parent school, ~~[secondary students]~~ to protect persons or property, or to avoid disruption of the ongoing academic programs ~~[when situations warrant]~~. The Kentucky TECH school administrator ~~[vocational principal]~~ shall submit in writing to the principal of the parent high school the reason(s) for disciplinary action and recommend any further action. The principal of the parent high school shall respond to the vocational administrator ~~[principal]~~ as to the action to be taken. ~~[The vocational principal or coordinator will accept the decision of the local school authority and act accordingly.]~~

Section 4. Any secondary student who is suspended or expelled from a participating local high school shall be considered suspended or expelled from the Kentucky TECH ~~[state vocational technical]~~ school ~~[or area vocational education center]~~ in which the student is enrolled.

Section 5. The Kentucky TECH school administrator ~~[principal of a state-operated vocational facility]~~ shall be authorized to suspend postsecondary ~~[or adult]~~ students for cause as set forth in Section 2 of this administrative regulation. No student shall be suspended for more than ten (10) consecutive school days for any one (1) instance of misconduct. No student shall be suspended without first being

given oral or written notice of the charge or charges against him; an explanation of the evidence of the charge(s) if the student denies such; and an opportunity to present his own version of the facts related to the charge or charges. ~~[Such]~~ Due process procedures shall precede any suspension unless immediate suspension is essential to protect persons or property or to avoid disruption of the ongoing academic process. ~~Due process [in such cases, such]~~ procedures shall follow an immediate ~~[the]~~ suspension as soon as practicable, but no later than three (3) school days after the suspension.

Section 6. (1) ~~[The regional director of vocational education shall be authorized to convene a hearing for expulsion of a postsecondary or adult student for cause as set forth in Section 2 of this administrative regulation.]~~

(2) ~~No postsecondary student shall be expelled from a Kentucky TECH [state-operated vocational] school without a hearing, pursuant to written, specific notice of the charges, before a committee convened by [composed of] the regional executive director or his designee, [a regional program coordinator,] and consisting of two (2) additional [three (3)] vocational instructional or administrative staff [instructors]. The regional executive director or his designee shall submit in writing to the Executive Director of Kentucky TECH within three (3) school days a copy of the hearing committee's findings, conclusions, and action taken on the expulsion of a student. A copy of the [such] report shall be provided to the student [involved]. The [decision to expel a] student may file a notice of appeal with the secretary of [be appealed to] the State Board for Adult and Technical Education.~~

Section 7. Readmittance to the school shall be on the basis of waiting list priorities at the time of expulsion or on the basis of at least a ninety (90) day expulsion (excluding the month of July), whichever is longer. The regional hearing committee may ~~[, however,]~~ set ~~[appropriate,]~~ shorter expulsion terms when ~~[ever]~~ extenuating circumstances and the facts of individual cases so warrant.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 32,634 students who attend the KY TECH schools each year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 2:090. Postsecondary vocational technical school admission priorities.

RELATES TO: KRS 151B.025, 151B.110

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY AND FUNCTION: KRS 151B.110 gives the State Board for Adult and Technical Education authority to carry out the purposes of the state's vocational-technical education program, and further gives it all necessary power and authority to administer vocational education in Kentucky TECH ~~[the state-operated voca-~~

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tional] schools. This administrative regulation establishes admission priorities for postsecondary students in Kentucky TECH [adults for state-operated vocational] schools.

Section 1. ~~[State-operated vocational schools in the]~~ Kentucky TECH schools ~~[System]~~ shall maintain the following postsecondary [adult] student applicant lists:

- (1) ~~[Prospect list by date of inquiry;~~
- (2) ~~[Preadmission program list of applicants not meeting program admission requirements who are enrolled in the school in a remediation program designed to assist in meeting program entry requirements;~~
- (3) ~~[Preregistration waiting list of [program-ready] applicants who have completed all [program] entry requirements; and~~
- (2) ~~[(4)] List of applicants who have [not] requested [program admission but request] admission to continuing education classes. [Continuing education enrollees in classes which are part of preparation programs shall meet program entry requirements prior to acceptance in a diploma program.]~~

Section 2. The preregistration waiting list shall show the date applicants completed entry requirements [and became program-ready]. Applicants enrolled in a remediation program shall be [are] placed on the preregistration list only after meeting all entrance requirements [test scores]. The preregistration list shall be updated in December and June of each year. An applicant's name shall be removed from the preregistration list when the applicant:

- (1) Fails to respond within seven (7) calendar days upon notification that an opening is available;
- (2) Requests that his name be removed;
- (3) Enrolls in a program; or
- (4) Fails to respond to notification of the purge process. [Any applicant on the list over six (6) months shall notify the school of a desire to remain on the list or the name will be deleted. Applicants shall respond within seven (7) calendar days after official notification by letter of admission into the program.]

Section 3. Class size projects funded under contract or agreement with another public or with a private agency shall give priority admission to clients sponsored by the funding agency. ~~[If not prohibited by the contract or agreement, slots not used may be filled from the general preregistration list.]~~

Section 4. ~~Individual slots in regular programs which are purchased by other public or by private agencies shall be reserved for clients sponsored or referred by that agency. Slots shall be identified and purchased by specific programs.]~~

Section 4. ~~[5.]~~ Students shall be admitted from the general preregistration list in the following order of priority:

- (1) Kentucky TECH Governor's Scholarship recipients;
- (2) Students in good standing who, because of illness or other hardship, previously had to withdraw but want to reenter the program within two (2) years of withdrawal;
- (3) ~~[(2)]~~ Secondary vocational-technical students who[upon graduation from high school,] wish to continue present technical training at the postsecondary [long-term adult] level, who have developed an individual career/graduation plan, and who file an application prior to graduation from high school. (Students in social services' programs operated under the direction of the Office of Kentucky Tech shall be qualified under this category);
- ~~[(3)] Continuing education students who have successfully completed the core classes for a specific occupational program as defined in the curriculum and wish to become full-time students or individuals who have successfully worked in a related occupation for one (1) or more years. Such students shall meet all other entrance requirements.]~~

(4) Students enrolled in other postsecondary Kentucky TECH [vocational] schools, including the Carl D. Perkins Rehabilitation Center and correctional institutions, who request a transfer to complete their present training; and

(5) Continuing education students who have successfully completed the core classes for a specific occupational program as defined in the curriculum and wish to become full-time students.

(6) Veterans who, within one (1) year of honorable separation from military service, make their first and initial application for enrollment in a vocational-technical program.

(a) ~~[with]~~ Names will be [being] placed on the preregistration waiting lists according to the date of entry into military service[or dependents of a deceased veteran who are otherwise eligible].

(b) This procedure shall not apply when a person has completed and received veterans' benefits for one (1) program and then wishes to enroll in another.

(7) Individuals who have successfully worked in a related occupation for one (1) or more years and meet all other entrance requirements.

Section 6. For vacancies in full-time programs, applicants requesting full-time attendance shall receive priority over those requesting part-time attendance.

~~[Section 7. An applicant's name shall be removed from the preregistration list when the applicant:~~

- ~~(1) Fails to respond upon notification that an opening is available;~~
- ~~(2) Requests that his name be removed;~~
- ~~(3) Enrolls in a program; or~~
- ~~(4) Fails to notify the school that he wishes to remain on the list.~~

Section 8. ~~Students entering high technology Category I programs in industrial education or health programs may be required to spend a day in an occupational setting related to the career objective unless they have had previous work experience in the field. The school may provide alternate scheduling of this occupational shadowing to occur in the school setting. As part of the process for orienting prospective students about programs, schools are encouraged to use personnel employed in the field. A group orientation or an individual preadmission counseling interview shall be required before any individual is admitted as a student into a high technology program.]~~

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

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REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Approximately 15,000 postsecondary students who attend the KY TECH schools each year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 2:100. Attendance policies for postsecondary students ~~[long-term adults]~~ in Kentucky TECH ~~[state-operated vocational]~~ schools.

RELATES TO: KRS 151B.025, 151B.110, 151B.145

STATUTORY AUTHORITY: KRS 151B.145

NECESSITY AND FUNCTION: KRS 151B.025 provides that the State Board for Adult and Technical Education has all necessary power and authority in administering vocational-technical education. The state board finds it necessary to establish attendance policies for students ~~[adults]~~ sixteen (16) years of age and older who are enrolled in a vocational-technical education program of 300 ~~[500]~~ hours or more.

Section 1. Kentucky TECH ~~[State-operated vocational]~~ schools shall establish and publish attendance policies governing the programs ~~[in the school]~~ that comply with the provisions of this administrative regulation.

Section 2. (1) Students shall be treated fairly in terms of compliance with attendance policies.

(2) Each school shall maintain a uniform attendance accounting procedure.

Section 3. Each student shall be provided a copy of the school's attendance policy and specific information regarding course attendance requirements.

Section 4. (1) ~~[Unless there is a valid reason for absence or lateness,]~~ A student shall attend classes regularly and at the prescribed times.

(2) An accurate record of total hours absent and total hours in attendance for the program shall be reflected on the student's transcript.

(3) Each student shall assume responsibility for:

(a) Regular attendance;

(b) Completion of all assignments;

(c) Completion of all examinations; and

(d) Completion of required laboratory, internship, and clinical time.

Section 5. (1) Work missed because of absence ~~[for any reason]~~ shall be made up ~~[satisfactorily to the teacher]~~ within a reasonable time after returning to school.

(2) The student shall contact the instructor to arrange for make-up work. Make-up work not completed ~~[turned in]~~ by the time designated by the instructor shall receive a grade of "0". ~~[The student shall contact the teacher on the day he returns to school to arrange for makeup work.]~~

~~(3) A teacher may require makeup of examinations, clinical time, or other instructional activities.]~~

Section 6. Leave Policy. (1) A student may be excused from attending a class because of his, or a family member's:

(a) Illness;

(b) Death;

(c) Accident; or

(d) Other personal emergency.

(2) A student may be asked to verify the reason for an absence~~], if there is reasonable cause to suspect that he has abused the leave policy].~~

(3) ~~[Either]~~ Prior to an absence, or ~~[as]~~ soon ~~[as]~~ thereafter ~~[as possible]~~, a student shall notify his instructor ~~[teacher]~~, or an administrator designated by the school, of:

- (a) An absence; and
- (b) The reason for the absence.

Section 7. (1) ~~By [At]~~ the ~~[first or]~~ second class meeting, each instructor shall provide each student an attendance policy for the class.

- (2) An attendance policy shall:
 - (a) Comply with the provisions of this administrative regulation; and
 - (b) Include definitions of:
 - 1. Class attendance;
 - 2. Makeup of class work;
 - 3. Penalties for failure to comply with attendance policy; and
 - 4. ~~[Excused and unexcused absences; and~~
 - 5. ~~] Other matters governing attendance.~~
- (3) An attendance policy shall not deny a makeup examination to a student:
 - (a) Who missed an announced or unannounced examination; and
 - (b) Whose absence was excused under provisions of Section 6(1) of this administrative regulation.

Section 8. (1) An instructor shall report to the school administrator ~~[director]~~ or designee the name of any student not making satisfactory progress in class due to irregular attendance.

- (2) The student shall be provided counseling support.
- (3) The student may be dropped from the course if:
 - (a) A reasonable time of counseling support has been given to him; and
 - (b) He continues to fail to make satisfactory progress.

Section 9. (1) Satisfactory progress for the purpose of financial aid shall be based on academic progress.

- (2) An official warning for attendance problems shall not result in withholding financial aid payments.

Section 10 .A student shall have the right to petition for a "W" withdrawal from a course if:

- (1) Attendance is a requirement for receiving a grade; and
- (2) His absences were excused under the provisions of:
 - (a) This administrative regulation; and
 - (b) Attendance policies that comply with this administrative regulation.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

- (1) Type and number of entities affected: Approximately 15,000 postsecondary students who attend the KY TECH schools each year.
- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: None
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: None
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (10) Any additional information or comments: None
 - (11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

- 1. Federal statute or regulation constituting the federal mandate. None
- 2. State compliance standards. None
- 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? N/A
- 5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

**WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(Amendment)**

780 KAR 2:110. Student medical and accident insurance.

RELATES TO: KRS 151B.025, 151B.110, 151B.175

STATUTORY AUTHORITY: KRS 151B.175

NECESSITY AND FUNCTION: KRS 151B.175 authorizes the Commissioner for the Department for ~~Adult and~~ Technical Education to provide medical and accident insurance for students enrolled in Kentucky TECH ~~[the state vocational technical] schools [and area vocational education centers]~~ and requires the State Board for Adult and Technical Education to adopt administrative regulations to implement the insurance program.

Section 1. ~~[All]~~ Students enrolled in Kentucky TECH ~~[state vocational technical] schools except continuing education and customized business and industry classes [and area vocational education centers]~~ shall have medical and accident insurance coverage during the period of enrollment.

Section 2. The commissioner shall enter into a contract with a surety or insurance company or its agent to provide medical and accident insurance coverage for students enrolled in Kentucky TECH. ~~[vocational technical schools and area vocational centers.]~~

Section 3. The policy shall:

- (1) Be a full excess policy; and
- (2) Pay the covered expenses incurred which are in excess of those paid or payable by another plan.

Section 4. The medical and accident coverage shall consist of a single contract applied to the plan of coverage contained in the contract between the Commonwealth and the carrier.

Section 5. Following an authorized signature ~~[After it has been signed]~~ by an official of the insuring company ~~[with authority to sign]~~, the insurance policy shall:

- (1) Be attached to the contract; and
- (2) Become a part of the medical and accident insurance contract.

Section 6. Coverage shall:

- (1) Take effect on the date requested; and
- (2) Remain in effect through the expiration date shown on the application.

Section 7. (1) The Office of Kentucky Tech System shall authorize payment of [pay] the premium to:

- (a) A surety; or
- (b) An insurance company; or
- (c) An agent thereof.

(2) The premium shall be based on the average number of students that were enrolled:

- (a) During the previous quarter ~~[month]~~;
- (b) In Kentucky TECH ~~[state vocational technical] schools [and area vocational centers]~~.

Section 8. Nothing in this administrative regulation shall be construed as a waiver of the sovereign immunity of the Commonwealth.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital

Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Approximately 32,634 students that attend the KY TECH schools each year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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: Agency receipts through tuition and fees are the source of revenue to be used under this 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None
2. State compliance standards. None
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? None
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(Amendment)

780 KAR 2:120. Standard for academic progress for postsecondary [and adult] students.

RELATES TO: KRS 151B.025, 151B.110

STATUTORY AUTHORITY: KRS 151B.110

NECESSITY AND FUNCTION: KRS 151B.025 establishes a state vocational-technical education program, and KRS 151B.110 gives the State Board for Adult and Technical Education all necessary power and authority in administering the state's vocational-technical education program. This administrative regulation is necessary in order to set a statewide standard for academic progress for postsecondary [and adult] students in Kentucky TECH [the state's vocational-technical] schools [and area vocational education centers] to meet in order to remain in good academic standing.

Section 1. (1) A postsecondary [or adult] student enrolled in a Kentucky TECH [state-operated vocational] school shall maintain satisfactory progress toward completion of the prescribed competencies [in all requirements] for a diploma or certificate program.

(2) Evaluation of the quality of a student's performance shall include;

- (a) [The] Grades of [shop or] laboratory work;
- (b) Technical knowledge;
- (c) Occupational work experiences such as clinical or cooperative education;
- (d) Work habits and attitudes;
- (e) Completion of assigned tasks and learning activities.

Section 2. (1) Postsecondary [and adult] students shall complete each course required for a diploma or certificate program with a "C" average or above prior to completion of the program. Any course identified as a prerequisite to an advanced level course shall be completed with a "C" average or above prior to enrolling in the advanced course.

(2) For a repeated course, the highest grade earned shall be used in the calculation of the overall grade point average.

Section 3. (1) Remedial assistance shall be offered to a student in the [these] instructional areas in which he has less than a "C" average.

(2) Remedial assistance may include:

- (a) Tutorial service;
- (b) Clearly defined independent study;
- (c) Scheduled time in the academic enrichment [learning] center;

or

(d) Other appropriate assistance.

Section 4. (1) A student earning a grade point average (GPA) below a 2.0 or "C" at the end of a term shall be placed on academic

probation for the next term in which he is enrolled.

(2) A student shall be removed from academic probation if he earns at least a:

~~[(a) 2.0 or "C" in each course in which he received a grade of less than 2.0 or "C"; or~~

~~[(b)] 2.0 or "C" cumulative average for the next term [in which he carries at least a half-time course load].~~

(3)(a) A student earning less than a "C" average for two (2) consecutive terms shall be academically expelled by the school administrator [principal];

(b) A student [He] shall not have the right to a formal hearing.

(4) The grade point average for each term shall be considered separately. Terms shall not be averaged together.

Section 5. (1) Clear and specific notice of the academic progress policy established by this administrative regulation shall be included in the [each school's] student handbook.

(2) The handbook shall be disseminated to each student upon admission in [entrance into] a vocational program.

(3) Each teacher shall [clearly] explain [to each student] the grading criteria to be used [at the outset of a student's participation] in the [that teacher's] course or program.

(a) A student being placed on academic probation shall be notified by the school;

(b) The notification shall include the:

1. Duration of probation; and
2. Consequences of continued failure to make satisfactory academic progress.

Section 6. (1) Except as provided in subsection (2) of this section, after the first expulsion [of a student] for academic reasons a student [he] shall not be readmitted before the expiration of the waiting list at the time of expulsion, or two (2) academic terms, whichever is longer.

(2) The student [He] may be readmitted after [the expiration of] a shorter period, or after he has been expelled more than once for academic reasons, if the school determines that earlier readmission is warranted because of:

(a) Extenuating circumstances; or

(b) Other facts related to his expulsion.

Section 7. (1) Readmission to the same program after academic dismissal from the school attended or another Kentucky TECH [state vocational] school shall be conditional admission.

(2) Continuation in the program shall be contingent upon attaining a cumulative grade point average of a "C" or above by the end of the first term.

(3) Students dismissed from one (1) Kentucky TECH [vocational] school may not be readmitted to another Kentucky TECH [vocational] school for a period of at least two (2) academic terms after dismissal.

~~[Section 8. A graduate of a diploma-level vocational-technical program may receive specific retraining without charge, if a written certification by his employer:~~

~~(1) States that his performance on the approved task list for the program from which he graduated is unsatisfactory; and~~

~~(2) Is received by the school within two (2) years after graduation.]~~

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to

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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 the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Postsecondary students that attend the KY TECH schools - approximately 15,000 a year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. 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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 2:130. Minimum standards of admission for postsecondary [adult] students in vocational-technical programs.

RELATES TO: KRS 151B.025, 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: KRS 151B.150 vests the State Board for Adult and Technical Education with authority to carry out the purposes of the state's vocational-technical education program and adopted federal acts relative thereto and KRS 151B.110 grants authority for management of the Kentucky TECH [state-operated vocational] schools. The purpose of this administrative regulation is to establish minimum entrance requirements for students entering vocational-technical programs, to establish a base for determining if students may receive advanced placement, to assist in developing remedial plans for students who need help in meeting minimum admission requirements, and to determine if a student needs additional assessment.

Section 1. Students admitted to the school shall meet program admission standards prior to admission to the occupational program. All occupational programs are classified as either Category I, II, or III for the purpose of setting academic standards [identifying required scale scores]. Course classifications and any other specific program admission requirements are available from the Kentucky Tech Office in the Department for [Adult and] Technical Education and from all Kentucky TECH [state-vocational/technical] schools. Program categories are based on the level of difficulty of required texts and the technical nature of the curriculum.

(1) Scale scores from the [Comprehensive Test of Basic Skills (CTBS), or] Test of Adult Basic Education (TABE) or composite score from the American College Test (ACT) will be used for program placement and for a remedial plan to help students meet minimum program requirements.

(2) Students enrolling in Category III programs shall have the following scale scores prior to program entry:

	<u>TABE</u> Form 5-6A/D	<u>ACT</u> Composite Score
Reading	739	16
Math	764	

Students enrolled in Category III programs [who have the following scale scores] shall be enrolled in math and reading programs to improve their skills. Enrollment may be concurrent with or prior to program enrollment [in Category III programs]. Students pursuing a diploma shall continue improvement of reading and math scores until scores in subsection (3) of this section are met.

	<u>[CTBS]</u> Form 4	<u>TABE</u> Form U	<u>TABE</u> Form 5-6A/D
Reading	742-774	749-785	739-769
Math	764-788	781	764-785

(3) Students enrolling in Category II programs shall have the

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following scale scores prior to program entry:

	<u>TABE</u> <u>Form 5-6A/D</u>	<u>ACT</u> <u>Composite Score</u>
<u>Reading</u>	<u>770</u>	<u>16</u>
<u>Math</u>	<u>786</u>	

	<u>CTBS</u> <u>Form 4</u>	<u>TABE</u> <u>Form U</u>	<u>TABE</u> <u>Form 5-6A/D</u>
<u>Reading</u>	<u>775</u>	<u>786</u>	<u>770</u>
<u>Math</u>	<u>780</u>	<u>707</u>	<u>786</u>

(4) Students enrolling in Category I programs shall have the following scale scores to be admitted to the program:

	<u>TABE</u> <u>Form 5-6A/D</u>	<u>ACT</u> <u>Composite Score</u>
<u>Reading</u>	<u>776</u>	<u>16</u>
<u>Math</u>	<u>790</u>	

	<u>CTBS</u> <u>Form 4</u>	<u>TABE</u> <u>Form U</u>	<u>TABE</u> <u>Form 5-6A/D</u>
<u>Reading</u>	<u>782</u>	<u>798</u>	<u>776</u>
<u>Math</u>	<u>797</u>	<u>797</u>	<u>790</u>

Applicants for Category I programs who meet subsection (3) of this section scores but do not meet scores identified in subsection (4) of this section may be enrolled in Category I programs if they successfully complete required technical core classes for that program.

(5) Where applicable, all programs shall operate according to guidelines developed by state ~~and~~ for national licensure, certification, and registration agencies with jurisdiction over graduates seeking employment in occupations governed by such agencies. In addition, any program operated under contract for a specific business or industry shall conform to the requirements of the industry for admission of students.

Section 2. The following minimum admission requirements shall apply to postsecondary ~~adult~~ students in an occupational preparation program of 300 ~~500~~ hours or more:

(1) Must be sixteen (16) years of age or ~~older. Licensure for some programs may require a higher~~ minimum age for programs required to meet licensure standards.

(2) Completion of a high school diploma or its equivalent. For Category III programs, students may be admitted without a high school diploma or its equivalent as a ~~with~~ special status student provided the student agrees to pursue the high school equivalency certificate and complete the GED prior to graduation.

(3) Submit a transcript of secondary and postsecondary work, GED test scores if applicable, and scores on ~~the Comprehensive Test of Basic Skills (CTBS) or~~ the Test of Adult Basic Education (TABE) if taken in the last three (3) years or American College Test (ACT) if taken in the last five (5) years. Students who cannot provide current test scores which meet minimum reading and math scores shall take the Test of Adult Basic Education or make arrangements to take the ACT. ~~Handicapped~~ Students with disabilities shall ~~may~~ be provided reasonable accommodations for ~~modified~~ assessments.

Section 3. Students may be admitted to the school upon completion of application, required records, and testing as outlined in Section 2 of this administrative regulation and may pursue instruction in a basic academic skills program, career exploration, core elective courses, and modified/special programs ~~for handicapped~~. Students

with disabilities will be provided reasonable accommodations.

Section 4. Kentucky TECH schools shall ~~The Kentucky Department for Adult and Technical Education does~~ not discriminate on the basis of race, color, national origin, religion, marital status, age, sex, or disability ~~handicap~~.

Section 5. The following minimum requirements shall apply to advanced standing for transfer students from other accredited institutions:

(1) The student shall supply the name and address of all previous institutions that provided training;

(2) The student shall provide a record of competencies achieved, length of training, date of enrollment, and date of withdrawal from each institution attended. The receiving school may validate competencies through testing and interviewing and/or school admission requirements; and

(3) The student shall provide all records and reports which are required by the state boards and/or licensing agencies for a given vocational-technical program.

Section 6. This administrative regulation shall be implemented in all Kentucky TECH ~~state vocational technical~~ schools ~~and health facilities, but shall not apply to correctional institutions. Postsecondary students enrolling in area vocational education centers shall meet the admission requirements as specified in this administrative regulation.~~ Any person on a preregistration waiting list who does not meet new requirements shall be permitted to retest.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Approximately 15,000 postsecondary students that attend the KY TECH schools each year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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:

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- (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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None
2. State compliance standards. None
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? None
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 2:140. Tuition and fees.

RELATES TO: KRS 151B.025, 151B.110, 151B.165

STATUTORY AUTHORITY: KRS 151B.165

NECESSITY AND FUNCTION: KRS 151B.165 gives the State Board for Adult and Technical Education authority to set tuition and fees for ~~postsecondary and adult~~ students in Kentucky TECH ~~the state-operated vocational-technical~~ schools. This administrative regulation implements that duty.

Section 1. A nonrefundable application fee of twenty (20) dollars for full-time and part-time students shall be paid with the completed application submitted prior to enrollment in a diploma or certificate program.

Section 2. Tuition for ~~long-term adult~~ ~~(postsecondary)~~ programs shall be paid at the beginning of each ~~ten (10) to eleven (11) week~~

term (quarter or semester). ~~[Tuition is due the first day of each term. A ten (10) dollar late payment fee shall be assessed after the tenth school day.]~~ The following tuition schedule shall apply effective July 1, 1995: [for FY 91 and FY 92:]

Per Week Contact Hours	Tuition Per Term	
	In-state Cost (Quarter)	(Semester)
24 and over	\$150	\$300
18-23	\$125	\$250
12-17	\$100	\$200
Under 12	\$75	\$150

Per Week Contact Hours	Tuition Per Term	
	Out-of-state Cost (Quarter)	(Semester)
24 and over	\$300	\$600
18-23	\$250	\$500
12-17	\$200	\$400
Under 12	\$150	\$300

Per Week Contact Hours	Per Term Credit Hours	Tuition Per Term (Quarter)	
		In-State Cost FY 91	FY 92
24 and over	12 and over	\$75	\$125
18-23	9-11	\$65	\$100
12-17	6-8	\$45	\$75
Under 12	1-5	\$30	\$50

Per Week Contact Hours	Per Term Credit Hours	Tuition Per Term (Quarter)	
		Out-of-State Cost FY 91	FY 92
24 and over	12 and over	\$150	\$250
18-23	9-11	\$130	\$200
12-17	6-8	\$90	\$150
Under 12	1-5	\$60	\$100

~~A nonrefundable application fee of fifteen (15) dollars for full-time and part-time students shall be paid with the completed application submitted prior to enrollment in a diploma or certificate program. Upon enrolling as a part-time or full-time student in a diploma or certificate program, a thirty-five (35) dollar registration fee for in-state and seventy (70) dollars for out-of-state is payable with tuition for the first term. The registration fee is a one (1) time charge per program. Full-time students are defined as those students enrolled for at least twenty-four (24) instructional hours or twelve (12) credit hours per term. Half-time students are enrolled for at least twelve (12) instructional hours or six (6) credit hours.~~

~~Section 2. Short-term continuing education classes for adults shall be designed to meet the needs of the labor market and for persons preparing or supplementing knowledge and skills for employment or job advancement. For FY 91 and FY 92, the cost to the general public for these classes shall include a minimum per course charge of fifteen (15) dollars for the first fifteen (15) hours and one (1) dollar and twenty-five (25) cents per instructional hour for all hours over fifteen (15). The equivalent cost per credit hour shall be eighteen (18) dollars for these schools with courses equated to credit hours.~~

~~Section 3. Costs for classes to meet specialized industry training needs in a region may be negotiated by the region on a shared cost~~

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~~basis documented by a written agreement on file in the regional and state offices. Specialized training programs contracted at the state level to meet statewide training needs for industry shall be based on a minimum charge of two (2) dollars per instructional hour.]~~

Section 3. Tuition is due the first day of each term. A nonrefundable ten (10) dollar late payment fee shall be assessed after the fifth school day. After the 15th instructional day, students may not attend class if tuition is not paid or unless prior arrangements have been made.

Section 4. The school may establish an activity or lab fee not to exceed twenty (20) dollars per term for postsecondary and secondary students. [Charges for avocational classes shall be based on cost recovery of instructor cost and necessary supplies and materials.]

Section 5. [Effective July 15, 1990,] A refund policy shall apply to tuition [and registration] charges for vocational-technical programs and classes in Kentucky TECH [state-operated vocational] schools. Students in certificate or diploma programs may receive a partial refund of tuition [and twenty (20) dollars of the registration fee if requested] within the first fifteen (15) school days [three (3) weeks] of the program through [official] withdrawal [and request for refund]. The refund policy applies only to program withdrawal and does not apply to a reduced course load. The application fee is nonrefundable.

Section 6. Within the first ten (10) instructional [five (5) school] days of the program, students may receive a full tuition and activity fee refund [plus twenty (20) dollars of the registration fee]. From eleven (11) [six (6)] to fifteen (15) instructional [ten (10) school] days, fifty (50) [seventy-five (75)] percent of the tuition [and twenty (20) dollars of the registration fee] is refundable. [From eleven (11) to fifteen (15) school days, fifty (50) percent of the tuition and twenty (20) dollars of the registration fee may be refunded.] There shall be no refund after the 15th instructional [school] day.

Section 7. Each school shall establish a tuition scholarship program to assist students with financial need. Financial assistance shall be available for students who lack financial resources to pay for their education but who, for special reasons, do not qualify for other financial aid.

Section 8. Continuing education classes for adults shall be designed to meet the needs of the labor market and for persons preparing or supplementing knowledge and skills for employment or job advancement. The cost for all continuing education offered in the regular curriculum shall be at the state-approved tuition rates. Specialized continuing education classes for adults may be offered on a cost recovery basis with prior approval by the regional executive director.

Section 9. [7.] Students enrolled in continuing education courses may be granted a full tuition refund if official withdrawal is [and request for refund are] completed prior to the third class session. No refunds shall be made after the third session, and tuition of fifteen (15) dollars or less shall not be refunded.

Section 10. A fifteen (15) dollar fee shall be charged for each live work project requiring more than one (1) hour labor and accepted by the school.

Section 11. Costs for classes to meet industry training needs in a school or region may be negotiated by the school or region on a shared-cost basis documented by a written agreement on file in the school where the contract is negotiated. Any such agreement with public or private organizations shall seek to recover the instructional cost and may be for class size projects, extra services, and ancillary

services as requested by the client. Training programs contracted at the state level to meet statewide training needs for industry shall establish a fee under written agreement.

Section 12. Tuition and fees shall be reviewed on or before October 30, each year by the State Board for Adult and Technical Education.

~~[Section 8. Each school shall establish a tuition scholarship program to assist students with financial need. No student shall be deprived of an educational opportunity because of inability to pay. Financial assistance shall be available for students who lack financial resources to pay for their education but who, for special reasons, do not qualify for other financial aid.]~~

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Kentucky TECH schools - all postsecondary schools and the secondary area centers which serve postsecondary students are 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 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: No new or additional reporting and paperwork requirement.

(4) Assessment of anticipated effect on state and local revenues: State revenues will be increased.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Tuition fees are the source

of revenue to be used under 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative method to procure needed money for the Kentucky TECH System is to receive revenue from Kentucky's General Fund. This alternative was rejected because of limited general fund dollars.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The same fees apply to everyone across the Commonwealth.

WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(Amendment)

780 KAR 4:010. General standards.

RELATES TO: KRS 151B.025, 151B.145[~~151B.150~~]

STATUTORY AUTHORITY: KRS 151B.025, 151B.145[~~151B.150~~]

NECESSITY AND FUNCTION: KRS 151B.145 mandates a state vocational-technical education program with certain purposes under the jurisdiction of the State Board for Adult and Technical Education. KRS 151B.025 [~~150~~] establishes program standard responsibilities for secondary vocational-technical programs [~~under the jurisdiction of the State Board for Elementary and Secondary Education~~]. This administrative regulation establishes the broad, general standards for all vocational-technical education programs in order to comply with federal funding statutes.

Section 1. Vocational-technical education programs shall be designed to serve one (1), or combinations, of the following groups of persons: secondary or [~~postsecondary students, short-term adult, long-term adult, disadvantaged, and handicapped.~~] Instructional programs shall not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability [~~handicap, in violation of state or federal statutes~~].

Section 2. Vocational-technical instruction shall be provided [~~to serve occupations~~] within the following [vocational] program areas: agriculture, business/office technology [agribusiness, business and office], health and personal services, home economics, industrial technology education, marketing [and distributive, practical arts], fire/rescue training, environmental education, [public service, and] special vocational-technical programs, and other program areas designed to meet emerging technologies and the needs of business and industry.

Section 3. Objectives of the instruction shall be designed to:

(1) Prepare individuals for [gainful] employment [~~as semiskilled or skilled workers, technicians, or semiprofessionals~~] in skilled or technical [recognized occupations and in new or emerging] occupa- tions;

(2) Prepare individuals for transition from education and training to work [enrollment in advanced or highly skilled vocational and technical education programs];

(3) Assist individuals in [~~the career development process of career awareness and in-depth career exploration necessary for~~] making meaningful occupational choices;

(4) Upgrade and update individuals in their present occupations;

(5) Retrain existing workers; or

(6) Achieve any combination of the above.

Section 4. The content of instruction in vocational-technical education programs shall:

(1) Be based on a consideration of the skills, attitude, and knowledge required to achieve the objectives of [such] instruction and include a planned sequence of those essentials of education or experience (or both) deemed necessary for the individual to achieve [such] objectives;

(2) Be developed and conducted in consultation with potential employers and other individuals having skills and substantive knowledge of the occupation or the occupational fields included in instruction;

(3) Include the most up-to-date technology [knowledge] and skills necessary for competencies required to meet the objectives of [such] instruction; and

(4) Be sufficiently extensive in duration and intensive within a scheduled unit of time to enable the student to achieve the objectives of instruction.

Section 5. The vocational-technical program of instruction shall [~~combine and~~] coordinate classroom instruction with field, [~~shop,~~] laboratory, cooperative work, or other work-based [occupational] experience which:

(1) Is appropriate to the objectives of instruction;

(2) Is of sufficient duration to develop competencies necessary for the student to achieve such objectives; and

(3) Is supervised, directed, or coordinated by persons qualified as determined by the State Board for [~~Department of~~] Adult and Technical Education in cooperation with the State Board for Elementary and Secondary Education.

[~~Section 6. Schools offering secondary programs shall conform to specific program standards established by the State Board for Elementary and Secondary Education, in consultation with the Commissioner for Adult and Technical Education. The secondary programs may be offered from middle school through the twelfth grade. The programs shall offer a variety of learning experiences and related services. Students shall be able to explore career options and technology and to apply technical, personal and academic skills in laboratory and cooperative work experience settings. A continuum of learning skills shall be provided to enable students to enter the workplace or advanced education at the postsecondary level.~~]

Section 7. Secondary vocational programs shall be designed to accommodate students with special learning needs main-streamed into the regular program. Special vocational programs in specific occupational areas or incorporating a variety of occupational areas shall be permitted when the handicapping conditions warrant.

Section 8. Adult (postsecondary) programs shall be designed for occupational preparation of person sixteen (16) years of age or older who have completed or left the regular high school. The programs shall be organized on a full-time basis during the day or evening hours. Students may enroll either full-time or part-time in the schedule

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~~programs. Programs shall be designed to include advanced placement of secondary students into the program based on competencies gained and articulation for adult students to receive college credit in cooperation with associate degree programs in community colleges and universities. Such programs shall be approved by the State Board for Adult and Technical Education.~~

~~Section 9. Continuing education programs for adults shall be designed to meet the needs of persons who have entered the labor market, who are underemployed or are temporarily unemployed and who need training in preparing, upgrading, retraining or supplementing knowledge and skills for employment or job advancement. Courses shall consist of either single or multiple units of intensive instruction. They may be customized for specific industries or provided to the general public.]~~

Section 6. ~~[40.]~~ Recognized vocational student organizations and leadership activities shall be an integral part of the instructional program and shall be supervised by qualified vocational education personnel.

~~[Section 11. Instructional and administrative personnel in secondary vocational technical programs shall be fully certified under the provisions established by the State Board for Elementary and Secondary Education and any successor certification agency.]~~

~~Section 12. Instructional and administrative personnel in postsecondary vocational technical programs shall meet the requirements specified by the State Board for Adult and Technical Education.~~

Section 13. Annual plans for vocational technical programs along with applications for funds for the next school year shall be submitted by all eligible recipients by April 15. Local school district programs shall be submitted directly to the Office of Secondary Vocational Education in the Kentucky Department of Education. All other eligible recipients shall submit plans directly to the Department for Adult and Technical Education.]

Section 7. ~~[14.]~~ Each ~~[occupational preparation]~~ program ~~[area]~~ shall have an active ~~[program]~~ advisory committee ~~[to assist in planning, implementing, and evaluation programs]~~. Reference 780 KAR 2:020, Section 4.

Section 8. Assessment ~~[15. A continuous evaluation]~~ of the vocational technical education programs shall be conducted ~~[by the local educational agency]~~ in accordance with requirements and instruments ~~[developed or]~~ approved by the Department for ~~[Adult and]~~ Technical Education ~~[and by the local educational agency to determine the effectiveness of the program in terms of its objectives. The evaluation shall include a follow up of students after their termination from the program]~~. The Commissioner for the Department for ~~[Adult and]~~ Technical Education shall designate the records and reports to be kept by local educational agencies operating approved vocational technical education programs. Staff from the Department for ~~[Adult and]~~ Technical Education or the Department of Education shall make periodic evaluation visits for program improvement purposes.

Section 9. ~~[16.]~~ Where applicable, all vocational technical education programs shall operate according to guidelines developed by state or national licensure, certification, and registration agencies having jurisdiction over graduates who seek employment in occupations governed by such agencies.

Section 10. The facilities for any vocational technical education program shall be of adequate size and designed to accommodate the activities and number of work stations unique to each program. ~~[17.]~~

Classrooms, libraries, ~~[shops,]~~ laboratories, and other facilities, including instructional equipment, supplies, teaching aids, and other materials, shall be provided in quantity and quality to meet the objectives in the vocational technical instruction. ~~[The facilities for any vocational education program shall be of adequate size and design to accommodate the activities and number of work stations unique to each program.]~~ Facilities and equipment shall be approved by the Commissioner for the Department for ~~[Adult and]~~ Technical Education in cooperation with the Commissioner for the Department of ~~[Elementary and Secondary]~~ Education or designee.

Section 11. ~~[18.]~~ Programs offered by any eligible recipient of federal funds shall be disapproved if program requirements are not met or provisions of the Kentucky State Plan for Vocational-Technical Education are not met.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: KY TECH schools - all postsecondary and secondary programs in all KY TECH schools are 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 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: State agency receipts and

federal dollars.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The same standards apply to every school across the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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. N/A

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 4:020. Diploma requirements for postsecondary students.

RELATES TO: KRS 151B.110

STATUTORY AUTHORITY: KRS 151B.110

NECESSITY AND FUNCTION: KRS 151B.110 gives the State Board for Adult and Technical Education all necessary power and authority in administering the state's vocational-technical educational programs. This administrative regulation is necessary in order to set a statewide standard for awarding diplomas to postsecondary students in the state's vocational-technical schools.

Section 1. The following requirements shall be met before a diploma is awarded to a postsecondary vocational-technical education student. Each student [applicant must]:

(1) Have earned [Hold] a high school diploma or high school equivalency diploma based on passing the GED test; [meet GED requirements];

(2) Meet the entry/exit requirements for the program; [exit test score on the Test of Adult Basic Education (TABE) as specified in 780 KAR 2:130; or, for deaf or hearing impaired students, an achievement test that is normed for the deaf or hearing impaired.]

(3) Complete all program requirements; [one (1) course each in the areas of study skills, computer literacy, economics, and employability skills, or test out;

(4) Complete the tasks for a major set forth on the Dictionary of Occupational Titles, provided such is designated as a diploma exit

point in one (1) of the postsecondary vocational programs as defined in the "Office of Education DOT Cross Reference" prepared by the Program Services Division and distributed on November 21, 1984. This document is hereby incorporated by reference, and a copy may be obtained from the Occupational Management Information Unit in the Office of Technical Education; and]

(4) [(5)] Pass an [written] occupational achievement test (the Kentucky Vocational Achievement Test (KVAT) or an approved nationally normed test). Reasonable accommodation will be made for students with disabilities. [prepared by the Office of Technical Education and validated by Kentucky vocational teachers for the particular occupational program. The test shall be normed using scores from Kentucky students. When English is not the primary language, alternate test procedures may be implemented.

Section 2. Students may take the occupational achievement test after verification by the instructor that the student has successfully demonstrated shop or laboratory performance, technical knowledge, attitude and conduct. Students who fail to pass the occupational achievement test may retake the test at the next testing period, remain enrolled for additional instruction, or terminate enrollment and accept a certificate of completion. Students who elect to retake the test may only be retested one (1) time without additional instruction or related work experience.

Section 3. Students who fail to meet the exit requirements on TABE, Level D, will be provided additional instruction. When the students are ready to retake, they will be provided an alternate form of the TABE.]

Section 2. [4.] Clear and specific notice of diploma requirements and of levels of satisfactory achievement shall be disseminated to each student upon entrance into a vocational program.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: All postsecondary students enrolled in diploma programs in KY TECH schools.

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

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

(b) Cost of doing business in the geographical area in which the

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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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All postsecondary students will be treated the same.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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. N/A

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 5:010. Institutional courses, approval of.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: To establish a procedure and minimal criteria for approval of courses in all types of schools for the training of veterans.

Section 1. Educational institutions may receive ~~desiring~~ approval of courses for the education and training of veterans, reservists ~~war orphans~~, and other eligible persons by applying ~~shall apply~~ to the

state approving agency on ~~such~~ forms and in the ~~such~~ manner ~~as~~ prescribed by the State Board for Adult and Technical Education.

Section 2. The state approving agency shall approve accredited courses for the training of veterans and other eligible persons when ~~it is found upon investigation that~~ the institution meets all the requirements of Section 3675 ~~4775~~, Chapter 36, Title 38, United States Code.

Section 3. The state approving agency shall approve nonaccredited courses for the training of veterans and other eligible persons only if ~~when it is found upon investigation that~~:

(1) The institution meets all of the requirements of Section 3676 ~~4776~~, Chapter 36, Title 38, United States Code.

(2) The specific course has been in operation for a minimum of two (2) years immediately preceding the date of application for approval.

(3) The instructors meet certification standards as established by the State Board for Adult and Technical Education of similar teachers in the public schools, or meet licensing requirements for those schools operating under the jurisdiction of other state boards or agencies.

~~[(4) Certain schools offering courses such as sales, sales management, and truck driving, shall show that at least one-half (1/2) of the persons completing such courses over the preceding two (2) year period have been employed in the field for which they were trained.]~~

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: KY TECH schools, proprietary schools, public and private universities and colleges, and public high schools.

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

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

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

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

- (1) First year following implementation: 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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: U.S. Code, Title 38, Part 21.4153.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: 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

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. U.S. Code, Title 38, Parts 21.4150, 21.4250, 21.4251, 21.4253, and 21.4254.

2. State compliance standards. N/A

3. Minimum or uniform standards contained in the federal mandate. Yes

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 5:020. Apprenticeship and OJT courses, approval of.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: To establish a procedure and [minimal] criteria for approval of apprenticeship and other on-the-job training programs for veterans.

Section 1. Training establishments may receive [desiring] approval of apprenticeship and other on-the-job courses for the training of veterans and other eligible persons by applying [shall apply] to the state approving agency on [such] forms and in the [such] manner [as] prescribed by the State Board for Adult and Technical Education.

Section 2. The state approving agency shall approve apprentice and other on-the-job courses for the training of veterans and other eligible persons when ~~[it is found upon investigation that]~~ the training establishment meets all of the requirements of Sections 3672 and 3677 ~~[4682 and 4777]~~, respectively, of Title 38, United States Code.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Private business establishments.

(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: U.S. Code, Title 38, Part 21.4153.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

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- the geographical area in which implemented and on Kentucky: N/A
- (b) State whether a detrimental effect on environment and public health would result if not implemented: 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
- (10) Any additional information or comments: N/A
- (11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. U.S. Code, Title 38, Parts 21.4150, 21.4261, and 21.4262.
2. State compliance standards. N/A
3. Minimum or uniform standards contained in the federal mandate. Yes
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 5:030. Revisions and amendments approval.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: To provide for updating of programs by revisions and amendments to initial approvals.

Section 1. Should the educational institution or training establishment desire to make changes in any portion of its program or any amendments after initial approval has been granted, the institution or training establishment shall make application to the state approving agency for [such] approval [~~as may be needed~~].

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: KY TECH schools, proprietary schools, public and private universities and colleges, public high schools, and private business establishments.

(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: U.S. Code, Title 38, Part 21.4153.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: 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

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. U.S. Code, Title 38, Parts 21.4250, 21.4251, 21.4253, 21.4253, 21.4254, 21.4258, 21.4261 and 21.4262.

2. State compliance standards. N/A

3. Minimum or uniform standards contained in the federal mandate. Yes

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

**WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(Amendment)**

780 KAR 5:040. Denial or revocation of approval.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: To provide a means of withholding or withdrawing approval in any case that fails to conform to required standards.

Section 1. If the state approving agency [~~when upon investigation~~] finds that an institution or training establishment has been guilty of unscrupulous practice, misrepresentation, fraud, or has failed to conform to any of the representations contained in its application for approval, approval shall be withheld [shall withhold approval]; or if the [such] institution or training establishment has been approved previously, the approval shall be withdrawn.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: KY TECH schools, proprietary schools, public and private universities and colleges, public high schools, and private business establishments.

(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: U.S. Code, Title 38, Part 21.4153.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: 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

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. U.S. Code, Title 38, Parts 21.4259.

2. State compliance standards. N/A

3. Minimum or uniform standards contained in the federal mandate. Yes

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

**WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(Amendment)**

780 KAR 5:050. Inspection and supervision.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: To provide a means of withholding or withdrawing approval in any case that fails to conform to required standards.

Section 1. The state approving agency, through its administrative unit in the Department for Technical Education [Office of the Kentucky Tech System] shall:

(1) Visit institutions and training establishments in order to inspect the training facilities and ascertain that they meet the minimum criteria before approval is granted; and

(2) Visit approved institutions and training establishments when deemed necessary. These visits must be in accordance with the provisions and limitations as outlined in the annual contract entered into between the Department of Veterans Affairs [Veterans Administration] and the State Board for Adult and Technical Education. The visits will be to determine whether the institutions and training establishments continue to comply with the representations made in their approval applications, and for the general improvement and upgrading of their training programs.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: KY TECH schools, proprietary schools, public and private universities and colleges, public high schools and private business establishments.

(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: U.S. Code, Title 38, Part 21.4153.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: 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

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. U.S. Code, Title 38, Parts 21.4250.

2. State compliance standards. N/A

3. Minimum or uniform standards contained in the federal mandate. Yes

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

WORKFORCE DEVELOPMENT CABINET

State Board for Adult and Technical Education (Amendment)

780 KAR 7:010. Definitions.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: To define terms pertinent to vocational-technical education facilities and equipment in Kentucky.

Section 1. ~~[The following]~~ Definitions. (1) "Area technology center" means a school primarily serving secondary students offering academic and occupational programs suitable for fulfilling high school credit requirements and attaining occupational goals and objectives. Area technology centers may serve one (1) or more local school districts and may also serve postsecondary students with postsecondary programs. Area technology centers may be used for the upgrading of occupational skills for current and emerging workforce. Area technology centers shall be directly administered by the Department for Technical Education, through the regional and school-based staff which are responsible for the programs, services and activities in the school.

(2) "Regional technology center" means a school primarily serving postsecondary students, offering academic and occupational programs and services suitable for preparation for employment, upgrading of occupational skills, assessment of occupational potential and interest, and applied research and development. Regional technology centers may be specialized schools for health related occupations, advanced technical programs or schools that meet technical institute standards. Regional technology centers may also serve secondary students. Regional technology centers shall be directly administered by the Department for Technical Education, through the regional or school-based staff which are responsible for the programs, services, and activities in the school.

(3) Corrections education center means a school serving incarcerated postsecondary students offering academic and occupational programs and services suitable for preparation for employment, upgrading of occupational skills, and assessment of occupational potential and interest. Correction education centers are operated in correctional institutions through Memorandum of Agreement with the Department of Corrections. ~~[apply for vocational education facilities in Kentucky;~~

~~(1) "Area vocational education school" means one (1) of the following facilities:~~

~~(a) A "public specialized high school" used exclusively or principally for the provision of vocational education to persons who are available for study in preparation for entering the labor market; or~~

~~(b) The "department of a public high school" exclusively or principally used for providing vocational education in no less than five (5) different occupational fields to persons who are available for study in preparation for entering the labor market. A department of a public high school may be described under the following types:~~

- ~~1. A department constructed as a separate facility to serve two (2) or more high schools in a single local school district;~~
- ~~2. A department constructed as a separate facility to serve two (2) or more high schools in two (2) or more local school districts;~~
- ~~3. A department constructed as a separate facility to serve one (1) high school for a single local school district; or~~
- ~~4. A department constructed as an addition to the high school facility which is owned and operated by a single local school district for the benefit of only one (1) high school; or~~

~~(c) A "public vocational or technical school" used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market; or~~

~~(d) The "department or division of a public junior college or community college or university" which provides vocational education in no less than five (5) different occupational fields, under the supervision of the State Board for Adult and Technical Education, leading to immediate employment but not necessarily leading to a baccalaureate degree.~~

~~(2) "State vocational technical school" means a school which is state owned and state operated and generally meets the definition in subsection (1)(c) of this section. In some situations, it may be used to meet the purposes as described in subsection (1)(b) of this section.~~

~~(3) "Area vocational education center" means a facility which provides the vocational component of the education program for secondary students. The center will primarily meet the purposes described in subsection (1)(b) of this section; however, it may be used to meet the purposes described in subsection (1)(c) of this section.~~

~~(4) "Residential school facility" means a facility used for residential vocational education purposes. It includes shops, laboratories, classrooms and related facilities (including initial equipment), dormitories, cafeterias, recreational facilities, and such other facilities which are appropriate for a residential vocational education school.~~

~~(5) "Vocational facility" means shops, laboratories, classrooms, and related facilities (including initial equipment and interests in the land on which such facilities are constructed). This term shall not include any facility intended primarily for events for which admission is to be charged to the general public.]~~

Section 2. Kentucky TECH may provide vocational-technical programs for postsecondary students in a facility jointly administered through a memorandum of agreement with other educational agencies. [The facilities defined in Section 1 of this administrative regulation may be constructed if they are available to all residents of the state or an area of the state designated and approved by the State Board for Adult and Technical Education and if, in the case of a school, department, or division described in Section 1(1)(c) or (d) of this administrative regulation, it admits as regular students both persons who have completed high school and persons who have left high school.]

Section 3. The following definitions apply to vocational-technical education construction, maintenance, operation, equipment and supplies for Kentucky TECH schools [in Kentucky]:

(1) "Construction" means construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement as well as architect fees.

(2) "Facility maintenance" means [refers to] maintenance of the facility which includes all equipment and systems considered to be permanently installed as part of the facility. "Maintenance" means

repairing, servicing, or replacing any or all parts of the facility including the permanently installed equipment and systems and appropriate insurance as needed to assure proper protection and adequate and safe operating conditions. Maintenance shall be in accordance with approved educational specifications and construction plans for the facility [which were approved by the state board and included in contractual agreements with the state board or its designated representatives].

(3) "Operation" means [all aspects of maintenance and operation of the facility, excluding those things included in the definition of "maintenance." It includes] management of the education program offered in the facility and [providing] the necessary ancillary services, including the cost of salaries, equipment, supplies, materials, and transportation of students which are involved in the instructional program. It may include, but is not limited to, other reasonable costs of services and supplies needed in providing janitorial services, replacement of expendable supplies [such as light bulbs, fuses, and utilities].

(4) "Equipment" means a movable or fixed unit of furniture or furnishings, an instrument, a machine, an apparatus, or a set of articles which meet all of the following conditions:

(a) [It] Retains its original shape and appearance with use;

(b) [It] Is nonexpendable. [That is,] If the article is damaged or some of its parts are lost or worn, it is usually more feasible to repair it rather than replace it with an entirely new unit;

(c) [It] Costs 100 [fifty (50)] dollars or more; and

(d) [It] Does not lose its identity through incorporation into a different or more complex unit or substance.

(5) "Supplies" means any article or material which meets any one (1) or more of the following conditions:

(a) [It] Is consumed in use;

(b) [It] Loses its original shape or appearance with use;

(c) [It] Is expendable. [That is,] If the article is damaged or some of its parts are lost or worn, it is usually more feasible to replace it with an entirely new unit rather than repair it;

(d) [It] Costs less than 100 [fifty (50)] dollars; or

(e) [It] Loses its identity through incorporation into a different or more complex unit or substance.

(6) ["New facility equipment" means those equipment items necessary to begin operation of vocational education programs in a newly constructed facility plus the initial complement of items normally possessing characteristics of equipment but costing less than fifty (50) dollars.

(7) "Replacement equipment" means those equipment items purchased to replace items that already exist in a vocational-technical program. The item replaced must be removed from its original location and disposed of by trade-in, surplus, sale (in compliance with state administrative regulations), [cannibalization,] or [in some limited cases] transfer to another [vocational] program or school. [In most cannibalization or transfer instances, the item will lose its identity as a unit.]

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written

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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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: All 87 vocational facilities that are owned and/or operated by the KY TECH System.

(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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 7:020. Area technology center ~~[or public high school]~~ standards ~~[for department of]~~.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: To establish ~~[minimum]~~ standards ~~[for the establishment of] an area technology center, [vocational education school as a department of a public high school or an area vocational education center.]~~

Section 1. An ~~[A department of a public high school or]~~ area technology center shall meet standards established by the Department for Technical Education and approved by the State Board for Adult and Technical Education. ~~[vocational education center may be established when the following standards are met:~~

~~(1) The facility shall be used exclusively or principally for providing vocational education in no less than five (5) different occupational fields to persons who are available for study in preparation for entering the labor market.~~

~~(2) The facility shall serve an area with high schools having a minimum enrollment of 1,200 students in grades nine (9) through twelve (12). The distance for transporting students from the parent high school to the facility shall not exceed twenty-five (25) miles or a driving time of thirty (30) minutes.~~

~~(3) The facility shall provide the vocational preparation component of the educational program for a minimum of 180 high school students who are fifteen (15) years of age or older.~~

~~(4) The facility shall provide for a minimum of five (5) different vocational preparation programs and the appropriate related instruction. The types of programs and related instruction to be offered shall be approved by the Commissioner for Adult and Technical Education.]~~

Section 2. ~~[(5)]~~ Each vocational-technical education program offered in the facility shall meet the minimum state requirements for teachers, curriculum, and equipment.

~~[(6) For a department constructed as a separate facility to serve two (2) or more high schools in a single local school district, a department constructed as a separate facility to serve two (2) or more high schools in two (2) or more local school districts, and a department constructed as a separate facility to serve only one (1) high school for a single local school district. For a department constructed as an addition to the high school facility which is owned and operated by a single local school district for the benefit of only one (1) high school, the assistant high school principal or vocational education department head may be charged with supervision of the total vocational program.~~

~~(7) The facility shall be available to all residents of the area designated and approved by the State Board for Adult and Technical Education.~~

~~(8) The center shall be available, on a need basis, to offer programs for postsecondary students and adults within the designated area.~~

~~(9) A minimum of five (5) acres of usable land shall be provided for building, expansion, and parking.]~~

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior

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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 the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 54 area technology centers that are operated by the KY TECH system.

(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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 7:030. Regional technology center [Vocational-technical, public or state] standards.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: To establish [minimum] standards for regional technology centers. ~~[the establishment of an area vocational education school as a public vocational or technical school or state vocational technical school.]~~

Section 1. A regional technology center shall meet the standards established by the Department for Technical Education and approved by the State Board for Adult and Technical Education. [A public vocational or technical school or state vocational technical school may be established when the following standards are met:

~~(1) The area to be served by the school shall have a minimum of 100,000 total population.~~

~~(2) The school shall be used exclusively or principally to provide vocational or technical education for persons who have completed or left high school and who are available for study in preparation for entering the labor market.~~

~~(3) The school shall offer a minimum of twelve (12) different vocational preparation programs and the appropriate related instruction.~~

~~(4) The school shall serve a minimum of 500 postsecondary students (FTE) during the regular school day. (FTE means six (6) hours of instruction per day per student.)~~

~~(5) The school facility shall meet minimum standards for space and adaptability for the programs to be offered.~~

~~(6) A minimum of twenty (20) acres of usable land shall be provided for building, expansion, and parking. In an urban or mountain area, this standard may be waived by the State Board for Adult and Technical Education upon recommendation of the Commissioner of Adult and Technical Education if the twenty (20) usable acres are not available and it is determined that there is sufficient space available for building, expansion, and parking.]~~

Section 2. ~~[(7)]~~ Each vocational-technical education program offered in the school shall meet the minimum state requirements for teachers, curriculum, and equipment as established by the Department for Technical Education and approved by the State Board for Adult and Technical Education.

~~[(8) The school shall be available to all residents of the state with priority given to the area designated and approved by the State Board for Adult and Technical Education.]~~

Section 3. ~~[(9)]~~ The school may ~~[shall]~~ be available for high school students when they do not have ready access to an area technology ~~[vocational education]~~ center.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative

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regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 25 regional technology centers that are owned and operated by the KY TECH System.

(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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 7:040. Facility maintenance.

RELATES TO: KRS 151B.145, 151B.150

STATUTORY AUTHORITY: KRS 151B.145, 151B.150

NECESSITY AND FUNCTION: To establish responsibilities ~~[[policy and responsibility]]~~ relative to maintenance of vocational-technical education facilities.

Section 1. Maintenance of area technology centers owned by local boards of education shall be the responsibility of the local boards of education and shall expend at a minimum the share of funds awarded to the local board through the SEEK funds earmarked in the Kentucky Department of Education's budget for the operation of vocational-technical programs in state-operated facilities. [Maintenance of vocational-technical facilities owned by the local boards of education shall be the responsibility of the local boards of education and shall be accomplished from funds designated by the State Board for Adult and Technical Education. Maintenance shall be in accordance with current and approved plans and specifications filed in the office of the Commissioner for Adult and Technical Education and as specified by contractual agreements with the State Board of Adult and Technical Education or its designated representatives.]

Section 2. Maintenance of vocational-technical education facilities owned by the state and operated by the Department for [Adult and Technical Education, [Office of Kentucky Tech System,] shall be accomplished from approved funds designated in accordance with current and approved plans and specifications on file in the office of the Commissioner of [Adult and Technical Education and the Division of Engineering, Finance and Administration Cabinet.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel,

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Cabinet for Workforce Development Cabinet, 500 Mero Street,
Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 54 area technology centers owned by the local boards and operated by the KY TECH System.

(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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

None

2. State compliance standards. None

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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 7:060. Equipment inventory.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: KRS 45.301 gives the Finance and Administration Cabinet the function and responsibility of supervision of purchasing and storekeeping and control of property and stores, and KRS 151B.110 gives the State Board for Adult and Technical Education the authority ~~[power and responsibility]~~ to administer the state vocational-technical education program. This administrative regulation establishes policy and operating procedures relative to the inventory of ~~[inventorying]~~ vocational-technical education equipment.

Section 1. The Office of Administrative Services shall be responsible for the management and control of an inventory system for vocational-technical education programs. All nonexpendable personal property with a value of 100 ~~[fifty (\$50)]~~ dollars or more acquired in whole or in part with state funds shall be maintained on this inventory and identified in accordance with administrative regulations established by the Finance and Administration Cabinet. The Office of Kentucky TECH System shall be responsible for ~~[the]~~ conducting of an annual ~~[physical]~~ inventory of all property ~~[in vocational education programs and shall make reports of these inventories to the Office of Administrative Services by September 1 of each year].~~

Section 2. All nonexpendable personal property acquired in whole or in part with federal funds shall be maintained on the current inventory in accordance with federal guidelines.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: All equipment that has a value of \$100 or more require to be inventoried by the Finance and Administration Cabinet.

(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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (Amendment)

780 KAR 7:070. Equipment insurance.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: To establish ~~policy and~~ operating procedures relative to equipment insurance.

Section 1. All vocational-technical education equipment in the Kentucky TECH ~~[state vocational-technical] schools [and area vocational-technical education centers]~~ shall be covered by the State Fire and

Tornado Insurance Fund regular policy underwritten by the Commonwealth of Kentucky except:

(1) Such equipment is to be insured against the perils of fire, flood, water, wind, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke.

(2) Equipment normally utilized and stationed at remote locations shall be insured under the floater clause in the Fire and Tornado Insurance Fund.

(3) ~~[(2)]~~ Equipment on loan from industry requiring insurance shall be insured under the Inland Marine policy underwritten by the Commonwealth of Kentucky.

~~[Section 2. The local school district shall provide insurance coverage on all equipment owned in whole or in part by the federal and state governments housed in a facility under its administrative direction and control. Such equipment is to be insured against the perils of fire, wind, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke.]~~

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: All equipment in the KY TECH schools.

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

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

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

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

(1) First year following implementation: 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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES

Office of Inspector General

(Amendment)

902 KAR 20:270. Mobile health services.

RELATES TO: KRS 216B.010 through 216B.131, 216B.990

STATUTORY AUTHORITY: KRS ~~[13A.100]~~ 216B.040, 216B.105 ~~[Executive Order 86-366]~~

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. This administrative regulation provides minimum licensure requirements for the operation of mobile health services.

Section 1. Definitions. (1) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(2) "Computed tomography (C.T.) scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.

(3) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(4) ~~[(3)]~~ "License" means an authorization issued by the cabinet for the purpose of operating mobile health services.

~~[(4)] "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.]~~

(5) "Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones. ~~["Qualified urologist"~~

~~means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or is in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery and who otherwise meets criteria established by the mobile health service's governing authority.]~~

(6) "Magnetic Resonance Imaging (MRI)" means a diagnostic imaging modality which utilizes magnetic resonance, an interaction between atoms and electromagnetic fields, to project images of internal body structures.

(7) "Qualified anesthesiologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or is in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery and who otherwise meets the criteria established by the mobile health service's governing authority. ~~["Computed Tomography (C.T.) Scanning" means a radiological diagnostic imaging procedure that shows cross sectional images of internal body structures.]~~

(8) "Qualified urologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or is in the process of being certified by the American Board of Urology or the American Osteopathic Board of Surgery and who otherwise meets criteria established by the mobile health service's governing authority. ~~["Lithotripter" means a noninvasive treatment technique that utilizes shock waves to shatter kidney stones.]~~

(9) "Registered nurse" means a nurse who is licensed to engage in registered nursing practice pursuant to KRS 314.041.

~~[(10)] "Qualified anesthesiologist" means a person who is a doctor of medicine or a doctor of osteopathy licensed to practice medicine and surgery and who is board certified or is in the process of being certified by the American Board of Anesthesiology or the American Osteopathic Board of Surgery and who otherwise meets the criteria established by the mobile health service's governing authority.]~~

Section 2. Scope of Operation and Services. Mobile health services provide medical services in various locations and in some instances utilize a specially equipped vehicle such as a van, trailer or mobile home. These services include mobile diagnostic imaging and examination services, mobile treatment services, and any other medical or dental services provided through the use of a mobile vehicle or performed at various locations.

Section 3. Administration. (1) Licensee.

(a) The licensee shall be legally responsible for the service and for compliance with federal, state and local laws and regulations pertaining to the operation of the service, limited to the scope of the service's certificate of need.

(b) The licensee shall establish lines of authority and designate an administrator who will be principally responsible for the daily operation of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate administrator may be designated from each hospital to serve as the administrator of the service when it is being provided at the hospital where the designee is employed.

(2) Policies. There shall be written administrative policies which the service follows covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;

(b) A description of linkages with inpatient facilities and other providers;

(c) Policies and procedures for the guidance and control of personnel performances;

(d) A written program narrative describing in detail the service(s) offered, methods and protocols for service delivery, qualifications of personnel involved in the delivery of the services, and goals of the

service(s);

(e) A description of the administrative and patient care records and reports; and

(f) Procedures to be followed in the storage, handling and administration of drugs and biologicals.

(3) Personnel.

(a) Medical director. The service shall have a medical director. The medical director shall be a licensed physician or dentist with specialized training and experience in, and responsibility for, all medical aspects of the service. In the case of a service whose governing authority is comprised of more than one (1) licensed hospital, a separate medical director may be designated from each hospital's medical staff to serve as the medical director of the service when it is being provided at the hospital where the physician is on staff. If a service operates only diagnostic examination equipment, and if the service is offered only to licensed hospitals, and if the employees of the service makes no medical assessment of the diagnostic patient data collected, then the service shall be exempt from the requirements of this paragraph.

(b) The service shall employ, or provide for through a written contractual agreement, sufficient number of qualified personnel to provide effective patient care and all other related services. The licensee shall provide written personnel policies which shall be available to all employees, reviewed on an annual basis, and revised as necessary. If the staff/patient ratio does not meet the needs of the patients, the Division of Licensing and Regulation shall determine and inform the program administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

(c) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address and social security number;
2. Evidence of current registration, certification or licensure of personnel;
3. Records of training and experience; and
4. Records of performance evaluation.

(4) In-service training. All personnel shall participate in ongoing in-service training programs relating to their respective job activities including thorough job orientation for new employees.

(5) Medical records.

(a) The service shall maintain medical records which contain at least the following:

1. Medical and social history relevant to the service(s) provided, including data obtainable from other providers;
2. Names of referring physician, if any, and physician's orders for special diagnostic services such as x-ray or CT scans;
3. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment diagnosis, services provided, medications and treatments prescribed, and disposition made;
4. Reports of all physical examinations, laboratory, x-ray, and other test findings relevant to the service(s) provided; and
5. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all patient records shall be maintained at all times.

(c) Transfer of records. The service shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the service shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is

longer.

(e) A specific location shall be designated by the mobile health service for the maintenance and storage of the service's medical records.

(f) Provisions for storage of medical records in the event the mobile health service ceases to operate because of disaster, or for any other reason. The licensee shall safeguard the record and its content against loss, defacement and tampering.

Section 4. Vehicle Requirements. (1) All vehicles used in the provision of a health service, as provided by the service's certificate of need, shall be kept, in optimum order with clean interiors and equipment.

(2) The following standards shall apply only to those vehicles which the patient enters.

(a) There shall be adequate heating and air-conditioning capability in both the driver and patient compartments.

(b) There shall be a minimum of two (2) potential power sources for the vehicle. To insure an immediately available source of power in the event of a power failure, one (1) must be self-contained on the vehicle. The other source must be an exterior source of power hookup.

(c) The vehicle shall be accessible to users with disabilities ~~the handicapped~~ either through the use of a wheelchair lift or a ramp which complies with applicable American National Standards Institute (ANSI) requirements.

(d) The vehicle shall have adequate and safe space for staff and examination procedures, as determined by the cabinet.

(e) Equipment. Vehicles used in the provision of a health service, as provided by the service's certificate of need, shall have the following essential equipment:

1. One (1) five (5) pound dry chemical fire extinguisher;
2. One (1) first aid kit;
3. Suction apparatus;
4. Oxygen equipment (portable) including:
 - a. One (1) "D" size oxygen cylinder;
 - b. One (1) pressure gauge and flow rate regulator;
 - c. Adaptor and tubing; and
 - d. Transparent masks for adults and children. Nasal cannulas may be substituted.

(f) Personnel. Each mobile health service vehicle shall at a minimum be staffed by one (1) person, who may also be the driver of the vehicle, who shall have the following qualifications:

1. Red Cross Advanced and Emergency Care Certification, each with supplemental CPR instruction certified by the American Red Cross or the American Heart Association; or
2. EMT-first responder certification; or
3. EMT-A certification; or
4. Licensure as a registered nurse, physician or dentist.

Section 5. Provision of Services. A licensed mobile health service shall comply with the requirements listed in Sections 3, 4, and 6 of this administrative regulation, the service's program narrative, and the additional requirements of this section which relate to the particular service(s) offered by the licensee.

(1) Diagnostic services. Diagnostic services are those services which are performed to ascertain and assess an individual's physical health condition.

(a) Diagnostic services shall be performed only on the order of a physician except for mammography services.

(b) The service shall prepare a record for each patient to include the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, the name of the person performing the procedure, the date and the name of the physician to whom the results were sent.

(c) Diagnostic imaging services.

1. Diagnostic imaging services are those services which produce

an image, either through film or computer generated video, of the internal structures of a patient. These services include:

- a. X-ray;
- b. MRI;
- c. CT scanning;
- d. Ultrasound;
- e. Mammography;
- f. Fluoroscopy; and
- g. Xerography.

2. Any mobile health service which provides diagnostic imaging services shall comply with the following:

a. Equipment used for direct patient care shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;

b. There shall be a written preventive maintenance program which the service follows to ensure that imaging equipment is operative, properly calibrated, and shielded to protect the operator, patient, environment, and the integrity of the images produced;

c. Diagnostic imaging services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of the specific imaging technique for diagnostic purposes;

d. Imaging services shall have a current license or registration pursuant to applicable Kentucky statutes and any administrative regulations promulgated thereunder;

e. All personnel engaged in the operation of imaging equipment shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations;

f. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the imaging equipment;

g. There shall be a physician's signed order which specifies the reason the procedure is required, the area of the body to be exposed, and the number of images to be obtained and the views needed, and a statement concerning the condition of the patient which indicates why mobile imaging services are necessary; and

h. There shall be sufficiently trained on duty personnel with adequate equipment to provide emergency resuscitation services in the event of a patient emergency.

(d) Other diagnostic services.

1. Other diagnostic services are those services which are provided through the use of diagnostic equipment, and physical examination. These services include:

- a. Electrocardiogram services;
- b. Electroencephalogram services;
- c. Holter Monitor services;
- d. Disability determination services;
- e. Pulmonary function services;
- f. Aphresis services;
- g. Blood gas analysis services;
- h. Echosonography services; and
- i. Doppler services.

2. Equipment used for direct patient care shall comply with the following:

a. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative and properly calibrated;

b. All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations; and

c. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment.

3. Physical examination services shall be nonabusive and provided in a manner which ensures the greatest amount of safety and security for the patient.

a. Protocols for diagnostic examinations shall be developed by the medical director.

b. Personnel performing physical examinations shall have adequate training and be currently licensed or certified in accordance with applicable Kentucky statutes and administrative regulations.

c. Personnel performing physical examinations shall be limited by the relevant scope of practice of Kentucky licensure.

(2) Treatment services. Treatment services are those services provided to an individual who, because of a physical health condition, is in need of medical assistance for the attainment of their maximum level of physical function.

(a) Mobile health clinic. A mobile health clinic is a health service providing both diagnostic and treatment services through the use of a mobile vehicle. A mobile health clinic may provide a wide range of diagnostic and treatment services on an outpatient basis for a variety of physical health conditions.

1. Policies. the licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physicians and one (1) or more advanced registered nurse practitioners. At least one (1) member shall not be a member of the mobile health clinic staff. The policies shall include:

a. A description of the services the mobile health clinic provides directly and those provided through agreement;

b. Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records; and

c. Procedures for review and evaluation of the services provided by the clinic at least annually.

2. Personnel. The mobile health clinic shall have a staff that includes at least one (1) physician and at least one (1) advanced registered nurse practitioner. The clinic shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

a. The physician shall:

(i) Be responsible for all medical aspects of the clinic and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;

(ii) In conjunction with the advanced registered nurse practitioner(s), participate in developing, executing, and periodically reviewing the mobile health clinic's written policies and services;

(iii) Periodically review the mobile health clinic's patient records, provide medical orders, and provide medical care services to patients of the mobile health clinic; and

(iv) Be present for consultation weekly, and be available within one (1) hour, through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

b. The advanced registered nurse practitioner shall:

(i) Participate in the development, execution and periodic review of the written policies governing the services the mobile health clinic provides;

(ii) Participate with the physician in periodic review of patient health records;

(iii) Provide services in accordance with mobile health clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

i. Arrange for, or refer patients to needed services that may not ~~cannot~~ be provided at the mobile health clinic; and

ii. Assure that adequate patient health records are maintained and transferred when patients are referred.

3. The mobile health clinic shall have linkage agreements or arrangements with each of the following:

a. Inpatient hospital care;

b. Physician services in a hospital, patient's home, or long-term care facility;

c. Additional and specialized diagnostic and laboratory services that are not available at the mobile health clinic;

d. Home health agency;

e. Emergency medical services;

- f. Pharmacy services; and
- g. Local health department.

4. The mobile health clinic shall carry out, or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

- a. The utilization of clinic services including at least the number of patients served and the volume of services;
- b. A representative sample of both active and closed clinical records; and
- c. The mobile health clinic's health care policies.

5. The mobile health clinic shall develop and maintain written protocols, i.e., standing orders, rules of practice, and medical directives, which apply to services provided by the clinic and which explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall further direct data analysis, direct explicit medical action depending upon the data collected, and include rationale for each decision made. The protocols shall be signed by the staff physician.

6. The mobile health clinic staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

7. The mobile health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

- a. Chemical examinations of urine by stick or tablet methods or both (including urine ketones);
- b. Microscopic examinations of urine sediment;
- c. Hemoglobin or hematocrit;
- d. Blood sugar;
- e. Gram stain;
- f. Examination of stool specimens for occult blood;
- g. Pregnancy tests;
- h. Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and
- i. Test for pinworms.

8. The mobile health clinic shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in lifesaving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

9. The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic, the clinic's next scheduled visit, and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled visits and hours of operation.

(b) Mobile dental clinic. A mobile dental clinic is a health service providing both diagnostic and dental treatment services at different locations through the use of a mobile vehicle or equipment.

1. Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) licensed dentist. These policies shall include:

- a. Guidelines which identify the dental problems which may not be performed in the mobile unit, and provisions for patient referral;
- b. Guidelines for the review and evaluation of the services provided by the clinic at least annually; and
- c. Guidelines for procedures to be followed in the event a patient has a medical emergency.

2. Personnel. The mobile dental clinic shall have a staff that includes at least one (1) licensed dentist and at least one (1) dental assistant.

- a. The dentist shall:

- (i) Be responsible for all aspects of patient care in accordance with KRS Chapter 313 and any administrative regulations promulgated thereunder;

- (ii) Be present in the clinic at all times that a patient is receiving dental care; and

- (iii) Provide direct supervision to all staff involved in the delivery of services.

- b. The dental assistant shall:

- (i) Provide services in accordance with the mobile dental clinic policies and established protocols, KRS Chapter 313, and any administrative regulations promulgated thereunder; and

- (ii) Provide services only under the direct supervision of a licensed dentist.

3. Equipment. The mobile dental clinics shall have the following equipment:

- a. X-ray units;
- b. Sterilizer;
- c. High speed suction;
- d. Dental lights; and
- e. Emergency kit with the following drug types:
 - (i) Antiallergenic;
 - (ii) Vasodilators;
 - (iii) Anticonvulsives; and
 - (iv) Vasopressors.

(c) Mobile lithotripter service. A mobile lithotripter service is a health service which provides for a noninvasive technique for removing kidney or ureteral stones through the use of a lithotripter at various hospital locations.

1. Mobile lithotripter services may only be delivered on the grounds of the hospital utilizing the mobile lithotripter service.

2. Lithotripsy services shall be performed only on the order of a physician.

3. Lithotripsy services shall be provided under the supervision of a physician who is qualified by advanced training and experience in the use of lithotripsy treatment.

4. The service shall prepare a record for each patient to include the date of the procedure, name of the patient, description of the procedures ordered and performed, the referring physician, and the name of the person performing the procedure.

5. There shall be a physician's signed order which specifies the reason the procedure is required, the area of the body to be exposed, and the anticipated outcome of treatment.

6. Policies. A mobile lithotripter service shall develop patient care policies with the advice of a group of professional personnel that includes at least one (1) qualified urologist and one (1) qualified anesthetist. At least one (1) member shall not be a member of the mobile lithotripter service staff. The policies shall include:

- a. A description of how a patient will be transported between the hospital and the mobile lithotripter service;
- b. Procedures to be followed in the event a patient has a medical emergency;
- c. Guidelines for the review and evaluation of the service on an annual basis; and
- d. Policies and protocols governing the utilization and responsibilities of hospital staff in the delivery of lithotripter services.

7. Personnel. The mobile lithotripter service shall employ at least one (1) lithotripter technician, and shall employ or make arrangements with the hospital utilizing the service for at least one (1) registered nurse, one (1) qualified urologist to be present in the unit during the delivery of lithotripsy services, and (1) qualified anesthetist to be available for procedures requiring anesthesia;

8. Lithotripsy equipment used for direct patient care shall comply with the following:

- a. Lithotripsy equipment shall be fully approved by the Federal Food and Drug Administration (FDA) for clinical use;
- b. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment shall be operative,

properly calibrated, properly shielded, and safe for the patient, operator, and environment;

c. All personnel engaged in the operation of diagnostic equipment shall have adequate training and be currently licensed, certified or registered in accordance with applicable Kentucky statutes and administrative regulations; and

d. There shall be a written training plan for the adequate training of personnel in the safe and proper usage of the equipment; and

e. There shall be sufficiently trained on duty personnel with adequate equipment to provide emergency resuscitation in the event of a patient emergency.

(d) Other treatment services shall include in home intravenous (I.V.) therapy services.

1. Other treatment services shall be performed only on the order of a physician.

2. In home I.V. therapy services shall only be performed by a registered nurse.

3. ~~All in home I.V. therapy services shall have a written agreement with a licensed home health agency outlining the responsibilities of both parties.~~

4-] All services provided shall be under the supervision of a licensed physician ~~[who may be associated with the home health agency].~~

4. [6-] Policies. The licensee shall develop patient care policies with the advice of a group of professional personnel that includes one (1) or more physician(s) and one (1) or more registered nurse(s). At least one (1) member shall not be a member of the service's staff. The policies shall include:

a. A description of the services provided; [-]

b. Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records; ~~[and]~~

c. Procedures for review and evaluation of the services provided at least annually; and

d. Guidelines for patient and environmental assessment.

5. [6-] Personnel. The service shall have a staff that includes at least one (1) registered nurse. The service shall employ such other staff or ancillary personnel that are necessary and essential to the service's operation. The registered nurse shall:

a. Participate in the development, execution and periodic review of the written policies governing the services provided;

b. Participate with the physician in periodic review of patient health records;

c. Provide services in accordance with established policies, protocols, the Nurse Practice Act (KRS Chapter 314), and with administrative regulations promulgated thereunder;

(i) Arrange for, or refer patients to needed services that cannot be provided by the service; and

(ii) Assure that adequate patient health records are maintained and transferred when patients are referred.

6. In-service training programs shall include instruction in:

a. Use of equipment;

b. Side effects and precautions of drugs and biologicals; and

c. Infection control measures.

7. The service shall carry out, or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

a. The utilization of the service including at least the number of patients served and the volume of services;

b. A representative sample of both active and closed records; and

c. The service's health care policies.

Section 6. Waste Processing. (1) Sharp wastes, such as broken glass, scalpel blades, and hypodermic needles, shall be segregated from other wastes and aggregated in rigid disposable containers immediately after use. Needles and syringes shall not be cut, dismantled, or destroyed after use, but shall be placed intact into a

rigid container. The rigid containers of sharp wastes shall either be incinerated or disposed of in a sanitary landfill approved pursuant to 401 KAR 47:020.

(2) The mobile health service shall establish a written policy for the handling and disposal of all infectious pathological and contaminated waste. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

(a) Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the mobile health service from which the waste is being removed, shall be attached to the bag in a conspicuous manner.

(b) All unpreserved tissue specimens shall be incinerated off site.

(c) The following waste shall be sterilized before disposal or be disposed of by incineration if they are combustible:

1. Dressings and materials from open or contaminated wounds;

2. Waste materials and disposable linens from isolation rooms;

3. Culture plates;

4. Test tubes;

5. Sputum cups; and

6. Contaminated sponges and swabs.

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 12, 1995

FILED WITH LRC: July 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1995, at 9 a.m., in the Health Services Auditorium, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 16, 1995, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Office of the Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau - 564-2800

(1) Type and number of entities affected: Mobile health services provide medical services in various locations and in some instances utilize a specially equipped vehicle. There are presently (66) licensed mobile health services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received at the Notice of Intent public hearing.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments on this subject were received at the Notice of Intent public hearing.

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

1. First year following implementation: Minimal

2. Second and subsequent years: Minimal

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source if 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: No comments on this subject were received at the Notice of Intent public hearing.

(b) Kentucky: No comments on this subject were received at the Notice of Intent public hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(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:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not used because all facilities are required to meet the same minimum licensure standards.

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

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.10, 205.52, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 233.90, 233.100, "Expansion of Definition of Specified Caretaker Relative", Transmittal No. ACF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance, "Determining AFDC Eligibility When the Only Dependent Child Receives Foster Care Benefits", Transmittal No. ACF-AT-94-5 (February 28, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194.050, 205.010, 205.200(2), (3)

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 from Aid to Families with Dependent Children be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support enforcement activities, strikers and potential entitlement for other programs for eligibility for benefits from Aid to Families with Dependent Children [AFDC].

Section 1. Definitions. (1) "Aid to Families with Dependent Children (AFDC)" means a money payment program for children who are deprived of parental support or care due to death, continued absence, physical or mental incapacity of a parent.

(2) "Aid to Families with Dependent Children Unemployed Parent

(AFDC-UP)" means AFDC benefits are paid when both parents are in the home and at least one (1) parent is unemployed.

(3) "Child" means an individual age seventeen (17) or under or, if eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study before reaching age nineteen (19) or during the month of the 19th birthday.

(4) ~~[(2)]~~ "Deprivation" means loss of parental support due to the unemployment, death, voluntary or involuntary absence, or incapacity of a child's natural or adoptive parent.

(5) "Job Opportunities and Basic Skills (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) ~~[(3)]~~ "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of paternity) parent of the child.

(7) ~~[(4)]~~ "Principal wage earner (PWE)" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for AFDC benefits based on the deprivation of unemployment.

(8) ~~[(5)]~~ "Prior labor market attachment (PLMA)" means the parent has earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for AFDC benefits based on the deprivation of unemployment.

(9) ~~[(6)]~~ "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

(10) "Supplemental Security Income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and persons with a disability;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

Section 2. Age and School Attendance. (1) The definition of a "child", as specified in Section 1 of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for:

(a) A child who is eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) A child who is sixteen (16) to eighteen (18) years of age and living in an active JOBS county, in order to determine his status as exempt or nonexempt for participation in the JOBS program, as specified in 904 KAR 2:370.

(3) Full- and part-time school attendance is defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

Section 3. Enumeration. (1) Each person included in the AFDC case shall furnish his Social Security number or apply for a number if one has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not verified.

(3) The agency shall assist an individual in making application for a Social Security number, if needed.

Section 4. Residence and Citizenship. (1) Residence. A resident is anyone who:

- (a) Is living in the state voluntarily and not for a temporary purpose; or
 - (b) Entered the state with a job commitment or seeking employment; and
 - (c) Is not receiving AFDC benefits from another state.
- (2) Citizenship.
- (a) AFDC shall be provided only to:
 - 1. Citizens;
 - 2. Aliens lawfully admitted for permanent residence; or
 - 3. Aliens otherwise permanently residing in the United States under color of law.
 - (b) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for AFDC, a child shall be in need and shall meet the definition of deprivation as specified in Section 1 of this administrative regulation.

(2) A specific deprivation factor shall be verified for each child for whom assistance is approved.

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent and:

- (a) The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and
 - (b) The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.
- (2) Absence may be voluntary or involuntary.
- (a) Voluntary absence includes:
 - 1. Divorce;
 - 2. Legal separation;
 - 3. Marriage annulment;
 - 4. Desertion;
 - a. Of thirty (30) days or more if:
 - (i) The parent voluntarily leaves; or
 - (ii) The parent refuses to accept the child into his home; or
 - b. Of less than thirty (30) days if:
 - (i) The child leaves the parent because the parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or
 - (ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or
 - (iii) The child is voluntarily placed with relatives following a finding by the Department for Social Services that the home is unsuitable; or
 - (iv) The child is placed by the court with a specified relative other than the parent; or
 - (v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or
 - (vi) Both parents are absent from the home;
 - 5. Forced separation of seven (7) days or more; or
 - 6. Birth out-of-wedlock.
 - (b) Involuntary absence includes:
 - 1. Commitment to a penal institution for thirty (30) days or more;
 - 2. Long-term hospitalization;
 - 3. Deportation; or
 - 4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) Each determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

- (a) Medical;
 - (b) Social; and
 - (c) Economic.
- (2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.
- (3) Incapacity exists in a case when the following criteria are met:
- (a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment which was:
 - 1. Present at the time of application; and
 - 2. Which has continued or is expected to last for a period of at least thirty (30) calendar days.
 - (b) The thirty (30) day period may include a period in which the claimant is undergoing:
 - 1. Planned diagnostic studies; or
 - 2. Evaluation of rehabilitation potential; and
 - (c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.
 - (4) A determination regarding incapacity shall be made by:
 - a. Field staff if the following criteria are met:
 - 1. The parent declares physical inability to work;
 - 2. The worker observes some physical or mental limitation; and
 - 3. The parent:
 - a. Is receiving ~~Supplemental Security Income (SSI)~~; or
 - b. Is age sixty-five (65) or over; or
 - c. Has been determined to meet the definition of blindness as contained in 42 USC 1382c or 42 USC 416 by the Social Security Administration; or
 - d. Has been determined to meet the definition of permanent and total disability as contained in 42 USC 1382c or 42 USC 416 by either:
 - (i) The Social Security Administration; or
 - (ii) The medical review team of the Department for Social Insurance; or
 - e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or
 - f. Is receiving Retirement, Survivors and Disability Insurance ~~(RSDI)~~, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or
 - g. Is receiving Veterans Administration ~~(VA)~~ benefits based on 100 percent disability, as verified by an award letter; or
 - h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician is also requested to indicate if incapacity existed as of application date; or
 - (b) The medical review team, consisting of a licensed physician and a social worker employed by the agency, if a determination by field staff is precluded.
 - (5) Factors to be considered by the medical review team in making the medical determination shall include:
 - (a) The claimant's medical history and subjective complaints regarding an alleged physical or mental disability, illness or impairment; and

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(b) Competent medical testimony relevant to:

1. Whether a physical or mental disability, illness or impairment exists;

2. Whether the disability, illness or impairment is sufficient to reduce the parent's ability to support or care for a child; and

3. Whether the disability, illness or impairment is likely to last thirty (30) days.

(6) Factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;

2. Employment history;

3. Vocational training;

4. Educational background; and

5. Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunities available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of ~~disabled~~ individuals with a disability shall be taken into account; and

(a) Available printed materials that provide information regarding available employment opportunities shall be researched;

(b) The local Department for Employment Service ~~[(DES)]~~ office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this subsection.

(9) Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a PLMA [prior labor market attachment]

(2) The determination of the ~~principal wage earner~~ ~~[(PWE)]~~ shall include the following:

(a) If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

b. If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) of this section.

(c) Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

(d) The PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) Unemployment. A parent shall be considered to be unemployed if:

(a) Employed less than 100 hours in a calendar month; or

(b) Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent:

1. Was under the 100 hour standard in the prior two (2) months; and

2. Is expected to be under the 100 hour standard in the following month.

(4) ~~Prior labor market attachment~~ ~~[(PLMA)]~~ shall be established if the parent:

(a) Attests to an employment history meeting the definition in Section 1(5) of this administrative regulation;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) In determining whether or not criteria in subsection (4) of this section is met, the following shall be taken into consideration:

(a) Participation in Community Work Experience Program ~~[(CWE)]~~ or Work Incentive Program ~~[(WIN)]~~ prior to October 1, 1990, and in the ~~Job Opportunities and Basic Skills~~ ~~[(JOBS)]~~ Program shall be considered as earning an income in determining PLMA.

(b) Full-time attendance, as defined by the school or institution, may be substituted for two (2) of the six (6) calendar quarters. Qualifying activities shall be:

1. An elementary;

2. Secondary; or

3. Vocational or technical training course designed to prepare the individual for gainful employment.

(c) Gross income from self-employment and farming qualify as earned income in determining PLMA [prior labor market attachment]. The self-employed individual does not have to realize a profit to meet this requirement.

(6) Restrictions. Unemployment shall not exist if the PWE:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather conditions or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work under Section 14 of this administrative regulation; or

2. Subject to JOBS, as specified in 904 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC-UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 are met.

Section 10. Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:

(1) A blood relative, including:

(a) Father;

(b) Mother;

(c) Grandfather;

(d) Grandmother;

(e) Brother;

(f) Sister;

(g) Uncle;

(h) Aunt;

(i) Nephew;

(j) Niece;

(k) First cousin; and

(l) First cousin once removed;

(2) A relative of the half-blood;

(3) Preceding generations denoted by prefixes of:

(a) Grand;

(b) Great;

(c) Great-great; or

(d) Great-great-great;

(4) A stepfather, stepmother, stepbrother, stepsister;

(5) Any person listed in subsections (1) through (4) of this section

if the alleged father has had paternity established through the administrative determination process as specified in Section 11 of this administrative regulation.

(6) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent.

(7) The husband or wife of any person listed in subsections (1) through (6) of this section, even if the marriage may have terminated, providing termination occurred after the birth of the child.

(a) For AFDC eligibility purposes, a couple that has been considered married by a state with common-law marriage provisions shall be considered married.

(b) The statement of the applicant or recipient that he resides in a state which recognizes common-law marriage shall be accepted as verification by the agency.

(8) If the specified relative continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:

- (a) Medical care;
- (b) Attendance at boarding school;
- (c) College or vocational school;
- (d) Emergency foster care; or
- (e) Short visits with friends or relatives.

Section 11. Administrative Establishment of Paternity. (1) An administrative determination of paternity is limited to situations in which the following types of evidence are present:

- (a) A birth certificate listing the alleged parent; or
- (b) Legal documents such as:
 - 1. Hospital records;
 - 2. Juvenile court records;
 - 3. Wills; and
 - 4. Other court records which clearly indicate the relationship of the alleged parent or relative; or
- (c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or
- (d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:
 - 1. School records;
 - 2. Bible records;
 - 3. Immigration records;
 - 4. Naturalization records;
 - 5. Church documents, such as baptismal certificates;
 - 6. Passport;
 - 7. Military records;
 - 8. U.S. Census records; or
 - 9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative paternity may occur if:

- (a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence present in subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and
- (b) The parent or caretaker relative provides a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

(3) Presence of the sworn statement or affidavit specified in subsection (2)(b) of this section will serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity will not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving ~~supplemental security income (SSI)~~.

(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility

factors are met.

(3) If a child who receives foster care benefits meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for any month in which the parent, with whom the child is living is, on the last day of the month, participating in a strike; and

(2) A specified relative other than the parent shall be ineligible for benefits for any month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE and the second parent shall register for work with the Department for Employment Services ~~{DES}~~ if:

- (a) He resides in a non-JOBS county; or
- (b) He resides in a JOBS county and is exempt from participation as specified in 904 KAR 2:370.

(2) Failure of the PWE or the second parent to register for work shall result in removal of the needs of the individual who fails to register.

Section 15. ~~Job Opportunities and Basic Skills (JOBS)~~ Training Program. The technical requirements for participation in the JOBS Program are specified in 904 KAR 2:370.

Section 16. Cooperation in Child Support Enforcement Activities. (1) The Department for Social Insurance shall attempt to secure parental support, and if necessary establish paternity, for children receiving AFDC based on the following voluntary absence deprivation factors:

- (a) Divorce;
 - (b) Desertion;
 - (c) Birth out-of-wedlock;
 - (d) Legal separation;
 - (e) Forced separation; or
 - (f) Marriage annulment.
- (2) With the exception of good cause reasons, specified in subsection (4) of this section inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities. This includes, but is not limited to:
- (a) Identifying the absent parent;
 - (b) Providing information to assist in the location of the absent parent;
 - (c) Establishing paternity; and
 - (d) Forwarding child support payments received to the agency.

(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

- (a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or
- (b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child adequately; or
- (c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or
- (d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the department believes it would be detrimental to the child to require the

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applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social service agency:

1. To resolve whether to keep the child or release him for adoption; and

2. Discussion has not gone on for more than three (3) months; and

3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence upon which a determination of good cause shall be made includes, but is not limited to, the following:

1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;

2. Court documents or other records indicating legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction;

3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the absent or alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; and

5. Notarized statements from individuals, other than the applicant or recipient, with knowledge of the circumstances which provide the basis for the "good cause" claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing support obligations.

(c) When the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

1. The agency shall conduct an investigation if it is believed that:

a. Corroborative evidence is not available; and

b. The claim is credible without corroborative evidence.

2. If the agency conducts an investigation of a good cause claim, it shall not contact the absent or alleged parent regarding support unless the contact is necessary to establish the good cause claim.

3. If it is necessary for the agency to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:

a. Obtain permission for the contact; or

b. To enable the applicant or recipient to:

(i) Present additional evidence or information so that such contact is unnecessary;

(ii) Withdraw the application for assistance or request discontinuance of AFDC; or

(iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the agency shall:

(a) Document the case;

(b) Determine that:

1. Good cause exists and support activities cannot be initiated without endangering:

a. The best interests of the child; or

b. The physical or emotional health of the child or the relative; or

2. Good cause exists and support activities can be initiated without endangering the physical or emotional health of the child or the relative; or

3. Good cause does not exist.

(c) Advise the specified relative in writing of the result of the good cause claim determination; and

(d) Identify each case in which good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the agency:

(a) The relative shall be ineligible for benefits; and

(b) The agency shall attempt to obtain a protective payee to administer the AFDC payment on behalf of the child.

(8) If, after the exclusion from the grant for failure to cooperate, the specified relative states he will cooperate, the agency shall:

(a) Add the specified relative to the case effective with the date the individual states he will cooperate;

(b) Remove the protective payee from the case; and

(c) Not authorize back payments for the period of time for which the individual did not cooperate.

Section 17. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) Except for the PWE in an AFDC-UP case, failure to apply for another benefit or comply with its requirements shall result in ineligibility for AFDC.

(3) If a PWE or second parent in an AFDC-UP case fails to apply for unemployment insurance benefits or comply with its requirements, the PWE or second parent shall have his needs removed from the case.

(4) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 18. Material Incorporated by Reference. (1) Forms necessary to establish technical eligibility requirements for the AFDC program, with the exception of JOBS participation, are being incorporated effective December 1, 1993. These forms include:

(a) PA-1C Supplement D, revised 3/92;

(b) PA-14, revised 11/91;

(c) PA-33D, revised 1/92;

(d) PA-121, revised 8/87;

(e) PA-125, revised 6/83;

(f) PA-125 Supplement A, revised 6/83;

(g) PA-125 Supplement B, revised 12/82;

(h) PA-125.1, revised 5/90;

(i) PA-511, revised 10/92;

(j) KA-125, revised 7/92;

(k) KA-125, Supplement A, revised 1/93;

(l) KA-125, Supplement B, revised 7/92;

(m) KA-125, Supplement C, revised 7/92;

(n) CS-333, revised 10/91; and

(o) CS-333.1, revised 9/86.

(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, Secretary

APPROVED BY AGENCY: June 6, 1995

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

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: There is no way for the cabinet to determine how many AFDC children are removed from homes considered undesirable, how many AFDC cases where both parents have deserted the child or the number of two parent AFDC cases that result in desertion. We believe that the number of cases involved by this change would be minimal.

(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: There was no hearing requested as a result of the Notice of Intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: There was no hearing requested as a result of the Notice of Intent being published and no comments were received.

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

1. First year following implementation: This revision might reduce the amount of paperwork involved and client's time in that cases will not have to be discontinued and then reapproved.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: There is no way to determine the fiscal impact on the revisions relating to desertion as a deprivation. As stated previously, the cabinet does not currently track how many AFDC children are removed from homes considered undesirable, how many AFDC cases where both parents have deserted the child or two parent AFDC cases that result in desertion. We believe that the number of cases would be minimal and would therefore have a minimal fiscal impact.

(a) Direct and indirect cost or savings: See #3.

1. First year: Same as (a).

2. Continuing cost or savings: Same as (a).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This revision might reduce the amount of paperwork since cases will not have to be discontinued and reapproved.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Title IV-A federal AFDC funds and state general funds.

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

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is the current method which penalizes the AFDC children in the described undesirable situations. This revision will permit those children, who through no fault of their own fall into certain circumstances, to remain eligible for AFDC and AFDC related medicaid benefits.

(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: None

(11) TIERING: Is tiering applied? Equitable conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The amendment to this administrative regulation regarding changes to current policy of desertion in AFDC is being made at state option. The language amendments are as a result of the ADA requirements.

2. State compliance standards. Same as the federal requirements.

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 standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. None

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? None

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

904 KAR 2:060. Delegation of power for oaths and affirmations.

RELATES TO: KRS 205.170, 45 CFR 205.32

STATUTORY AUTHORITY: KRS [13A.120.] 194.050, 205.170

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer a money payment program under 42.U.S.C.-601, Aid to Families with Dependent Children [(AFDC)], and provide supplemental payments to persons who are aged, blind or have a disability [~~disabled persons~~]. KRS 205.170 empowers the Secretary for Human Resources or his duly authorized representative to administer oaths and affirmations to obtain information from an applicant or recipient in the administration of the Aid to Families with Dependent Children [AFDC] and state supplementation programs. This administrative regulation sets forth the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations to an applicant or a recipient of a money grant in limited situations.

Section 1. Specific Worker Designation. The following classifications of employees shall be designated as duly authorized representatives of the Secretary of the Cabinet for Human Resources to administer an oath or affirmation to an applicant or recipient:

- (1) A field services supervisor;
- (2) A field services manager; and
- (3) A regional administrator.

Section 2. Purpose. An oath or affirmation shall be administered by a designated representative to an applicant or recipient for the purpose of obtaining his sworn statement:

- (1) Regarding a claim that a check issued from a money payments program of the cabinet has been:
 - (a) Lost;
 - (b) Misplaced; or
 - (c) Stolen;
- (2) To request a replacement check; or
- (3) When a check endorsement is viewed.

Section 3. Process. (1) An affidavit shall be used when:

- (a) A check is reported lost or stolen to request a replacement check; or
- (b) When a check endorsement is viewed.
- (2) If the payee reports nonreceipt, loss or theft of a check, the payee shall come into the office to complete an affidavit within four (4) work days. This process will place a stop payment on the check.
- (3) If the original check has been cashed, a photocopy of the cashed check shall be forwarded to the local office.
 - (a) The payee shall view the endorsement; and
 - (b) If the signature is not that of the payee, the payee shall sign the affidavit stating the signature on the photocopy is not his signature and he received no benefit from the cashing of the check.
- (4) The affidavit shall also be used to request reissuance of the check in question.

Section 4. Material Incorporated by Reference. (1) Forms necessary for the administration of an oath or affirmation for the Aid to Families with Dependent Children [AFDC] and state supplementation programs are being incorporated effective November, 1993. These forms include:

- (a) PA-60, revised 4/95 [4/94];
- (b) PA-61, revised 7/94 [5/88].

(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, Secretary

APPROVED BY AGENCY: June 14, 1995

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested

in attending this hearing shall notify this agency in writing by August 16, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This amendment only implements appropriate language as required by the ADA. It does not make any policy changes as they relate to delegation of power for oaths and affirmations.

(2) Direct and indirect cost or savings 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 comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect cost or savings: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No funding involved in the amendment.

(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 comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: 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: None
- (11) TIERING: Is tiering applied? Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

- 1. Federal statute or regulation constituting the federal mandate. American with Disabilities Act
- 2. State compliance standards. Same as federal mandate.
- 3. Minimum or uniform standards contained in the federal mandate. Language shall not be insensitive, demeaning or otherwise unacceptable to persons with a disability.
- 4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
- 5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

- 1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No
- 2. State whether this administrative regulation will affect the local government or only a part or division of the local government. None
- 3. State the aspect or service of local government to which this administrative regulation relates. None
- 4. How does this administrative regulation affect the local government or any service it provides? None

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

904 KAR 3:020. Financial requirements.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.8, 273.9, 273.10, 273.11, PL 103-66

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 financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Financial Eligibility Requirements. (1) In accordance with regulations promulgated by the Food and ~~Consumer~~ Nutrition Service ~~[(FNS)]~~, of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be composed of the following criteria:

- (a) Income limitations; and
- (b) Resource limitations.
- (2) Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.
- (3) The income eligibility standards shall be derived from the Office of Management and Budget's ~~[(OMB)]~~ nonfarm income poverty guidelines.

Section 2. Countable Income. All income from any source shall be counted, except income specifically excluded in Section 3 of this administrative regulation, including:

- (1) Wages earned by a household member, including all wages received by a striker in accordance with the provision at 904 KAR 3:035, Section 6(9).
- (2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business;
- (3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements;
- (4) Payments under 42 USC 1451 shall be considered earned income unless specifically excluded in Section 3 of this administrative regulation;
- (5) The earned or unearned income of an eligible household member or nonhousehold member as set forth in 904 KAR 3:035, Section 6(3) and 4;
- (6) Assistance payments from federal or federally aided public assistance including:
 - (a) Supplemental security income ~~[(SSI)]~~;
 - (b) Aid to families with dependent children ~~[(AFDC)]~~;
 - (c) General assistance ~~[(GA)]~~ programs; or
 - (d) Other assistance programs based on need;
- (7) Annuities;
- (8) Pensions;
- (9) Retirement, veteran's or disability benefits;
- (10) Worker's or unemployment compensation;
- (11) Strike pay;
- (12) Old-age survivors or Social Security benefits;
- (13) Foster care payments for children or adults, except as excluded in Section 3(16) of this administrative regulation;
- (14) Gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week;
- (15) Wages earned by a household member which are garnished or diverted by an employer and paid to a third party for a household expense;
- (16) Support or alimony payments made directly to the household from nonhousehold members. This includes any portion of such payments returned to the household by the cabinet;
- (17) The portion of scholarships, educational grants, fellowships, deferred payment loans for education, and veterans educational benefits which are not excludable under Section 3(6) of this administrative regulation;
- (18) Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit;
- (19) Monies withdrawn or dividends which are or could be received from a trust fund;
- (20) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as set forth in 904 KAR 3:035, Section 6(12);
- (21) The portion of means tested Assistance monies from a federal, state, or local welfare program which are withheld for purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements;
- (22) Earnings to an individual who is participating in on-the-job training programs under 29 USC 1501 unless the individual is under nineteen (19) years of age and under the parental control of another adult member; and
- (23) Portions of Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401 in excess of \$2,000 per payment per individual, effective September 1, 1989; and
- ~~(24) Payments from the Department of Housing and Urban Development which are paid directly to the household or utility~~

provider as a utility subsidy].

Section 3. Income Exclusions. The following payments shall not be considered as income:

- (1) Money withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, except in Section 2 (14) of this administrative regulation;
- (2) Child support income shall be considered as follows:
 - (a) Child support payments received by [AFDC] recipients of Aid to Families with Dependent Children which must be transferred to the Division of Child Support Enforcement to maintain [AFDC] eligibility for Aid to Families with Dependent Children benefits, shall be excluded;
 - (b) Any portion of child support monies returned to the [AFDC] household receiving Aid to Families with Dependent Children by the cabinet shall not be excluded;
- (3) Any gain or benefit which is not in the form of money payable directly to the household.
- (4) Money payments that are not legally obligated and otherwise payable directly to a household, but are paid to a third party for a household expense;
- (5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty (30) dollars in a quarter.
- (6) Educational income shall be excluded as follows:
 - (a) Educational income, including:
 1. Educational loans on which payment is deferred;
 2. Grants;
 3. Scholarships;
 4. Fellowships;
 5. Veteran educational benefits;
 6. And the like;
 - (b) Awarded to a household member enrolled at one (1) of the following recognized institutions as defined by 904 KAR 3:010, Section 1(22):
 1. Institution of postsecondary education;
 2. School for persons with a disability [the handicapped];
 3. Vocational education program; or
 4. A program that provides for completion of a secondary school diploma or the equivalent thereof;
- (c) Is excluded to the extent that it does not exceed the amount used for or made available as an allowance determined by such:
 1. School;
 2. Institution;
 3. Program; or
 4. Other grantor; for
- (d) Expenses of the student, including:
 1. Tuition;
 2. Mandatory fees related to the pursuit of the course of study involved, including the rental or purchase of any:
 - a. Equipment;
 - b. Material; and
 - c. Supplies;
 3. Books;
 4. Supplies;
 5. Transportation;
 6. Other miscellaneous personal expenses (other than living expenses);
 7. Origination fees for such loans; and
 8. Insurance premiums for such loans.
- (7) All loans from private individuals or commercial institutions, other than educational loans on which repayment is deferred;
- (8) Reimbursements for past or future expenses, other than normal living expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household;

- (9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member;
- (10) The earned income of a child who is:
 - (a) A member of the household;
 - (b) An elementary or secondary school student; and
 - (c) Age twenty-one (21) years or younger;
- (11) Money received in the form of a nonrecurring lump-sum payment;
- (12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming, such losses shall be offset against any other countable income in the household;
- (13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program;
- (14) Energy assistance payments made under:
 - (a) Any federal law, including utility reimbursements made by:
 1. The Department of Housing and Urban Development [HUD]; and
 2. Rural and Economic Community and Development [The Farmers Home Administration (FmHA)]; or
 - (b) A state or local law if certified as excludable energy payments by the Food and Consumer Service [FNS];
- (15) Cash donations based on need received from nonprofit charitable organizations, not to exceed \$300 in a federal fiscal year quarter;
- (16) Foster care payments for foster children when the household requests that the foster children be excluded from the household in determining eligibility;
- (17) Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II;
- (18) Monies received under Section 3507 of the Internal Revenue Code (advanced payment of earned income credit).
- (19) Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261 and 25 USC 1401, as distribution from judgment awards and trust funds of \$2,000 or less per individual per payment.
- (20) Any amount of income necessary for the fulfillment of an approved plan for achieving self-support of a household member as provided under 42 USC 1382a(b)(4)(B)(iv).

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to those households whose incomes fall at or below the applicable standards as established by the Food and Consumer Service [FNS] and which are set forth below:

- (1) Households which contain a member who is elderly or has a disability [disabled] as defined in 904 KAR 3:010, Section 1(9) or (11) shall have their net income compared to 100 percent of the federal income poverty guidelines.
- (2) Households in which all members are recipients of Aid to Families with Dependent Children [AFDC] or Supplemental Security Income [SSI] shall be categorically eligible and shall not be required to meet either the gross or net income eligibility standards.
- (3) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

- (1) A standard deduction per household per month which shall be periodically adjusted by the Food and Consumer Service [FNS] to reflect changes in the cost of living for a prior period of time as determined by the Food and Consumer Service [FNS];
- (2) Twenty (20) percent of gross earned income;
- (3) Payments for the actual cost for the care of:

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- (a) A child; or
- (b) Other dependent;
- (c) Not to exceed:
 - 1. \$200 per month per dependent child under age two (2); and
 - 2. \$175 per month for each other dependent;
- (d) When necessary for a household member to:
 - 1. Seek, accept or continue employment;
 - 2. Attend training; or
 - 3. Pursue education preparatory to employment;
- (4) The monthly shelter cost deduction shall be determined as follows:
 - (a) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made.
 - (b) The shelter deduction shall not exceed the excess shelter maximum established by the Food and Consumer Service [FNS], except that households containing an elderly or disabled member shall not be subject to the maximum.
 - (c) The excess shelter maximum shall be adjusted periodically by the Food and Consumer Service [FNS] to reflect changes in the cost of living for a prior period of time.
 - (d) Allowable monthly shelter expenses shall include the following expenses:
 - 1. Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on the payments;
 - 2. Property taxes, state and local assessments, and insurance on the structure itself, but no separate cost of insuring furniture or personal belongings;
 - 3. The cost of:
 - a. Heating and cooking fuel;
 - b. Cooling;
 - c. Electricity;
 - d. Water and sewage;
 - e. Garbage and trash collection fees;
 - f. The telephone standard deduction; and
 - g. Fees charged by the utility provider for the initial installation of the utility;
 - 4. The shelter costs for the home if temporarily not occupied by the household because of:
 - a. Employment or training away from home;
 - b. Illness; or
 - c. Abandonment caused by a natural disaster or casualty loss; and
 - d. If the household intends to return to the home;
 - e. The current occupants of the home are not claiming the shelter costs for food stamp purposes; and
 - f. The home is not leased or rented during the absence of the household; and
 - 5. Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood, unless such costs are reimbursed by:
 - a. Private or public relief agencies;
 - b. Insurance companies; or
 - c. From any other source.
 - (e) The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which receive Low Income Home Energy Assistance Program [LIHEAP] benefits or which incur heating or cooling (by air conditioning units only) costs separate and apart from their rent or mortgage payments.
 - (f) If the household is not entitled to the utility standard or does not choose to use the utility standard, it may claim actual utility expenses for any utility which it does pay separately.
 - (g) The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.
 - (h) The cabinet shall use a homeless shelter standard of shelter

expenses for households in which all members are homeless and are not receiving free shelter throughout the calendar month, unless that household verifies higher expenses.

(5) Allowable medical expenses, excluding special diets, in excess of thirty-five (35) dollars per month incurred by any household member who meets the definition of being elderly or having a disability [disabled] as specified by 904 KAR 3:010, Section 1(10), including, but not limited to:

- (a) Medical and dental care;
- (b) Hospitalization or outpatient treatment and nursing care;
- (c) Medication and medical supplies;
- (d) Health and hospitalization premiums; and
- (e) Dentures, hearing aids, eyeglasses and prosthetics.

Section 6. Resources. (1) Uniform national resource standards of eligibility shall be utilized.

(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 7 of this administrative regulation exceed:

- (a) \$3000 for all households with one (1) or more members, when at least one (1) member is sixty (60) years or older; or
- (b) \$2000 for any other household.

(3) A household which is categorically eligible as specified in Section 4(2) of this administrative regulation shall be considered as having met the food stamp resource requirement.

(4) A household member who receives [AFDC or SSI] benefits from Aid to Families with Dependent Children or Supplemental Security Income shall be considered categorically eligible and to have satisfied the Food Stamp Program's resource limits as specified in subsection (2) of this section.

Section 7. Exempt Resources. The following resources shall not be considered in determining eligibility:

- (1) The home and surrounding property which is not separated from the home by intervening property owned by others.
- (2) Household goods;
- (3) Personal effects including one (1) burial plot per household member;
- (4) The cash value of life insurance policies; and
- (5) Pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt);
- (6) Prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds;
- (7) Licensed or unlicensed vehicles as specified in Section 8 of this administrative regulation;
- (8) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis;
- (9) Property which is essential to the employment or self-employment of a household member;
- (10) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value;
- (11) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended;
- (12) Resources whose cash value is not accessible to the household;
- (13) Resources which have been prorated as income;
- (14) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs;
- (15) Resources which are excluded for food stamp purposes by express provision of federal statute;
- (16) Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II;

(17) Income which is withheld by the employer to pay certain expenses directly to a third party as a vendor payment to the extent that the remainder of the withheld income is not accessible to the household at the end of the year;

(18) Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401, as distribution from judgment awards and trust funds, of \$2,000 or less per individual per payment.

(19) Purchases of \$2,000 or less which are made solely with Indian Per Capita payments after December 31, 1981 but prior to January 12, 1983;

(20) The earned income tax credit (~~ETC~~) income received by any member of the household for a period of twelve (12) months from receipt if the member was:

(a) Participating in the Food Stamp Program at the time the credits were received; and

(b) Participated in the program continuously during the twelve (12) month period of exclusion; and

(21) A resource, except a vehicle, which cannot be sold for a significant amount of funds for the support of the household.

Section 8. Vehicles. (1) The entire value of any licensed vehicle shall be excluded if the vehicle is:

(a) Used over fifty (50) percent of the time for income producing purposes;

(b) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(c) Necessary for long distance travel, other than daily commuting, that is essential to the employment of a:

1. Household member; or

2. Ineligible alien; or

3. Disqualified person; if:

4. The resources of the individual are being considered available to the household.

(d) Used as the household's home;

(e) Necessary to transport a:

1. ~~Physically disabled~~ Household member with a physical disability, ineligible alien, or disqualified person, if:

a. The resources of the individual are being considered available to the household; and

b. Regardless of the purpose of the transportation.

2. The exclusion is limited to one (1) vehicle per physically disabled household member.

3. A vehicle shall be considered necessary for the transportation of a ~~physically disabled~~ household member with a physical disability if:

a. The vehicle is specially equipped to meet the specific needs of the ~~disabled~~ person with a disability; or

b. The vehicle is a special type of vehicle that makes it possible to transport the disabled person; however

c. The vehicle need not have special equipment or be used primarily by or for the transportation of the ~~physically disabled~~ household member with a physical disability to be excluded.

(f) The value of a vehicle that a household depends upon to carry fuel for heating or water for home use when such transported fuel or water is the primary source of fuel or water for the household;

(2) The exclusion in subsection (1)(a) through (d) of this section shall apply when the vehicle is not in use because of temporary unemployment.

(3) A licensed vehicle not excluded under subsection (1) of this section shall:

(a) Individually be evaluated for fair market value; and

(b) That portion of the value which exceeds \$4550 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles.

(4) A licensed vehicle shall also be evaluated for its equity value, except for:

(a) A vehicle excluded in subsection (1) of this section;

(b) One (1) licensed vehicle per household, regardless of the use of the vehicle; and

(c) Any other vehicle used to transport:

1. A household member; or

a. An ineligible alien; or

b. A disqualified household member; whose

c. Resources are being considered available to the household;

2. To and from:

a. Employment; or

b. Training; or

c. Education which is preparatory to employment; or

d. To seek employment in compliance with the Food Stamp Employment and Training Program as specified in 904 KAR 3:041.

(5) A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during a temporary period of unemployment.

(6) The equity value of a licensed vehicle not covered by this exclusion, and of an unlicensed vehicle not excluded by Section 7(7), (8) and (9) of this administrative regulation shall be attributed toward the household's resource level.

(7) In the event a licensed vehicle is assigned both a fair market value in excess of \$4,550 and an equity value, only the greater of the two (2) amounts shall be counted as a resource.

Section 9. Transfer of Resources. A household which has transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

JOHN CLAYTON, Commissioner

MASTEN CHILDERS, Secretary

APPROVED BY AGENCY: June 7, 1995

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This amendment only implements appropriate language as required by the ADA. It does not make any policy changes as they relate to financial requirements in the Food Stamp Program.

(2) Direct and indirect cost or savings 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 comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

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

1. First year following implementation: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body: None
 - (a) Direct and indirect cost or savings: None
 1. First year: None
 2. Continuing cost or savings: None
3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: None
- (4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No funding involved in the amendment.

(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 comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: 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: None

(11) TIERING: Is tiering applied? Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. American with Disabilities Act.

2. State compliance standards. Same as federal mandate.

3. Minimum or uniform standards contained in the federal mandate. Language shall not be insensitive, demeaning or otherwise unacceptable to persons with a disability.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. None

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? None

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

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

RELATES TO: KRS ~~[194.050]~~ 7 CFR 272.1, 272.5, 7 CFR 273.16, 273.17, 273.18, 273.18(d)(4)(iii), 26 CFR 301.6402-6 et seq., 31 CFR 5.23 et seq., 56 FR 41325-31, 57 FR 39176-77, PL 103-66

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer a Food Stamp Program as prescribed under 7 USC 2011 to 2029. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth additional provisions used by the cabinet in the administration of the Food Stamp Program.

Section 1. Civil Rights Compliance. The cabinet shall not discriminate against any applicant or participant in any aspect of program administration for reasons of age, race, color, sex, disability ~~[handicap]~~, religious creed, national origin, or political beliefs.

Section 2. Restoration of Lost Benefits. (1) Benefits shall be restored to a household if a household has lost benefits:

(a) Due to an administrative error;

(b) By an administrative disqualification for intentional program violation that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from:

(a) The date the agency receives a request for restoration; or

(b) If no request is received, the date a fair hearing action is initiated.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claims the household may have.

Section 3. Program Informational Activities. (1) Low-income or disadvantaged households shall be informed of the availability of the program, program rights and responsibilities through program informational activities including posters and pamphlets from the Food and Consumer ~~[Nutrition]~~ Service.

(2) Other programs that households shall be encouraged to use are the:

(a) Special Supplemental Food Program for Women, Infants and Children ~~[(WIC)]~~; and

(b) Expanded Food and Nutrition Education Program ~~[(EFNEP)]~~.

Section 4. Identification of Claims Against Households. (1) All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household.

(2) The cabinet shall establish a claim against a household that:

(a) Has received ~~[received]~~ more food stamp benefits than it is entitled to receive; or

(b) Contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

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Section 5. Classification and Establishment of Claims. Claims shall be classified as:

(1) Inadvertent household error claims. Overissuance was due to:

(a) The household unintentionally failed to provide the state agency with correct or complete information [A misunderstanding or unintended error on the part of the household];

(b) An action, or failure to take action, by the Social Security Administration, that results in the household improperly receiving Supplemental Security Income [SSI]; or

(c) A misunderstanding or unintended error on the part of a categorically eligible household, as defined in 904 KAR 3:030, Section 5, that receives food stamps solely because of categorical eligibility, and is subsequently determined ineligible for either Aid to Families with Dependent Children or Supplemental Security Income [PA or SSI] or both;

(d) The household unintentionally failed to report to the cabinet changes in its household's circumstances;

(e) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to the benefits.

(2) Administrative error claims. Overissuance was due to the agency:

(a) Failing to take action on a change reported by the household;

(b) Incorrectly computing household income or deductions or otherwise issuing an incorrect allotment;

(c) Issuing duplicate benefits; [or]

(d) Continuing to issue benefits after the certification period expired without a reapplication determination; or

(e) Taking an action or failing to take an appropriate action, which resulted in the household improperly receiving Aid to Families with Dependent Children.

(3) Intentional program violation claims.

(a) Overissuance was due to an act of intentional program violation on the part of the household by:

1. Making a false or misleading statement, or misrepresenting, concealing or withholding facts; or

2. Committing a violation of 7 USC 2011-2029, 904 KAR Chapter 3, or any state statute relating to the Food Stamp Program, relating to the:

a. Use;

b. Presentation;

c. Transfer;

d. Acquisition;

e. Receipt; or

f. Possession of food stamp coupons.

(b) The act of intentional program violation is determined by:

1. An administrative disqualification hearing official;

2. A federal, state or local court [of appropriate jurisdiction];

3. An individual signing [either] a waiver of his right to an administrative disqualification hearing; or

4. An individual signing a disqualification consent agreement in cases referred for prosecution.

(4) Neither an agency error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the cabinet failing to insure that a household fulfilled the following procedural requirements:

(a) Sign the application form;

(b) Complete the registration of an individual who is required to register for work in accordance with 904 KAR 3:041; or

(c) Certify the household in the correct county in which they reside.

Section 6. Calculating the Amount of Claims. (1) Inadvertent household error and agency error claims.

(a) For each month that a household received an overissuance due to an inadvertent household error or agency error, the cabinet

shall determine the correct amount of food stamp benefits the household was entitled to receive.

(b) The amount of the inadvertent household error or agency error claim shall be calculated based on the amount of overissuance which occurred during the twenty-four (24) months preceding the date that the overissuance was discovered.

(c) In cases involving reported changes, the cabinet shall determine the month the overissuance initially occurred as follows:

1. For inadvertent household error claims, if the household failed to report a change in its circumstances within the required time frames:

a. The first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been timely reported.

b. In no event shall the cabinet determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred.

2. For agency error claims, if the household timely reported a change, but the cabinet did not act on the change within the required time frames:

a. The first month affected by the cabinet's failure to act shall be the first month the cabinet would have made the change effective had it timely acted.

b. In no event shall the cabinet determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred.

c. If a notice of action was required but was not provided, the cabinet shall assume for the purpose of calculating the claim that the household would have been allowed the maximum advance notice period to expire without the household requesting a fair hearing including:

(i) Ten (10) days to report the change;

(ii) Ten (10) days for the caseworker to act on the change; and

(iii) Ten (10) days for the client to respond to the notice of action.

(d) If the household received a larger allotment than it was entitled to receive, the cabinet shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(e) For a categorically eligible household as specified in 904 KAR 3:020, Section 4(2), a claim shall only be determined when it can be computed on the basis of changed household net income and household size.

(f) After calculating the amount of the inadvertent household error or agency error claim:

1. The cabinet shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with Section 2 of this administrative regulation.

2. The cabinet shall then initiate collection action for the remaining balance, if any.

(2) Intentional program violation claims.

(a) For each month that a household received an overissuance due to an intentional program violation, the cabinet shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive.

1. The amount of the intentional program violation claim shall be calculated back to the month the act of intentional program violation occurred but back no more than six (6) years from the date the overissuance was discovered.

2. If the household member is determined to have committed an intentional program violation by intentionally failing to report a change in its household's circumstances, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported.

3. In no event shall the cabinet determine as the first month in which the change would have been effective any month later than two

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(2) months from the month in which the change in household circumstances occurred.

(b) If the household received a larger allotment than it was entitled to receive:

1. The cabinet shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received;

2. When determining the amount of benefits the household should have received, the cabinet shall not apply the twenty (20) percent earned income deduction to that portion of earned income which the household intentionally failed to report.

(c) Once the amount of the intentional program violation claim is established, the cabinet shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with Section 2 of this administrative regulation.

Section 7. ~~[6.]~~ Collecting Claims Against Households. The cabinet shall initiate collection action against households with an established claim in accordance with the following criteria:

(1) All claims identified in Section 5 of this administrative regulation, as inadvertent household and administrative error claims, shall have collection action initiated unless the:

(a) Claim is collected through offset;

(b) Claim is less than thirty-five (35) dollars and cannot be recovered by coupon reduction; or

(c) Department has documentation that the household cannot be located.

(2) A household member found to have committed ~~claim identified in Section 5 of this administrative regulation, as~~ an intentional program violation, in accordance with Section 5(3) of this administrative regulation ~~(claim)~~, shall have collection action initiated against the individual's household unless:

(a) The household has repaid the overissuance;

(b) The department has documentation that the household cannot be located; or

(c) Collection action would prejudice the case against a household member referred for prosecution.

(3) Payments for claims against the household shall be collected as follows:

(a) Lump sum payments.

1. If the household states it is financially able to pay the entire amount of the claim at one (1) time, either as cash payment or food stamp coupons, the cabinet shall collect a ~~(by)~~ lump sum payment; however

2. The household shall not be required to liquidate all of its resources to make this lump sum payment.

3. If the household states it is financially unable to pay the entire amount of the claim at one (1) time and prefers to make a lump sum payment of cash or food stamp coupons as partial payment of the claim, the cabinet shall accept this method of repayment.

(b) Installments. ~~[as negotiated with the household either as cash payment or food stamp coupons; or]~~

1. The cabinet shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment.

a. The minimum monthly payment must be equal to the amount which would be received through coupon reduction outlined in paragraph (c) of this subsection.

b. Payment shall be accepted by the cabinet in regular installments and shall be paid to the cabinet no later than the tenth of the month.

c. The household may use food stamp coupons as full or partial payment of any installment.

d. If the full claim or remaining amount of the claim cannot be liquidated in thirty-six (36) months, the cabinet may compromise the amount of the claim by reducing it to an amount that allows the household to pay the claim in thirty-six (36) months.

e. The cabinet shall use the full amount of the claim, including any amount compromised, to offset benefits in accordance with Section 2 of this administrative regulation.

2. If the household fails to make a payment in accordance with the established repayment schedule, either a lesser amount or no payment, the cabinet shall allow the household an opportunity to renegotiate the payment schedule.

(c) Reduction in the food stamp allotment. For participating households, the cabinet shall collect payments for claims, unless a repayment schedule has been otherwise negotiated, by reducing the household's food stamp allotments in accordance with the following criteria:

1. For inadvertent household error claims, the amount of reduction shall be the greater of:

a. Ten (10) percent of the household's monthly allotment; or

b. Ten (10) dollars per month;

2. For administrative error claims;

a. The amount of reduction shall be negotiated with the household; and

b. Coupon reduction shall only be imposed if the household prefers to use this method.

3. For intentional program violation error claims, the amount of reduction shall be the greater of:

a. Twenty (20) percent of the household's monthly entitlement; or

b. Ten (10) dollars per month.

(d) Federal salary offset procedures.

1. The cabinet shall offset the salary of a federal or United States Postal Service employee who owes an:

a. Inadvertent household error claim; or

b. Intentional program violation claim; unless

(i) The claim has been paid;

(ii) The claim is being paid under a current payment agreement;

or

(iii) The claim is not collectible.

2. Prior to salary offset, the cabinet shall provide each federal or United States Postal Service employee verified as owing an inadvertent household error or intentional program violation claim with an advance notice of salary offset which includes an opportunity to enter into a voluntary repayment agreement.

3. The federal or United States Postal Service employee shall avoid referral for salary offset if within thirty (30) days of the date of advance notice:

a. Payment of the claim is received in full; or

b. The first installment of fifty (50) dollars or more is received by the cabinet and the debtor continues to pay installment payments of fifty (50) dollars or more by the tenth day of each subsequent month until the claim is paid in full.

4. If any monthly installment of at least fifty (50) dollars is not received by the tenth day of each subsequent month, the claim will be referred for salary offset with no further right to enter into a voluntary repayment agreement;

5. If a federal or United States Postal Service employee believes that he is not responsible for the claim or that the claim has been paid, he may submit documentation to the cabinet, including:

a. Payment records; or

b. Legal bars to collection of claims.

6. Unless the documentation clearly shows that the claim has been paid or is not legally collectible, the cabinet shall refer the claim for collection from the debtor's salary.

7. Debtors shall have the right to a formal appeal to the Food and Consumer Service.

8. The advance notice to federal employees is incorporated into this administrative regulation by reference.

(4) An individual who has defaulted on repayment of his debt shall have the debt offset through intercept of his:

(a) State income tax return if his claim is identified as:

1. Noncourt established intentional program violation as described

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in Section 5(3)(b)1, 3, or 4 of this administrative regulation; or

2. An inadvertent household error as described in Section 5(1) of this administrative regulation; and

(b) Federal income tax return if his claim is identified as:

1. Court established fraud as described in Section 5(3)(b)2 of this administrative regulation;

2. Noncourt established intentional program violation as described in Section 5(3)(b)1, 3, or 4 of this administrative regulation; or

3. An inadvertent household error as described in Section 5(1) of this administrative regulation.

(5) Disqualification from the Food Stamp Program shall be imposed on an individual with intentional program violation ~~[error]~~ claims in accordance with 904 KAR 3:060, Section 10. ~~[The individual shall be ineligible to participate in the program:]~~

~~(a) For the first violation, six (6) months;~~

~~(b) For the second violation, twelve (12) months; and~~

~~(c) For the third violation, permanently.]~~

(6) Cabinet forms necessary to collect overpayments are incorporated into this administrative regulation by reference.

Section 8, ~~[7.]~~ Disclosure of Information. Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted to the following individuals:

(1) Persons directly connected with the administration or enforcement of the provisions of:

(a) 7 USC 2011-2029;

(b) Other federal assistance programs; or

(c) Federally aided state programs which provide assistance, on a means-tested basis, to low income households;

(2) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(3) Local, state or federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of 7 USC 2011-2029 or regulations. The written request shall include:

(a) The identity of the person requesting the information and his authority to do so;

(b) The nature of the violation being investigated; and

(c) The identity of the person about whom the information is requested.

Section 9, ~~[8.]~~ General Program Information. 904 KAR Chapter 3 shall be maintained in the central and local office for examination by members of the public on regular workdays during regular office hours. Copies of administrative regulations may be obtained from the cabinet. Federal laws and regulations shall be maintained by the central office and the Food and Consumer Services ~~[FNS]~~ and shall be available for inspection and copying.

Section 10, ~~[9.]~~ Retention of Records. (1) The cabinet shall retain all program records in an orderly fashion, for audit and review purposes, for a period of three (3) years from the month of origin of each record.

(2) The cabinet shall retain fiscal records and accountable documents for three (3) years from the date of fiscal or administrative closure.

Section 11, ~~[10.]~~ Disaster Certification. The cabinet shall distribute emergency coupon allotments to a household within a food stamp county determined to be a disaster area:

(1) In accordance with 42 USC 5122, authorized by the Food and Consumer Service ~~[Food and Nutrition Service]~~ of the United States Department of Agriculture as a result of a major disaster that is determined by the President of the United States; or

(2) In accordance with 7 USC 2011-2029, authorized by the Food and Consumer Service ~~[Food and Nutrition Service]~~ as a result of a lesser disaster, if:

(a) The emergency has resulted either from a natural or human occurrence which disrupted the commercial channels of food distribution; and

(b) The Food Stamp Program is operational.

Section 12. Material Incorporated by Reference. (1) Forms necessary for the establishment and collection of claims against households, are incorporated effective January 1, 1995. These forms include:

(a) Advance Notice to Federal Employees, revised 1/95;

(b) FS-410, revised 3/92;

(c) FS-412, revised 1/93;

(d) FS-413, revised 6/91; and

(e) FS-415, revised 1/93.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner

MASTEN CHILDERS, Secretary

APPROVED BY AGENCY: June 12, 1995

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The provision to offset the salary of federal, including United States Postal Service, employee's salary to repay food stamp claims will affect a minimal number of food stamp recipients. In order for the offset procedure to take place, the food stamp household must be inactive. The household will be afforded the opportunity to pay off the claim or to provide documentation that the claim is not valid prior to offsetting his salary. There is no way of determining how many unpaid claims for inactive households are owed by current federal employees.

(2) Direct and indirect cost or savings to those affected: Due to the minimal number of affected individuals, it is impossible to determine the cost to the individual. However, we anticipate that the cost will be insignificant.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

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(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: Minimal

(a) Direct and indirect cost or savings: Insignificant. No additional staff will be required to implement the salary offset procedure. The additional cost was anticipated in the budget.

1. First year: Additional costs of notifying affected households of potential salary offsetting to accommodate the federal mandate will be minimal and were anticipated in the departmental budget.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing general and agency funds.

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

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and 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? The federal statute at 7 USC 2014 (b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 59 FR 44400-05.

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provision of salary offsetting of federal employees to repay their recipient claim is consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by 59 FR 44400-05.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

3. State the aspect or service of local government to which this administrative regulation relates.

4. How does this administrative regulation affect the local government or any service it provides?

CABINET FOR HUMAN RESOURCES

Department for Social Insurance

Division of Management and Development (Amendment)

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

RELATES TO: ~~[KRS 194.050]~~ 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82), 59 FR 44343-47

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall ~~[is required to]~~ administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties which shall be applied.

Section 1. Administrative Disqualification Hearings. (1) An administrative disqualification hearing shall be initiated by the cabinet whenever it has documented evidence to prove that a household member has committed an act of intentional program violation, as defined by 904 KAR 3:050, Section 5(3).

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of the individual.

~~[(3) An act of intentional program violation shall consist of having intentionally:~~

~~(a) Made a false or misleading statement;~~

~~(b) Misrepresented facts;~~

~~(c) Concealed facts;~~

~~(d) Withhold facts; or~~

~~(e) Committed any act that constitutes a violation of:~~

~~1. 7 USC 2011 to 2020;~~

~~2. 904 KAR Chapter 3; or~~

~~3. Any state statute relating to:~~

~~a. The use;~~

~~b. Presentation;~~

~~c. Transfer;~~

~~d. Acquisition;~~

~~e. Receipt; or~~

~~f. Possession of;~~

~~(i) Food stamp coupons; or~~

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~~(ii) An authorization to participate card (ATP);~~

Section 2. Disqualification Hearing Procedures. (1) The cabinet shall provide state level administrative disqualification hearings which shall be heard by a fair hearing official.

(2) A hearing shall be conducted by an impartial official who:

- (a) Did not have any personal stake or involvement in the case;
- (b) Was not directly involved in the initial determination that the household member had committed intentional program violation; and
- (c) Was not the immediate supervisor of the case worker who took the action.

(3) The powers and duties of the hearing official shall be the same as those specified in 904 KAR 3:070, Section 13.

(4) The household's rights during the hearing shall be the same as those specified in 904 KAR 3:070, Section 14.

(5) The hearing decision shall comply with provisions specified in 904 KAR 3:070, Section 15.

(6) At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall:

- (a) Conduct the hearing;
- (b) Arrive at a decision; and
- (c) Notify the household member of the decision.

(8) Provided that the request is made at least ten (10) days in advance of the date of the scheduled hearing, the household member or representative is entitled to one (1) postponement not to exceed thirty (30) days.

(9) If a hearing is postponed, the time limits specified in subsection (7) of this section shall be extended for as many days as the hearing is postponed.

Section 3. Advance Notice of Disqualification Hearing. (1) The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a hearing initiated by the cabinet has been scheduled.

(2) The notice shall be sent certified mail - addressee only - return receipt requested and shall contain:

- (a) The date, time, and place of the hearing;
- (b) The charge against the household member;
- (c) A summary of the evidence;
- (d) How and where the evidence may be examined;

(e) A statement [warning] that the decision shall be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(f) A statement that the household member or representative shall have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(g) A statement [warning] that a determination of intentional program violation shall result in disqualification penalties as described in Section 10 of this administrative regulation, and:

- ~~1. A six (6) month disqualification for the first violation;~~
- ~~2. A twelve (12) month disqualification for a second violation; and~~
- ~~3. Permanent disqualification for the third violation; and~~

4.] a statement of which penalty is applicable to the case scheduled for a hearing;

(h) A listing of the household member's rights as contained in 904 KAR 3:070, Section 14;

(i) A statement that the hearing shall not preclude the state or federal government from:

- 1. Prosecuting the household member for intentional program violation in a civil or criminal court action; or
- 2. Collecting the overissuance; and
- (j) If there is an individual or organization available that provides

free legal representation, a statement of the availability of this service.

Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(2) If the applicant, recipient and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) A party who wishes to introduce a document or written material into the record at the hearing shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing.

(4) Failure to provide both the hearing officer and the opposing party with a copy of such evidence may result in the exclusion of this evidence from the record.

(5) If the household member or his [ite] representative does not appear for a face-to-face or telephonic hearing, the state agency shall determine whether proper advance notice was received by the household member.

(a) If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted.

(b) The hearing process is again initiated when the household member is located and another notice can be provided to that member.

(c) If the agency has sufficient evidence to verify that the household member either received or refused the notice, the hearing shall be conducted.

(6) Even if the household member is not represented, the hearing official is required to:

1. Carefully consider the evidence; and

2. Determine if intentional program violation was committed based on clear and convincing evidence.

(7) If the household member is found to have committed an intentional program violation, but a hearing official later determined that the household member or representative had good cause, as defined in 904 KAR 3:070, Section 10, for not appearing:

(a) The previous decision shall not remain valid;

(b) The cabinet shall conduct a new hearing; and

(c) The hearing official who originally ruled on the case may conduct the new hearing.

(8) The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear.

(9) A hearing official shall enter the good cause decision into the record.

Section 5. Participation While Awaiting a Disqualification Hearing.

(1) A pending hearing shall not affect the individual's or the household's right to be certified and participate in the program.

(2) The cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household until:

(a) The hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation;

(b) The individual has signed a waiver of right to an administrative disqualification hearing; or

(c) The individual has signed a disqualification consent agreement; and

(d) The cabinet disqualifies the household member for intentional program violation.

Section 6. Disqualification Hearing Decision. (1) The hearing official shall base the determination of intentional program violation on clear and convincing evidence that demonstrates that the household member committed and intended to commit intentional program

violation as specified in Section 1 of this administrative regulation.

(2) The decision of the hearing official shall:

(a) Specify the reasons for the decision;

(b) Identify:

1. The supporting evidence, including Kentucky Revised Statutes, if applicable;

2. The state administrative regulations; and

3. Corresponding federal regulation; and

(c) Respond to reasoned arguments made by the household member or representative.

(3) The case record ~~[An official report]~~ shall be retained by the cabinet until all appeals have been exhausted.

(a) The case record ~~[report]~~ shall contain:

1. The substance of what transpired at the hearing;

2. All papers and requests filed in the hearing proceeding.

(b) This record shall be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of a Disqualification Hearing Decision. (1)

The cabinet shall notify the household member in writing of:

(a) The hearing decision; and

(b) His rights.

(2) If the hearing finds that the household member committed intentional program violation, the notice shall:

(a) Be provided prior to disqualification;

(b) Inform the household member of the disqualification; and

(c) Advise the household member when the disqualification will take effect.

(3) If the individual is no longer participating, the notice shall inform the individual that the period of disqualification shall be deferred until the individual:

(a) Applies for food stamps; and

(b) Is determined eligible for program benefits.

(4) A notice shall be provided to the remaining household members, if any, informing them of:

(a) The allotment they will receive during the disqualification period; or

(b) That they may reapply because their certification period has expired.

(5) A written demand letter shall be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. (1) An individual accused of intentional program violation shall be allowed to waive his rights to an administrative disqualification hearing.

(2) The cabinet shall:

(a) Ensure that:

1. The appropriate field services supervisor or designated agency representative reviews the evidence against the household member suspected of the IPV; and

2. A decision is obtained that the evidence warrants scheduling a disqualification hearing.

(b) Provide written notification to the household member suspected of IPV that the member can waive his right to an administrative disqualification hearing.

Section 9. Deferred Adjudication. (1) An individual accused of intentional program violation shall be allowed to sign a disqualification consent agreement in a case of deferred adjudication.

(2) The cabinet shall use a disqualification consent agreement for a case in which a determination of guilt is not obtained from a court because the accessed individual:

(a) Met the terms of a court order; or

(b) Is not prosecuted because he met the terms of an agreement with the prosecutor.

Section 10. Intentional Program Violation Disqualification

Penalties. (1) An individual found to have committed an intentional program violation in accordance with 904 KAR 3:050, Section 5(3)(b) shall be ineligible to participate in the Food Stamp Program:

(a) For a period of six (6) months for the first intentional program violation, except as provided by subsections (2) and (3) of this section;

(b) For a period of twelve (12) months upon the second occasion of any intentional program violation, except as provided by subsections (2) and (3) of this section; and

(c) Permanently for the third occasion of any intentional program violation.

(2) An individual found by a federal, state or local court to have used or received coupons in a transaction involving the sale of a controlled substance, as defined by 21 USC 802, shall be ineligible to participate in the program:

(a) For a period of twelve (12) months upon the first occasion of the violation; and

(b) Permanently upon the second occasion of the violation.

(3) An individual found by a federal, state or local court to have used or received coupons in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of the violation.

(4) The penalties in subsections (2) and (3) of this section shall also apply in cases of deferred adjudication, as described in Section 9 of this administrative regulation, where the court makes a finding that the individual engaged in the conduct described in subsections (2) and (3) of this section.

(5) If a court fails to impose a disqualification period for any intentional program violation, the cabinet shall impose the appropriate disqualification penalty specified in subsections (1), (2) or (3) of this section, unless it is contrary to the court order.

(6) Regardless of when an action was taken by an individual which caused an intentional program violation to occur, the disqualification periods specified in subsections (2) and (3) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(7) The cabinet shall not disqualify everyone in the household from participating in the Food Stamp Program but shall disqualify only the individual who:

(a) Is found to have committed the intentional program violation;

or

(b) Signed the waiver of the right to an administrative disqualification hearing; or

(c) Signed the disqualification consent agreement in cases referred for prosecution.

(8) The cabinet shall disqualify only the individual from participating in the Food Stamp Program but the remaining household members are responsible for making restitution for the amount of any overpayment, in accordance with 904 KAR 3:050.

~~[(1) A penalty is assessed for an individual:~~

~~(a) Found by an administrative disqualification hearing to have committed an intentional program violation; or~~

~~(b) Who has signed a waiver of the right to an administrative disqualification hearing; or~~

~~(c) Who has signed a disqualification consent agreement; or~~

~~(d) Found guilty by a court of appropriate jurisdiction.~~

~~(2) An individual listed in subsection (1) of this section shall be ineligible to participate for:~~

~~(a) Six (6) months for the first violation;~~

~~(b) Twelve (12) months for the second violation; or~~

~~(c) Permanently for the third violation.~~

~~(3) The disqualification period for a nonparticipant shall be deferred until he applies for and is determined eligible for program benefits.~~

~~(4) Once a disqualification period is imposed, it shall continue uninterrupted, regardless of any subsequent determinations of eligibility/ineligibility of the disqualified member's household.~~

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~~(5) A court ordered disqualification may be imposed separate and apart from any action taken by the cabinet.~~

~~(a) An individual found guilty of intentional program violation by a court of appropriate jurisdiction shall be disqualified for the period of time specified by that court.~~

~~(b) If the court fails to specify or address a disqualification period for the intentional program violation, the cabinet shall impose a disqualification period consistent with the time periods set forth in this section.]~~

(9) ~~[(6)]~~ If the cabinet's determination of intentional program violation is reversed by a court, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) Restore any benefits that were lost as a result of the disqualification.

~~[(7) The cabinet shall disqualify only the individual convicted of intentional program violation and not the entire household.~~

~~(a) The remaining household members shall agree to make restitution in accordance with the procedures set forth in 904 KAR 3:050, Section 4.~~

~~(b) Allotment reduction shall be imposed on the household's monthly allotment if:~~

~~1. The household does not agree to make restitution; or~~

~~2. After having agreed to make restitution fails to do so.]~~

(10) ~~[(8)]~~ The cabinet shall inform the household in writing of the disqualification penalties for committing intentional program violation at each time it applies for benefits.

Section 11. Appeal Rights of the Household. (1) No further administrative appeal procedure shall exist after an administrative disqualification hearing finds that:

(a) An intentional program violation was committed; or

(b) An individual has waived his right to an administrative disqualification hearing.

(2) The determination of intentional program violation made by a disqualification hearing official shall not be reversed by a subsequent fair hearing decision.

(3) The household member who is subject to subsection (2) of this section is entitled to seek relief in a court having appropriate jurisdiction.

(4) The period of disqualification may be subject to stay by:

(a) A court of appropriate jurisdiction; or

(b) Other injunctive remedy.

Section 12. Material Incorporated by Reference. (1) Form FS-80, revised 9/94 ~~[4/93]~~, is necessary:

(a) To provide an individual suspected of committing an intentional program violation with information regarding his claim;

(b) To inform an individual of his rights to an administrative disqualification hearing.

(2) Form FS-80, Supplement A (revised 1/93), is necessary to permit an individual the opportunity to waive his right to an administrative disqualification hearing.

(3) Form FS-111, revised 9/94 ~~[6-94]~~, is necessary to defer adjudication of an individual suspected of intentional program violation.

(4) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS, Secretary

APPROVED BY AGENCY: June 11, 1995

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested

in attending this hearing shall notify this agency in writing by August 16, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The number of people convicted by a federal, state or local court for using food stamps to purchase drugs or firearms are extremely minimal.

(2) Direct and indirect cost or savings to those affected: Under the increased penalties, the cost to those affected will be the permanent loss of food stamp coupons.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings: None. The savings will be in food stamp benefits which are 100 percent federally funded.

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing general and agency funds.

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

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by federal law.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:
None

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? The federal statute at 7 USC 2014 (b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
59 FR 44343-47

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provision mandating disqualification penalties is consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by 59 FR 44343-47.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

3. State the aspect or service of local government to which this administrative regulation relates.

4. How does this administrative regulation affect the local government or any service it provides?

CABINET FOR HUMAN RESOURCES

Department for Social Insurance

Division of Management and Development (Amendment)

904 KAR 3:070. Fair hearings.

RELATES TO: KRS 194.050, 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82)

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall [is required to] administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of

the citizens of the Commonwealth. This administrative regulation sets forth the fair hearing procedures used by the cabinet to administer the Food Stamp Program. ~~[This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly, as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS 13A.347.]~~

Section 1. Availability of Hearings. (1) The cabinet shall provide a fair hearing to any household aggrieved by any action of the cabinet that affects the participation of the household in the Food Stamp Program.

(2) The cabinet shall provide a state level fair hearing conducted by a state level hearing officer. The fair hearing shall be conducted at:

(a) The local office administering the household's allotment; or

(b) An alternate site if the applicant or recipient:

1. Is unable to travel to the local office; and

2. Requests an alternate site.

(3) If the applicant, recipient, and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(4) A party who wishes to introduce a document or written material into the record at the hearing shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing.

(5) Failure to provide both the hearing officer and the opposing party with a copy of such evidence may result in the exclusion of this evidence from the record.

Section 2. Consolidation of Administrative Disqualification Hearing with Fair Hearing. (1) The cabinet may combine a fair hearing and an administrative disqualification hearing into a single hearing if:

(a) The factual issue arises out of the same, or related, circumstance; and

(b) The household receives prior notice that the hearings shall be combined.

(2) If the disqualification hearing and fair hearing are combined, the cabinet shall follow the time frames for conducting a disqualification hearing in accordance with 904 KAR 3:060, Section 2.

(3) The household shall lose its right to a subsequent fair hearing on the amount of the claim if a combined hearing convenes for the purpose of:

(a) Setting the amount of the claim; and

(b) Determining whether or not an intentional program violation has occurred.

(4) Upon household request, the cabinet shall allow the household to waive the thirty (30) day advance notice period required by 904 KAR 3:060, Section 3, if a disqualification hearing and a fair hearing are combined.

(5) A household that has already had a fair hearing on the amount of an overissuance or claim shall not be entitled to another hearing on that issue.

Section 3. Timely Action on Hearing Requests. (1) Within sixty (60) days of a request for a fair hearing, the cabinet shall:

(a) Acknowledge the hearing request;

(b) Conduct a hearing; and

(c) Issue a decision.

(2) A decision that results in an increase in household benefits shall be reflected in the coupon allotment within ten (10) days of the receipt of the hearing decision.

(a) The cabinet shall provide a household:

1. Supplementary coupons; or

2. With an opportunity to obtain the allotment outside the normal issuance cycle.

(b) The cabinet may take longer than ten (10) days if:

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1. It elects to make the decision effective in the household's normal issuance cycle; and

2. The issuance shall occur within sixty (60) days from the household's request for the hearing.

(3) A decision that results in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

Section 4. Agency Conference. (1) The cabinet shall offer an agency conference to a household adversely affected by the cabinet's action.

(2) The household shall be advised that an agency conference is:

(a) Optional; and

(b) Shall not delay or replace the fair hearing process.

(3) An agency conference may lead to an informal resolution of the dispute.

(4) A fair hearing shall still be held unless the household makes a written withdrawal of its request for a hearing.

(5) The agency conference shall be attended by:

(a) The case worker;

(b) His supervisor; and

(c) The household member; or

(d) Representative.

(6) An agency conference for a household contesting a denial of expedited service shall be scheduled within two (2) working days, unless the household:

(a) Requests that it be scheduled later; or

(b) States that an agency conference is not wanted.

Section 5. Group Hearings. (1) The cabinet may respond to a series of individual requests for a fair hearing by conducting a single group hearing.

(2) A hearing case may be consolidated only if:

(a) Individual issues of fact are not disputed; and

(b) The sole issue is one of:

1. Federal law;

2. Regulation; or

3. Policy.

(3) In a group hearing, the same procedures specified in this administrative regulation governing an individual hearing shall be followed.

(4) Each client shall be permitted to:

(a) Present his own case;

(b) Be represented by legal counsel; or

(c) Be represented by other spokesperson.

Section 6. Postponement of a Hearing. (1) Upon request, a household shall be entitled to receive a postponement of the scheduled hearing.

(2) The postponement shall not exceed thirty (30) days from the date of the postponement request.

(3) The time limit for action on the decision may be extended for as many days as the hearing is postponed.

Section 7. Notification of Rights to Request a Hearing. (1) At the time of application the cabinet shall notify each household in writing of:

(a) Its right to a hearing;

(b) The method by which a hearing may be requested; and

(c) That its case may be presented by a household member or a representative, such as:

1. Legal counsel;

2. A relative;

3. A friend; or

4. Other spokesperson.

(2) If a household expresses to the cabinet that it disagrees with the cabinet's action, it shall be reminded in writing of its right to

request a fair hearing.

(3) If there is an individual or organization available that provides free legal representation, the household shall be informed in writing of the availability of that service.

Section 8. Request for Hearings. (1) Any household member shall have the right to request a hearing on any action by the cabinet that:

(a) Affects the participation of the household in the program; and

(b) Occurred in the prior ninety (90) days; or

(c) Denied a request for restoration of any benefits lost more than ninety (90) days but less than a year prior to the request.

(2) Within a certification period, a household may request a fair hearing to dispute its current level of benefits.

Section 9. The Cabinet's Responsibilities on Hearing Request. (1) A request for a hearing shall be:

(a) A clear expression, oral or written, by the household or its representative;

(b) That it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired.

(2) If it is unclear from the household's request what action it wishes to appeal, the cabinet may request the household to clarify its grievance.

(3) The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(4) Upon request, the cabinet shall make available, without charge, the specific materials necessary for:

(a) A household or its representative to determine whether a hearing should be requested; or

(b) To prepare for a hearing.

(5) Upon request, the cabinet shall help a household with its hearing request.

(6) If a household makes an oral request for a hearing, the cabinet shall complete the procedures necessary to start the hearing process.

(7) Households shall be advised of any free legal services available that can provide representation at the hearing.

(8) The cabinet shall expedite a hearing request from a migrant farmworker household, that plans to move from the jurisdiction of the hearing official before the hearing decision shall normally be reached.

(9) A hearing request from a migrant farmworker household shall be processed faster than other requests if necessary to enable the household to receive a decision and restoration of benefits, if the decision so indicates, before it leaves the area.

Section 10. Denial or Dismissal of a Fair Hearing Request. The cabinet shall not deny or dismiss a request for a hearing unless:

(1) The request is not received within the time period specified in Section 8 of this administrative regulation;

(2) Prior to the release of the hearing officer's decision, the client or his representative withdraws in writing his request for a hearing at any time; or

(3) The household or its representative fails to appear to the scheduled hearing without good cause, as defined below:

(a) The household member was away from home during the entire filing period;

(b) The household member is unable to read or to comprehend the notice;

(c) The household member moved which resulted in a delay in receiving or failure to receive the timely notice [and a delay resulted in receiving inadequate notice];

(d) Serious illness of a household member;

(e) The delay was no fault of a household member; or

(f) The household member did not receive the notice.

Section 11. Continuation of Benefits. (1) If a household requests a fair hearing within the period provided on the notice of adverse

action, it shall be allowed to continue participation in the program on the basis authorized immediately prior to notice of adverse action:

- (a) If its certification period has not expired; or
- (b) The household has not specifically waived continuation of benefits.

(2) The state agency shall consider the request timely received if:

- (a) The adverse notice period ends on a weekend or holiday; and
- (b) A request for a fair hearing and continuation of benefits is received the day after the weekend or holiday.

(3) If the household fails to request a hearing within the notice period for good cause, benefits shall be reinstated on the prior basis.

(4) If benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated if:

- (a) The issue is that food stamp eligibility or benefits were improperly computed; or

(b) ~~That~~ Federal law or regulation is being misapplied or misinterpreted by the cabinet.

(5) Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:

- (a) The certification expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the cabinet;

(b) The hearing officer makes a preliminary determination in writing and at the hearing, that:

- 1. The sole issue is one of federal law or regulation; and
- 2. No questions of fact are involved;

(c) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending, and the household fails to request a hearing after the subsequent notice of adverse action;

(d) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending; or

(e) The household or representative fails to appear at the hearing without good cause. Attendance shall not be required at a group hearing.

Section 12. Notification of Time and Place of Hearing. (1) The time, date and place of the hearing shall be arranged so that the hearing is accessible to the household.

(2) At least ten (10) days prior to the hearing, advance written notice shall be provided to any party involved to permit adequate preparation of the case.

(3) The household may request less advance notice to expedite the scheduling of the hearing.

(4) The notice shall:

- (a) Advise the household or representative of the name, address, and phone number of the person to notify if it is not possible for the household to attend the scheduled hearing;

(b) Specify that the cabinet shall dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause;

(c) Include the cabinet's procedure and any other information that provides the household with an understanding of the proceedings and that contributes to the effective presentation of the household's case; and

(d) Explain that the household or representative may examine the case file prior to the hearing.

Section 13. Hearing Official. (1) The cabinet shall designate a hearing official who:

- (a) Does not have any personal stake or involvement in the case;
- (b) Was not directly involved in the initial determination of the action which is being contested;

(c) Was not the immediate supervisor of the case worker who took the action; and

(d) Is an employee of the cabinet.

(2) The power and duties of the hearing official shall be as follows:

(a) Administer oaths or affirmations;

(b) Ensure ~~insure~~ that all relevant issues are considered;

(c) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(d) Regulate the conduct and course of the hearing consistent with due process to ensure ~~insure~~ an orderly hearing;

(e) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the cabinet;

(f) Subpoena relevant and useful information or individuals; and

(g) Provide a hearing record and recommendation for final decision by the hearing authority. The hearing official shall render a hearing decision in the name of the cabinet in accordance with Section 15 of this administrative regulation.

Section 14. Rights During Hearing. (1) During the hearing process the household or its representative shall be given adequate opportunity to:

(a) Examine all documents and records to be used at the hearing at anytime during working hours before the date of the hearing as well as during the hearing;

(b) Examine the contents of the case file including the application form and documents of verification used by the cabinet to establish the household's ineligibility or eligibility and allotment;

(c) Present the case or have it presented by a legal counsel or other person;

(d) Bring witnesses, friends or relatives;

(e) Advance arguments without undue interference;

(f) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

(g) Submit evidence to establish all pertinent facts and circumstances in the case.

(2) Confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, shall be protected from release.

(3) If requested by the household or its representative, the cabinet shall provide a free copy of the portions of the case file that are relevant to the hearing.

(4) Confidential information that is protected from release and other documents or records, not relevant to the hearing, which the household shall not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

Section 15. Hearing Decisions. (1) Decisions of the hearing officer shall comply with federal law and regulation and shall be based on the hearing record.

(2) The official record for a final decision by the hearing authority shall contain:

(a) The recording of testimony and exhibits;

(b) An official report containing the substance of what transpired at the hearing; and

(c) All papers and requests filed in the proceeding.

(3) This record shall be retained in accordance with 904 KAR 3:050, Section 6.

(4) This record shall be available to the household or its representative during working hours for copying and inspection.

(5) A decision by the hearing authority shall:

(a) Be binding on the cabinet;

(b) Summarize the facts of the case;

(c) Specify the reasons for the decision; and

(d) Identify:

1. The supporting evidence;

2. The pertinent state administrative regulation; and

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3. Corresponding federal regulation.
- (6) The decision shall become a part of the record.
- (7) The household and the local office shall each be notified in writing of:
 - (a) The decision;
 - (b) The reasons for the decision;
 - (c) The available appeal rights;
 - (d) The issuance or termination of the household's benefits as decided by the hearing authority; and
 - (e) The fact that an appeal may result in a reversal of the decision.
- (8) ~~After notification of a hearing decision which upholds the cabinet's action, the household shall be notified of the right to pursue judicial review of the decision.~~
- ~~(9)~~ The household shall be notified of the right to appeal its case to the appeal board in accordance with Section 17 of this administrative regulation.

Section 16. Implementation of Hearing Decision. (1) The cabinet shall ~~ensure~~ insure that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in Section 3 of this administrative regulation.

(2) If the hearing authority determines that a household has been improperly denied program benefits, or has been issued a lesser allotment than was due, lost benefits shall be provided to the household.

(3) The cabinet shall restore benefits to a household that leaves the county before the departure if possible.

(4) If benefits are not restored prior to the household's departure, the county office shall forward an authorization for benefits to the household or to the new county office if known.

(5) The county office shall accept an authorization and issue the appropriate benefits whether the authorization is:

- (a) Presented by the household; or
- (b) Received directly from another county office.

(6) When the hearing authority upholds the cabinet's action, a claim against the household for any overissuances shall be prepared.

Section 17. Appeal Board. (1) A household dissatisfied with the hearing officer's decision may appeal to the appeal board within twenty (20) days from the date of the hearing decision.

(2) Within forty-five (45) days of receipt of the request for an appeal of a fair hearing decision, the cabinet shall ensure that:

- (a) The review is conducted; and
- (b) A decision is reached.

(3) The decision shall be reflected in the coupon allotment within ten (10) days of the decision.

(4) After notification of a hearing decision which upholds the cabinet's action, the household shall be notified of the right to pursue judicial review of the decision.

Section 18. Judicial Review. A household aggrieved by the appeal board's decision shall have the right to appeal this decision to the circuit court of appropriate jurisdiction.

Section 19. Material Incorporated by Reference. (1) Form PAFS-78, revised 3/95 [6-94], is required for a fair hearing.

(2) This form 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, Secretary

APPROVED BY AGENCY: June 2, 1995

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

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: None, the amendment is only making formatting changes and revising a form used to request fair hearings.

(2) Direct and indirect cost or savings 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 comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect cost or savings: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None other than what is currently required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No funding issues involved.

(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 comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: 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: None

(11) TIERING: Is tiering applied? The federal statute at 7 USC 2014(b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This amendment makes only KRS Chapter 13A formatting changes and revises a fair hearing request form.

2. State compliance standards. Same as above.

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 standards, or additional or different responsibilities or requirements. None

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? None

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JULY 15, 1995

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)

200 KAR 22:030. 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)

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" as revised July 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: July 13, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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

(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. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

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

1. First year following implementation: 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: No public comments have yet been received and no

public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

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

(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 regulation only applies to employees in the Department of Vocational Rehabilitation who are participating in the Pilot Personnel Program.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)

200 KAR 22:040. Comprehensive Employment Manual of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, for use in the Pilot Personnel Program.

RELATES TO: KRS 18A.430(1)

STATUTORY AUTHORITY: KRS 18A.430(1)(a), (b), (c)

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 Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, for use in the Pilot Personnel Program.

Section 1. Comprehensive Employment Manual. The Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, have 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 Program Development and Program Services Branches are set out in the "Employee Handbook of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches for Use in the Pilot Personnel Program."

Section 2. Incorporation by Reference. (1) The "Employee Handbook of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, for Use in the Pilot Personnel Program" as revised January 1995, ("employee handbook") is incorporated by reference.

(2) The "employee handbook" may be inspected, copied, or obtained from Larry Leach, Project Coordinator, at the offices of the Division of Abandoned Lands, 618 Teton Trail, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUALLEN, Secretary

APPROVED BY AGENCY: July 13, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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

(1) Type and number of entities affected: This regulation will affect all employees in the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, 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. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(c) Compliance, reporting and paperwork requirements of those

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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 Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, 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: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

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

(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 regulation only applies to employees in the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, who are participating in the Pilot Personnel Program.

FINANCE AND ADMINISTRATION CABINET

Office of the Secretary

(New Administrative Regulation)

200 KAR 22:050. Comprehensive Employment Manual of the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, Permit Review Section 1 (East), for use in the Pilot Personnel Program.

RELATES TO: KRS 18A.430(1)

STATUTORY AUTHORITY: KRS 18A.430(1)(a), (b), (c)

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 Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, Permit Review Section 1 (East), for use in the Pilot Personnel Program.

Section 1. Comprehensive Employment Manual. The Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, 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 Permit Review Section 1 (East) are set out in the "Employee Handbook of the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, Permit Review Section 1 (East), for Use in the Pilot Personnel Program."

Section 2. Incorporation by Reference. (1) The "Employee Handbook of the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, Permit Review Section 1 (East), for Use in the Pilot Personnel Program" as revised January 1995, ("employee handbook") is incorporated by reference.

(2) The "employee handbook" may be inspected, copied, or obtained from Steve Fields, Project Coordinator, at the offices of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUAllen, Secretary

APPROVED BY AGENCY: July 13, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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

(1) Type and number of entities affected: This regulation will affect all employees in the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, who are participating 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. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

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

1. First year following implementation: 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 Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, 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: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

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

(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 regulation only applies to employees in the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, who are participating in the Pilot Personnel Program.

FINANCE AND ADMINISTRATION CABINET

Office of the Secretary

(New Administrative Regulation)

200 KAR 22:060. Comprehensive Employment Manual of the Department of Personnel for use in the Pilot Personnel Program.

RELATES TO: KRS 18A.430(1)

STATUTORY AUTHORITY: KRS 18A.430(1)(a), (b), (c)

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 Personnel for use in the Pilot Personnel Program.

Section 1. Comprehensive Employment Manual. The Department of Personnel 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 Personnel are set out in the "Employee Handbook and the Pilot Program Performance Review Handbook for the Department of Personnel for Use in the Pilot Personnel Program."

Section 2. Incorporation by Reference. (1) The "Employee Handbook and the Pilot Program Performance Review Handbook for the Department of Personnel for Use in the Pilot Personnel Program," dated January 1995, ("employee handbook") is incorporated by reference.

(2) The "employee handbook" may be inspected, copied, or obtained at the Department of Personnel, 200 Fair Oaks Lane, Suite 535, Frankfort, Kentucky 40601, c/o David Holtzworth, Project Coordinator, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUALLEN, Secretary

APPROVED BY AGENCY: July 13, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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

(1) Type and number of entities affected: This regulation will affect all employees in the Department of Personnel 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 Personnel 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 regulation only applies to employees in the Department of Personnel who are participating in the Pilot Personnel Program.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)

200 KAR 22:070. Comprehensive Employment Manual of the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, for use in the Pilot Personnel Program.

RELATES TO: KRS 18A.430(1)

STATUTORY AUTHORITY: KRS 18A.430(1)(a), (b), (c)

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 Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, for use in the Pilot Personnel Program.

Section 1. Comprehensive Employment Manual. The Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, 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 Water Quality Branch are set out in the "Employee Handbook of the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, for Use in the Pilot Personnel Program."

Section 2. Incorporation by Reference. (1) The "Employee Handbook of the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, for Use in the Pilot Personnel Program" as revised January 1995, ("employee handbook") is incorporated by reference.

(2) The "employee handbook" may be inspected, copied, or obtained from Lythia Metzmeier, Project Coordinator, at the offices of the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUAllen, Secretary

APPROVED BY AGENCY: July 13, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 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 August 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

(1) Type and number of entities affected: This regulation will affect all employees in the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, 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 Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, 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 regulation only applies to employees in the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, who are participating in the Pilot Personnel Program.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(New Administrative Regulation)**

201 KAR 20:410. Expungement of records.

RELATES TO: KRS 314.131(9)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY AND FUNCTION: To set forth the records which may be expunged and the procedure to follow.

Section 1. Definitions. "Expungement" shall mean that all affected records shall be sealed and that the proceedings to which they refer shall be deemed never to have occurred. The person may properly reply that no record exists with respect to such persons upon any inquiry in the matter.

Section 2. Upon a request from a nurse against whom disciplinary action has been taken, the board shall expunge records relating to the following categories of disciplinary action:

(1) Consent decrees that are at least seven (7) years old; and

(2) Agreed orders and decisions which are at least ten (10) years old and which concern one (1) or more of the following categories, provided that there has been no subsequent disciplinary action:

(a) Failed to timely obtain continuing education or AIDS education hours;

(b) Paid fees by a check that was returned unpaid by the bank; or

(c) Practiced as a nurse or advanced registered nurse practitioner without a current, active license, registration or temporary work permit.

Section 3. The board shall not report cases which have been expunged to any other state agency, other board of nursing, or any other organization.

PATRICIA B. BURGE, President

APPROVED BY AGENCY: June 23, 1995

FILED WITH LRC: July 12, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1995, at 9 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1995, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Licensees with certain types of disciplinary action. Number 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: 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: Certain records will be expunged.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict: 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? N/A

**GENERAL GOVERNMENT CABINET
Kentucky Board of Certification of Marriage
and Family Therapists
(New Administrative Regulation)**

201 KAR 32:010. Definitions.

RELATES TO: KRS 335.330

STATUTORY AUTHORITY: KRS 335.320

NECESSITY AND FUNCTION: KRS 335.330 sets forth the requirements for certification as a marriage and family therapist. The board is required to review the applications of applicants for certification. In addition to other requirements, KRS 335.330 requires applicants to have experience under supervision. This administrative regulation establishes definitions necessary for the evaluation of experience under supervision.

Section 1. Definitions. The following terms relate to the evaluation of applications for certification:

(1) "The practice of marriage and family therapy" means the identification and treatment of cognitive, affective, and behavioral symptoms of marital and family dysfunctions. Marriage and family therapy involves the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families.

(2) "Two (2) years" experience in the practice of marriage and family therapy means a minimum of two (2) years of the practice of marriage and family therapy which includes 1,000 hours of direct, face-to-face contact with individuals, couples, and families in the practice of marriage and family therapy under the supervision of an approved supervisor.

(3) "Approved supervisor" means an individual who is one (1) of the following:

(a) A person who holds a designation as an approved supervisor granted by the American Association for Marriage and Family Therapy;

(b) A person who is certified as a marriage and family therapist in the Commonwealth of Kentucky with a minimum of four (4) years of experience in the practice of marriage and family therapy; or

(c) A person who holds licensure or certification in another mental health profession whose education and experience demonstrate to the board a level of competence equivalent to that contained in paragraph (b) of this subsection. After July 15, 1999, a supervisor qualifying under this paragraph shall no longer be considered as an approved supervisor.

(4) "Clinical supervision" means the process of utilizing a partnership aimed at enhancing the professional development of supervisees in providing marriage and family services. Clinical supervision shall be equally distributed throughout the qualifying period.

Section 2. Clinical membership in the American Association for Marriage and Family Therapy shall be accepted as evidence that the applicant has met both the educational and experiential requirements for certification as set forth in KRS 335.330(3) and (4)(a) and (b).

JOHN P. SOHAN, Board Chairman

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1995, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All persons applying for certification as a marriage and family therapist.

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

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

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

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

1. First year following implementation: This administrative regulation will create minimal reporting requirements for those individuals seeking to become certified as a marriage and family therapist.

2. Second and subsequent years: See above answer.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All applications for certification will be reviewed by the board.

(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. Fees paid by the applicants.

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

from administrative regulation on:

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

(b) Kentucky. None

(7) Assessment of alternative methods; reasons why alternative methods were rejected. KRS 335.330 (4)(a) and (b) authorize the board to define the terms set forth in this regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Only individuals with the proper supervision and two years of experience will be able to hold themselves out to the public as marriage and family therapists.

(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: Persons without the proper amount of supervision and years of experience would be able to hold themselves out to the public as marriage and family therapists.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified candidates.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Certification of Marriage
and Family Therapists
(New Administrative Regulation)**

201 KAR 32:020. Equivalent course of study.

RELATES TO: KRS 335.330

STATUTORY AUTHORITY: KRS 335.320, 335.330

NECESSITY AND FUNCTION: KRS 335.330(3) states that the board shall define a course of study equivalent to a master's degree in marriage and family therapy and promulgate the equivalency standard by administrative regulations. This administrative regulation clarifies the criteria for marriage and family therapy education and clinical training as approved by the United States Department of Education.

Section 1. "An equivalent course of study" means a master's or doctoral degree from a regionally accredited institution in a mental health field closely related to marriage and family therapy which either contains, or has been supplemented by the coursework in each of the basic core areas listed in Section 2 of this administrative regulation.

Section 2. The basic core areas which are necessary in order to qualify as an equivalent course of study, shall include the following:

(1) Marriage and family studies. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area shall be theoretical in nature and have a major focus of system theory orientation, and may include:

- (a) Systems theory;
- (b) Family development;
- (c) Blended families;
- (d) Cultural issues in families;
- (e) Family subsystems;

(f) Major models of family systems theory; or

(g) Gender issues in families.

(2) Marriage and family therapy. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area shall have a major focus on family systems theory and systemic therapeutic interventions. Courses shall relate to major theories of family systems change and therapeutic practices evolving from each theoretical model. Examples may include:

- (a) Structural communications family therapy;
- (b) Strategic object relations family therapy;
- (c) Behavioral family therapy;
- (d) Intergenerational family therapy;
- (e) Solution oriented family therapy;
- (f) Narrative family therapy; or
- (g) Systemic sex therapy.

(3) Human development. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours or 135 didactic contact hours). Courses in this area provide knowledge of individual human personality development in both normal and abnormal manifestations. Topic areas may include:

- (a) Human development;
- (b) Psychopathology;
- (c) Personality theory;
- (d) Human sexuality; or
- (e) Effects of gender and cultural issues on human development.

(4) Professional studies. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours or forty-five (45) didactic contact hours). Courses may include:

- (a) Professional ethics in marriage and family therapy;
- (b) Legal responsibilities of the therapist;
- (c) Professional socialization and the role of the professional organization;

- (d) Licensure or certification legislation; or
- (e) Independent practice issues.

(5) Research. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours or forty-five (45) didactic contact hours). Courses may include:

- (a) Statistics;
- (b) Research methods;
- (c) Quantitative methodology; or
- (d) Other courses designed to assist the student to understand and perform research.

(6) Practicum or internship. The practicum or internship shall include a minimum of one (1) year or 300 hours of supervised direct client contact with individuals, couples and families for family therapy.

(a) Applicants who did not complete a clinical practicum in graduate school may satisfy the practicum requirement with their first 300 post masters' client contact hours.

(b) These hours shall not be counted toward the two (2) years of required post master's experience or the 200 hours of clinical supervision.

Section 3. A course used to fulfill one (1) of the requirements set forth in Section 2 of this administrative regulation may be used to fulfill only one (1) requirement.

Section 4. (1) Applicants who completed their qualifying graduate degree in a mental health field prior to 1985 may substitute conferences, workshops, seminars, or in-service training related to marriage and family therapy attended or presented as a substitute for college coursework required in Section 2 of this administrative regulation.

(2) Forty-five (45) contact hours of relevant content shall equal three (3) semester hours of credit.

(3) A list of equivalencies the applicant wishes to have considered shall be organized by core area as set forth in Section 2 of this administrative regulation.

(4) Appropriate documentation shall include:

- (a) Date;
- (b) Title;
- (c) Course description;
- (d) Sponsoring organization;
- (e) Presenter;
- (f) Number of contact hours attended or presented; and
- (g) Certificates of attendance.

Section 5. Other acceptable equivalencies may be considered as follows:

(1) One (1) graduate level course taught on a relevant subject after 1985 may be considered equivalent to three (3) semester hours of credit.

(2) Publication on a relevant subject dated after 1985 may be submitted as equivalencies as acceptable to the board. Credit shall be granted as follows:

(a) A chapter in a book is equivalent to three (3) semester hours of credit. Applicants who author or edit a book may be given credit equivalent to six (6) semester hours of credit. Applicants shall submit a copy of the title page, table of contents and bibliography.

(b) Publication in a professional refereed journal is equivalent to three (3) semester hours of credit. Applicants shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

JOHN P. SOHAN, Board Chairman

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1995, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 19, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: Those persons seeking to be certified as a marriage and family therapist who do not hold a master's or doctorate degree in marriage and family therapy.

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

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

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

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

1. First year following implementation: This administrative regulation will create minimal reporting requirements for those

individuals seeking to be certified as a marriage and family therapist.

2. Second and subsequent years: See above answer.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: All applications for certification will be reviewed by the board.

(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. Fees paid by the applicants.

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

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

(b) Kentucky. None

(7) Assessment of alternative methods; reasons why alternative methods were rejected. KRS 335.330(3) requires the board to establish an equivalent course of study for those applicants seeking to become certified who do not hold a master's or doctoral degree in marriage and family therapy.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Only those individuals with the proper education will be able to hold themselves out to the public as a marriage and family therapist.

(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: Individuals without the proper education would hold themselves out to the public as a certified marriage and family therapist.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified candidates.

GENERAL GOVERNMENT CABINET Kentucky Board of Certification for Marriage and Family Therapists (New Administrative Regulation)

201 KAR 32:030. Fees.

RELATES TO: KRS 335.330

STATUTORY AUTHORITY: KRS 335.320(7)

NECESSITY AND FUNCTION: This administrative regulation is necessitated by KRS 335.330 and sets forth in detail all fees charged by the board.

Section 1. Initial Certification Fee. (1) The initial certification fee for certification as a marriage and family therapist shall be \$200.

(2) If the application for certification is denied, the board may refund \$150 of the initial certification fee.

JOHN P. SOHAN, Board Chairman

APPROVED BY AGENCY: April 20, 1995

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FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1995, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All individuals applying for certification as a marriage and family therapist.

(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: All applicants will have to pay the application fee.

2. Second and subsequent years: See above answer.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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 since any costs associated with operating the board will be paid for out of the application fees.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Application fees.

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

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

(b) Kentucky. None

(7) Assessment of alternative methods; reasons why alternative methods were rejected. The board is required by statute to establish an application fee.

(8) Assessment of expected benefits:

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

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are

no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary because this administrative regulation applies uniformly to all qualified candidates.

GENERAL GOVERNMENT CABINET Kentucky Department of Agriculture (New Administrative Regulation)

302 KAR 20:076. 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 at the time of delivery on a form made available to the seller, or his agent, by the stockyard. 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 violated this administrative regulation may be subject to the penalties set forth in KRS 257.990.

ED LOGSDON, Chairman

APPROVED BY AGENCY: April 19, 1995

FILED WITH LRC: July 11, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, August 28, 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 August 23, 1995, five days prior to the meeting, 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 attend 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: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: Stockyard owners and sellers of cattle.

(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 effects on the cost

of living.

(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 effects on 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: All sellers of cattle will have to designate on a form at the stockyard whether cattle are "farm fresh."

2. Second and subsequent years: Same requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal cost. Current personnel will be used to enforce.

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: Existing personnel will be used for enforcement.

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

(a) Geographical area in which administrative regulation will be implemented: This will be better for the health of cattle thereby increasing the revenues received from the sale of cattle.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation has been extensively discussed by interested parties and this seems to be the most reasonable solution.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation furthers Kentucky health and disease control initiatives for cattle.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, possibly.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All sellers of cattle are treated the same.

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT CORPORATION (New Administrative Regulation)

302 KAR 100:010. Procedures for determining purchasing priority for agricultural conservation easements or other property interests in agricultural lands.

RELATES TO: KRS 262.902, 262.904, 262.908

STATUTORY AUTHORITY: KRS 262.902, 262.908

NECESSITY AND FUNCTION: KRS 262.908 requires the Purchase of Agricultural Conservation Easement Board to implement a Purchase of Agricultural Conservation Easement Program, including the development and promulgation of necessary administrative regulations. KRS 262.908 requires the Purchase of Agricultural Conservation Easement Corporation to establish fair, equitable, objective, nondiscriminatory procedures for determining easement

purchase priorities. KRS 262.908 also requires that land is selected for purchase because it will make a significant contribution to agricultural production.

Section 1. Definitions. All terms used in this administrative regulation shall have the meaning given them in KRS 262.900.

Section 2. A farmland tract shall not be considered by the PACE Corporation for acquisition as an agricultural conservation easement or other property interest unless the land proposed for acquisition meets the following minimum criteria:

(1) The land is a farm as defined by KRS 262.900.

(2) The land is viable agricultural land as defined by KRS 262.900.

Section 3. The PACE Corporation shall consider the following factors in evaluating eligible lands for purchase:

(1) Soil type;

(2) Extent of agricultural production in proximity to the farmland tract;

(3) Current use of the farmland tract;

(4) Proximity of the farmland tract to an agricultural conservation district;

(5) Size of farmland tract;

(6) Vulnerability of the farmland tract to conversion to nonagricultural uses; and

(7) Any other factors relevant to the use or potential use of the farmland tract for agricultural production.

Section 4. The provisions this administrative regulation do not apply to the following acquisitions of easements or other property interests by the Commonwealth.

(1) Purchases made pursuant to KRS 262.904(4);

(2) Purchases of an easement or other property interest from a nonprofit land conservation organization or other qualified organization; or

(3) Donations of lands to the Commonwealth by gift or bequest.

DR. LUTHER HUGHES, Chairman

APPROVED BY AGENCY: July 7, 1995

FILED WITH LRC: July 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held August 23, 1995, at 10 a.m. EDT in 7th Floor Conference Room, Department for Agriculture, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Persons interested in being heard at this hearing shall notify this agency in writing by August 18, 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. 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 submit written comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on August 18, 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: Glenna Jo Curry, 5th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-5576, (502) 564-6131 (telefax).

The Department of Agriculture 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

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to participate in all programs and activities. Any individual who requires special accommodations in connection with this proceeding should contact Bill Burnette, Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696 at least one (1) week prior to the date the accommodations will be needed.

REGULATORY IMPACT ANALYSIS

Contact Person: Glenna Jo Curry

(1) Type and number of entities affected: Any owner of farmland in the state can apply to the PACE Corporation for the purchase of their farmland as an agricultural conservation easement, or other property interest. This regulation establishes the minimum criteria and factors to be considered in determining whether an easement will be required. Due to the large number of farm owners potentially applying for purchase, 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 property interests 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 the PACE Board to consider certain factors in determining whether farm land will be considered 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: Agricultural conservation easements, or other property interests, are purchased with funds from the Agricultural Enhancement Fund, KRS 262.920.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: Costs to the agency may be decreased if private gifts are made to the Agricultural Enhancement Fund for the purposes of retaining agricultural lands.

(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: Moneys received and deposited in the Agricultural Enhancement Fund, KRS 262.920.

(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: The contribution agricultural production makes to the geographical area's economy.

(b) Kentucky: The contribution agricultural production makes to the state's economy.

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

(8) Assessment of expected benefits of the administrative regulation: Provides a mechanism to ensure lands currently in, or available, for agricultural production will continue to remain available for agricultural production.

(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: Agricultural land may be converted to incompatible nonfarming uses.

(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? Tiering was applied. Certain acquisitions of agricultural conservation easements, or other property interests, are exempt from the requirements set forth in the regulation. It is not necessary to review the factors in evaluating lands for purchase in the case of the donation of lands, the purchase of lands already held by a conservation organization and the purchase of the remaining agricultural or other property interest in land where the state had previously acquired an easement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. This regulation is promulgated pursuant to KRS 262.900 through 262.920.

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? No

2. State what unit, part of division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

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 dollars estimate cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT CORPORATION (New Administrative Regulation)

302 KAR 100:020. Procedures for purchasing agricultural conservation easements or other property interests in agricultural lands.

RELATES TO: KRS 262.902, 262.904, 262.908

STATUTORY AUTHORITY: KRS 262.902, 262.908

NECESSITY AND FUNCTION: KRS 262.908 requires the Purchase of Agricultural Conservation Easement Board to implement a Purchase of Agricultural Conservation Easement Program, including the development and promulgation of necessary administrative

regulations. KRS 262.908 requires the Purchase of Agricultural Conservation Easement Corporation to promulgate administrative regulations establishing policies and procedures for purchasing easements. KRS 262.908 also requires that land is selected for purchase because it will make a significant contribution to agricultural production.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 262, terms used in this administrative regulation shall have the following meanings:

(1) "Application" means the documentation and information submitted to the PACE Corporation by a landowner on the approved application form offering to sell or donate to the Commonwealth an agricultural conservation easement or other property interest in eligible land.

(2) "Easement value" is defined in KRS 262.900.

(3) "Eligible land" is defined in KRS 262.900.

(4) "Farmland tract" is defined in KRS 262.900.

Section 2. Application Requirements. Application to the PACE Corporation. In order to be considered for purchase, a completed application shall be submitted by the landowner on the "Agricultural Conservation Easement Application" (July 15, 1995). The landowner or a duly authorized representative of the landowner may apply. The landowner shall sign the application. A separate application shall be required for each farmland tract offered for acquisition. The following information shall be included in a completed application:

(1) Adequate identification by deed reference of the farmland tract to be considered for purchase.

(2) A map of the property on a United States Geological Survey (USGS) Topographic Map showing the land area to be considered for purchase, as well as any contiguous acreage under the same ownership to be excluded.

(3) A United States Department of Agriculture (USDA) Natural Resources Conservation Services Soil Map and farm plan.

(4) A full description of the agricultural production carried out on the property including type and quantity of crops, number of livestock, acreage of land leased or used from others for agricultural production. In the event the landowner is not principally engaged in agricultural production on the farmland tract, a written statement shall be submitted stating the short and long term proposals for use of the land for agricultural production.

(5) A statement by the landowner of any contingencies which may affect the retention of the land in agricultural production, such as death, health, or retirement of the owner, financial stress, estate settlement, or other circumstances which may cause the farmland tract to be removed from agricultural production.

(6) Whether the property interest proposed to be conveyed to the Commonwealth is fee simple or less-than-fee-simple interest, including but not limited to, an easement, life estate, covenant, or other contractual right.

(7) The landowner's asking price and preferred method of payment for the acquisition, including but not limited to, lump sum payment, pay out over a term of years or installment payments.

(8) A statement by the landowner agreeing to allow inspection and appraisal of the property.

(9) A list of any and all liens and encumbrances on the farmland tract.

(10) Existence of any surface or mineral leases or easements.

(11) All other information requested on the "Agricultural Conservation Easement Application."

Section 3. Application Process. (1) A representative of the PACE Corporation shall review the application to determine if it is complete. If the application is complete, a representative of the PACE Corporation shall view the farmland tract and provide the PACE Board with a preliminary evaluation of whether the farmland tract meets the

minimum criteria for eligible land set forth in 302 KAR 100.010.

(2) If the application is complete and the minimum criteria is met, the application shall be evaluated in accordance with 302 KAR 100.010. If it is determined by the PACE Board that the farmland tract is eligible land, the PACE Board shall notify the landowner in writing that the farmland tract will be considered for purchase by, or donation to, the PACE Corporation or that, for reasons set forth in writing, the application is being rejected.

(3) Prior to purchase, the PACE Board shall determine the easement value of the farmland tract by appraisal:

(a) The appraisal shall be conducted by a licensed real estate appraiser who is qualified to appraise property for easement purchase. The appraisal shall be based on an analysis of comparable sales.

(b) The appraisal shall include, at a minimum, a legal description of the appraised farmland tract, description of improvements, photos of the farmland tract, sketch of the subject farmland tract, pertinent data for each comparable sale, whether the farmland tract has public or private land use restrictions, any attributes which limit the development of the farmland tract and a description of the area or neighborhood in which the farmland tract is located.

(c) The appraisal shall contain an analysis of the highest and best use of the farmland tract, the valuation methodology used by the appraiser to determine market value and farmland value, the market value, the farmland value and the easement value of the farmland tract. The value of any buildings or other improvements shall appear separately in the appraisal report.

Section 4. Purchase of Agricultural Conservation Easement or Other Property Interests. (1) If the PACE Board determines to offer to purchase an easement or other property interest on the farmland tract, the PACE Corporation shall submit a written offer to the landowner for the purchase. The offer shall be accompanied by a copy of any appraisals of the property obtained by the PACE Corporation.

(2) Within thirty (30) calendar days of receipt of the written offer, the landowner, or his authorized representative, shall:

(a) Accept the offer in which case the PACE Corporation and the landowner shall enter into a contract of sale. The contract shall be conditioned upon the approval of the PACE Board and be subject to the ability of the landowner to provide good title to the farmland tract, free of encumbrances such as liens, mortgages and other encumbrances which would adversely affect the Commonwealth's interest in the farmland tract.

(b) Reject the offer and advise the PACE Corporation that the application is withdrawn.

(c) Advise the PACE Corporation that the landowner is obtaining an independent appraisal, at the landowner's expense to determine the easement value. The appraisal shall be obtained in accordance with Section 4 of this administrative regulation. Within thirty (30) calendar days of receipt of the landowner's independent appraisal, the PACE Corporation shall notify the landowner that the PACE Corporation's original offer remains open and will not be modified, make an offer to purchase the easement for an amount that is the average between the landowner's appraisal and the PACE Corporation's appraisal, or reject the landowner's offer. If an offer to purchase is accepted, the landowner and PACE Corporation shall enter into a contract of sale in accordance with subsection (1)(a) of this section.

(3) Prior to conveyance of the easement, a title search shall be completed by an attorney licensed to practice law in the Commonwealth, to certify clear and marketable title prior to closing. The landowner shall be responsible for clearing all title defects. The PACE Corporation shall obtain the preparation of a property description suitable for recording the deed and, in the event that a survey is required, completion of the survey. The landowner of the subject farmland tract shall execute a deed which shall include the language required by KRS 262.914. A copy of the deed shall be submitted to

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the PACE Board for approval prior to recording.

(4) The purchase price shall be paid by the Commonwealth in accordance with KRS 262.904(2). The easement or other property interests may be acquired by an exchange of the interest which the Commonwealth owns in other than eligible lands for eligible lands in accordance with KRS 262.904(3).

Section 5. Reconsideration of PACE Corporation Rejection of Application. If a landowner is dissatisfied with the action of the PACE Corporation in rejecting an application, the landowner may request in writing a meeting with the PACE Board. The landowner will be notified of the next scheduled meeting of the PACE Board and will be provided the opportunity to present additional information regarding the farmland tract's value or use, or potential use, for agricultural production. The PACE Board shall consider this additional information and notify the landowner of its decision to reject or reconsider the farmland tract for purchase.

Section 6. Exemptions. (1) The provisions of this administrative regulation do not apply to the following acquisitions of an easement or other property interest by the Commonwealth:

- (a) Purchases made pursuant to KRS 262.904(4);
 - (b) Purchases of an easement or other property interest from a nonprofit land conservation organization or other qualified organization; or
 - (c) Donations of lands to the Commonwealth by gift or bequest.
- (2) Eligible lands acquired pursuant to subsection (1) of this section are subject to the provisions of KRS 262.910 through 262.918.

Section 7. Conflicts of Interest. (1) If a director of the PACE Board has an ownership interest in a farmland tract being considered for purchase by the board, the director shall abstain from any action on an official decision by the board in regard to the farmland tract in accordance with KRS 262.906(a).

(2) A director shall disclose to the PACE Board any direct or indirect ownership interest of a member of the director's family, or a business in which the director or a member of his family has an interest of more than five (5) percent, in a farmland tract proposed for purchase. A director shall abstain from any action on an official decision of the PACE Board in regard to this farmland tract if the director believes there is a substantial threat to his independence of judgment because of his personal or private interest in the property.

Section 8. Reference Material. The "Agricultural Conservation Easement Application" form (7/15/95) is incorporated by reference and is available for public inspection and copying at the office of the Agriculture Department, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696, during normal working hours of 8 a.m. to 4:30 p.m., local time.

DR. LUTHER HUGHES, Chairman

APPROVED BY AGENCY: July 7, 1995

FILED WITH LRC: July 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held August 23, 1995, at 10 a.m. EDT in 7th Floor Conference Room, Department for Agriculture, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Persons interested in being heard at this hearing shall notify this agency in writing by August 18, 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. 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 submit written

comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on August 18, 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: Glenna Jo Curry, 5th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-5576, (502) 564-6131 (telefax).

The Department of Agriculture 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 Bill Burnette, Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696 at least one (1) week prior to the date the accommodations will be needed.

REGULATORY IMPACT ANALYSIS

Contact Person: Glenna Jo Curry

(1) Type and number of entities affected: Any owner of farmland in the state can apply to the PACE Corporation for the purchase of their farmland as an agricultural conservation easement, or other property interest. Due to the large number of farm owners potentially applying for purchase, 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 property interests 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 interested landowners to submit an application in order for their land to be considered for purchase. A landowner may obtain an independent appraisal of their property to determine easement value.

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: Agricultural conservation easements; or other property interests, are purchased with funds from the Agricultural Enhancement Fund, KRS 262.920.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: Costs to the agency may be decreased if private gifts are made to the Agricultural Enhancement Fund for the purposes of retaining agricultural lands.

(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: Moneys received and deposited in the Agricultural Enhancement Fund, KRS 262.920.

(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: The contribution agricultural production makes to the geographical area's economy.

(b) Kentucky: The contribution agricultural production makes to the state's economy.

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

(8) Assessment of expected benefits of the administrative regulation: Provides a mechanism to ensure lands currently in, or available, for agricultural production will continue to remain available for agricultural production.

(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: Agricultural land may be converted to incompatible nonfarming uses.

(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? Tiering was applied. Certain acquisitions of agricultural conservation easements, or other property interests, are exempt from the requirements set forth in the regulation. An application is not required for the PACE Board to determine the eligibility of the land to be acquired in the case of the donation of lands, the purchase of lands already held by a conservation organization and the purchase of the remaining agricultural or other property interest in land where the state had previously acquired an easement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. This regulation is promulgated pursuant to KRS 262.900 through 262.920.

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? No

2. State what unit, part of division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

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 dollars estimate cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 42:005. Definitions related to 401 KAR Chapter 42.

RELATES TO: KRS 224.01, 224.10, 224.60, 40 CFR Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.01-100, 224.60-105, 40 CFR Part 280, Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect human health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This chapter identifies requirements for UST systems. This administrative regulation defines terms used throughout this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or other administrative regulations of 401 KAR Chapter 42, or otherwise specifically indicated by context, terms in 401 KAR Chapter 42 shall have the meanings given in this administrative regulation.

(1) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above ground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(2) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from a UST system.

(3) "Background" means the concentration of substances consistently present in the environment at, or regionally proximate to, a release, but outside of the influence of the release. There are two (2) types of background as follows:

(a) "Natural background" means the amount of naturally-occurring substances in the environment, exclusive of that from anthropogenic sources; and

(b) "Ambient background" means the amount of both naturally-occurring substances and ubiquitous anthropogenic substances in the environment at levels that are representative of the region surrounding the site and at levels not attributable to activities on the property.

(4) "Belowground release" means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the belowground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

(5) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

(6) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a UST system can be cathodically protected through the application of either galvanic anodes or impressed current.

(7) "Cathodic protection tester" means a person accredited or certified as a cathodic protection tester by the National Association of Corrosion Engineers (NACE International).

(8) "CERCLA" means the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, as amended (42 USC 9601 et seq.).

(9) "Change in service" means continued use of a UST system to store a nonregulated substance.

(10) "Compatible" means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST system.

(11) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems shall be allocated equally between them.

(12) "Consumptive use" means, with respect to heating oil, consumed on the premises where stored.

(13) "Contamination" means degradation in the quality of surface water, sediment, groundwater, air, soil, or bedrock as a result of human activities.

(14) "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from a UST system.

(15) "Corrosion expert" means a person accredited or certified as being a corrosion expert by the National Association of Corrosion Engineers (NACE International), or a professional engineer registered by the Kentucky State Board of Registration for Professional Engineers and Land Surveyors with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(16) "Dielectric material" means a material that does not conduct direct electrical current.

(17) "Domestic-use well, spring, cistern, or well head protection area" means a well, spring, cistern, or well head protection area currently used or potentially used by humans for personal, commercial, or agriculture purposes.

(18) "Electrical equipment" means underground equipment containing dielectric fluid used for the operation of equipment such as transformers and buried electrical cable.

(19) "Empty" means all regulated substances have been removed from the UST system using commonly employed practices so that no more than two and five-tenths (2.5) centimeters (one (1) inch) of residue, or three-tenths (0.3) percent by weight of the total capacity of the UST system, remain in the system.

(20) "Environmentally sensitive feature" means surface waters and wetland areas. The term shall not include road-side ditches or manmade drainage ways that do not discharge to surface waters or wetland areas.

(21) "EPA identification number" means the number assigned by the U.S. EPA or the cabinet to each hazardous waste generator; transporter; and treatment, storage, or disposal facility.

(22) "Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(23) "Existing UST system" means a UST system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the UST system; and

(b) 1. A continuous on-site physical construction or installation program has begun; or

2. The owner or operator has entered into contractual obligations, that cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the UST system to be completed within a reasonable time.

(24) "Facility" or "site" means the property on which the UST system is located.

(25) "Farm tank" means a tank located on a tract of land devoted to the production of crops (including nurseries) or raising animals (including fish hatcheries) and associated residences and improvements.

(26) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation, and the U.S. Government Printing Office.

(27) "Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(28) "Free product" means a regulated substance that is present as a nonaqueous phase liquid (for example, liquid not dissolved in water).

(29) "Gathering lines" means pipelines, equipment, facilities, and buildings used in the transportation of oil or gas during oil or gas production or gathering operations.

(30) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(31) "Hazardous substance UST system" means a UST system that:

(a) Contains a hazardous substance identified in Section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under 401 KAR Chapters 31 through 39), or contains a mixture of such a hazardous substance and petroleum; and

(b) Is not a petroleum UST system.

(32) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one (1) of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(33) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(34) "Hydrogeologically downgradient" means in the direction from a point of higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a higher water table elevation exists to a point where a lower water table elevation exists, as defined by wells or piezometers.

(35) "Hydrogeologically upgradient" means in the direction from a point of lower hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a lower water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(36) "Leak-detection system" means a method of monthly monitoring capable of detecting a failure in a UST system of either the primary or secondary containment system, or capable of detecting the presence of a release of a regulated substance outside the UST system.

(37) "Liquid trap" means a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids.

(38) "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(39) "Monitoring" means the act of systematically collecting and

accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.

(40) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used as a fuel in the operation of a motor or engine.

(41) "Newly discovered UST system" means a UST system at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.

(42) "New UST system" means a UST system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.

(43) "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(44) "Off site" means any property other than the facility.

(45) "Operation" means the storage and dispensing of a regulated substance from a UST system.

(46) "On the premises where stored" means, with respect to heating oil, UST systems located on the same property where the stored heating oil is used.

(47) "Operational life" means the period beginning when installation of the UST system has commenced and ending when the UST system is closed under 401 KAR 42:070 or 401 KAR 42:071.

(48) "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

(49) "Overfill release" means a release that occurs when a UST system is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(50) "Owner" means:

(a) In the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns a UST system used for storage, use, or dispensing of a regulated substance; and

(b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned the UST system immediately before the discontinuation of its use.

(51) "Permanent closure" means either removing the UST system from the ground or filling the UST system with an inert solid material or a combination of both methods.

(52) "Permanently closed" means a UST system was:

(a) Closed prior to December 22, 1988 in accordance with the requirements of the Kentucky Fire Marshal, in accordance with applicable industry standards at the time of closure, and in such a manner as to prevent any future use of the UST system;

(b) Closed after December 22, 1988, but prior to December 19, 1990, in accordance with 40 CFR 280 Subpart G;

(c) Closed after December 19, 1990, but prior to April 18, 1994, in accordance with administrative regulations in effect at that time;

(d) Closed after April 18, 1994, but prior to January 1, 1996, in accordance with the emergency administrative regulations that took effect on February 15, 1994; or

(e) Closed after January 1, 1996 in accordance with 401 KAR 42:070 or 401 KAR 42:071 in effect at that time.

(53) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, or political subdivision of a state. The term also includes a consortium, a joint venture, the United States government, or a commercial entity.

(54) "Petroleum" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). The term includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(55) "Petroleum UST system" means a UST system that contains petroleum or a mixture of petroleum with de minimis quantities of

other regulated substances. The term includes those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(56) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of such materials).

(57) "Pipeline facilities (including gathering lines)" means new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(58) "Point of compliance" means any property line of the facility.

(59) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance into groundwater, surface water, surface or subsurface soils, or interstitial space between a UST system and its secondary barrier or secondary containment. The term shall not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing that is permitted or authorized by Kentucky or federal law.

(60) "Release detection" means a method of determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between a UST system and its secondary barrier or secondary containment.

(61) "Repair" means to restore a UST system component that has caused a release of a regulated substance from a UST system.

(62) "Residential tank" means a tank located on property used primarily for dwelling purposes.

(63) "Residual tank materials" means any accumulated tank water, bottom sediments, mixture of product and water, or other material remaining in a tank after removal of tank contents.

(64) "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

(65) "Septic tank" means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil, and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(66) "Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment used to collect or transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to or from retention areas or any areas where treatment is designated to occur.

(67) "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is not an injection well.

(68) "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 to the surface. Effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(69) "Tank" means a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of such materials) that provide structural support.

(70) "Tank contents" means any accumulated tank water, bottom sediments, or mixture of product and water that is removed from a tank at one (1) time by the same method and that is accepted by a recycling facility.

(71) "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42:070.

(72) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the UST system situated on or above the surface of the floor.

(73) "Underground utility conduits" means any manmade underground conduit installed for utility purposes either on or off site.

(74) "Upgrade" means the addition of or retrofitting of UST system components to improve the ability of a UST system to prevent the release of a regulated substance. Examples of upgrades include the addition of cathodic protection, improvements to the interior lining, and improvements of spill and overfill controls.

(75) "U.S. EPA" or "EPA" means the United States Environmental Protection Agency.

(76) "UST system", "tank system", or "underground storage tank system" means an underground storage tank (as defined in KRS 224.60-100), connected underground piping, underground ancillary equipment, and containment system, if any.

(77) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 31, 1995, at 7 p.m. eastern time in the State Board Room on the first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 26, 1995. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 26, 1995 and arrangements for payment of the transcript costs are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on August 31, 1995. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for electronic comments is any version of WordPerfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should WordPerfect or 3.5 inch diskettes not be available. 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 the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation establishes definitions used in 401 KAR Chapter 42, which governs the underground storage tank program. This administrative regulation does not establish requirements and therefore does not directly affect regulated entities.

2. Direct and indirect costs or savings on 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 defines terms and does not establish requirements, therefore there will be no effect.

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: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

2. Second and subsequent years: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

3. Additional factors increasing or decreasing costs: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

2. Continuing costs or savings: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

3. Additional factors increasing or decreasing costs: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

b. Reporting and paperwork requirements: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

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 administrative regulation will be implemented: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

b. Kentucky: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

7. Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation defines terms as required by KRS Chapter 13A. There were no alternatives to promulgating this administrative regulation.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation defines terms and will serve to provide standardization for use of terms and concepts established in 401 KAR Chapter 42.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

b. State whether a detrimental effect on the environment and public health would result if not implemented: This administrative regulation defines terms and does not establish requirements, therefore there will be no effect.

c. If detrimental effect would result, explain detrimental effect: This administrative regulation defines terms and does not establish

requirements, therefore there will be no effect.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or government policy. One commentor requested that the cabinet identify the extent to which the definitions established in this administrative regulation differ from the federal definitions established in 40 CFR Part 280. The cabinet notes, in response to this comment, that the definitions in this administrative regulation have been tailored to meet the specific needs of the study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission, authorized by KRS 224.60-137 and the Commonwealth of Kentucky. These definitions were modeled after those established in 40 CFR Part 280 and assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: This administrative regulation is based on the study performed for the Petroleum Storage Tank Environmental Assurance Fund Commission, authorized by KRS 224.60-137.

12. TIERING: Is tiering applied? This administrative regulation defines terms and does not establish requirements, therefore tiering was not applied.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.60-105 also requires the cabinet to adopt a regulatory program that implements federal regulatory requirements for underground storage tanks. KRS 13A.222(4)(e) is a state mandate that requires that all definitions be defined within a separate administrative regulation and that the administrative regulation be the first administrative regulation within the specific chapter of the Kentucky Administrative Regulations Service to which the definitions apply. Pursuant to this mandate, this administrative regulation establishes definitions for all terms used within 401 KAR Chapter 42, which governs underground storage tanks. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

2. State compliance standards: This administrative regulation establishes definitions for all terms used within 401 KAR Chapter 42. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. 40 CFR Part 280 establishes general underground storage tank system standards applicable to facilities across the United States. The federal requirements are general in nature and they defer to the state regulatory agencies to establish detailed, state-specific standards. This administrative regulation establishes definitions for all terms used within 401 KAR Chapter 42,

which governs underground storage tanks. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the cabinet to establish minimum standards for underground storage tanks to protect the public health and the environment. KRS 224.60-137 requires that the cabinet establish standards based on a corrective action study conducted for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet justifies deviation from the standards recommended in the study. Additionally, the federal program looks to the states to establish program details consistent with the state's needs and certain broad, federal criteria. This administrative regulation establishes definitions for all terms used within 401 KAR Chapter 42, which governs underground storage tanks. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where 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 any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by establishing minimum construction and performance standards, leak detection, recordkeeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. This administrative regulation establishes definitions for all terms within 401 KAR Chapter 42. These terms are assimilated from existing federal regulatory definitions and existing statutory definitions where applicable. Agencies referenced in item 2 of this fiscal note will use these definitions.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because this administrative regulation establishes definitions for 401 KAR Chapter 42, this administrative regulation will not affect state, county, or local expenditures.

Other Explanation: None

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department of Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 42:071. Voluntary closure for facilities that permanently closed a UST system or had a confirmed release prior to April 18, 1994.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 CFR Part 280 Subpart G, Part 281, 42 USC 6991c

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137, 40 CFR Part 280 Subpart G, Part 281, 42 USC 6991c

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tank (UST) systems by requiring notification, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This chapter identifies requirements for UST systems. This administrative regulation establishes the requirements for voluntary closure of facilities that permanently closed a UST system or had a confirmed release without permanent closure prior to April 18, 1994.

Section 1. Applicability. (1) This administrative regulation shall apply to any owner or operator of a facility that permanently closed a UST system or that had a release confirmed prior to April 18, 1994 without permanent closure, and who voluntarily submits a letter to the cabinet requesting to have the UST system reviewed for closure or confirmed release determination in accordance with this administrative regulation.

(2) The voluntary letter referenced in subsection (1) of this section shall contain the UST identification number for the facility; the identification number of the UST system for which the request is being made; the name, address, and phone number of the facility or company where the UST system is located; the name, address, and phone number of the UST system owner; and an explicit statement of the action being requested. The letter shall be signed by the owner or operator.

(3) An owner or operator who submits a letter pursuant to subsections (1) and (2) of this section shall perform a voluntary closure in accordance with the document incorporated by reference in Section 2 of this administrative regulation.

Section 2. Incorporation by Reference. (1) The following document is hereby incorporated by reference: "Pre April 18, 1994 Underground Storage Tank (UST) System Voluntary Closure Outline" (July 1995).

(2) The document referenced in subsection (1) of this section is available for inspection or copying, subject to copyright law, at the Underground Storage Tank Branch of the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, from 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, excluding state holidays.

Section 3. Extensions. The owner or operator of a UST system may request extension of a time frame for any report required by this administrative regulation. The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if warranted.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 31, 1995, at 7 p.m. eastern time in the State Board Room on the first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by August 26, 1995. If by that date Mr. Hale has not received any notification of intent to attend the hearing, the hearing will be canceled. This hearing is open to the public. Any person wishing to comment on the proposed administrative regulation will be given an opportunity to do so. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a request for such is filed with Mr. Hale by August 26, 1995 and arrangements for payment of the transcript costs are made by that date. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than the close of the public hearing on August 31, 1995. Persons submitting written comments are also requested to provide an electronic copy of their comments, if available. The preferred format for electronic comments is any version of WordPerfect on 3.5 inch diskettes; however, any other format would be greatly appreciated, should WordPerfect or 3.5 inch diskettes not be available. 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 the provision of services. Upon request, the cabinet will provide reasonable accommodation, including auxiliary aids and services, necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2225, ext. 221.

REGULATORY IMPACT ANALYSIS

CONTACT PERSON: James Hale

1. Type and number of entities affected: This administrative regulation affects owners and operators of service stations and other facilities with underground storage tank (UST) systems. Currently, there are approximately 39,000 registered UST systems in Kentucky and many more UST systems exist that are not registered. Cabinet records indicate that approximately 16,000 UST systems have released constituents into the environment and are currently conducting corrective action activities. This administrative regulation establishes a voluntary program for permanent closure of UST systems that performed closure activities or had a confirmed release prior to January 1996.

2. Direct and indirect costs or savings on 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: No public comments were received concerning the effects on the cost of living and employment in the geographical area that this administrative regulation may impose. Any additional costs that may be associated with the effect on the cost of living and employment are specified in item "c" below.

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 concerning the costs of doing business that this administrative regulation may impose. Any additional costs that

may be associated with the costs of doing business are specified in item "c" below.

c. Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: One commentor stated that the cabinet intends to allow some of the provisions of these revised regulations to be applied retroactively to sites that have either been closed under previously applicable requirements, or for which corrective action is ongoing under those prior requirements. The cabinet notes in response to this comment, that the requirements established by this administrative regulation establish a voluntary program for sites which completed closure or had a confirmed release prior to April 18, 1994. In no way does this administrative regulation prevent an owner or operator from performing closure in accordance with the requirements in place at the time of removal or the release.

2. Second and subsequent years: The compliance, reporting, and paperwork requirements instituted during the first year will continue for the second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings associated with these amendments.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will incur some additional expenses in printing and distributing the new documents that are incorporated by reference in this administrative regulation; however, this expense should be minor. There are no additional costs or savings to the cabinet associated with these amendments.

2. Continuing costs or savings: The costs instituted during the first year will continue for second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting costs or savings to the cabinet associated with these amendments.

b. Reporting and paperwork requirements: There will be no effect on the reporting and paperwork requirements on the cabinet as a result of these amendments.

4. Assessment of anticipated effect on state and local revenues: This administrative regulation does not distinguish between UST systems owned by private entities and those owned by the government. Therefore, all levels of government - state, county, and local - will be required to comply with this administrative regulation if they own UST systems. For a discussion of the impact on these entities, see items (1) and (2) of this Regulatory Impact Analysis.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for implementation and enforcement of this administrative regulation is the Leaking Underground Storage Tank Grant. This grant is funded 90% from the federal government and 10% from UST owner fees. There are no general fund moneys used to implement and enforce this administrative regulation.

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 administrative regulation will be implemented: This administrative regulation will be implemented statewide. Therefore, please refer to item "b" below.

b. Kentucky: No public comments were received concerning the economic impacts that this administrative regulation may impose.

7. Assessment of alternative methods; reasons why alternatives were rejected: Under the constraints of KRS Chapter 13A, there were no alternatives to promulgating this administrative regulation to institute the standards for KRS 224.60 related to closure of UST systems.

8. Assessment of expected benefits of the administrative regulation: This administrative regulation establishes a voluntary

program that will standardize the process for closure of UST systems and completion of all reports necessary to provide the cabinet with the ability to determine if corrective action and release response actions are necessary to remediate a release.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: This administrative regulation will be implemented statewide. Through the establishment of a voluntary program, this administrative regulation will expedite the identification of release sites and standardize requirements for closure and corrective action. The cabinet believes that the standardization of these requirements will speed site remediation and thus be more protective of public health and environmental welfare within the Commonwealth. The overall benefit to Kentucky and its citizens will be to decrease the number of overall health threats posed by releases.

b. State whether a detrimental effect on the environment and public health would result if not implemented: A detrimental effect on the environment and public health would result if this administrative regulation is not implemented. For an explanation see item "c" below.

c. If detrimental effect would result, explain detrimental effect: Releases from UST systems can result in immediate chronic and acute health risks to both the environment and the public. Explosive hazards caused by a release and exposure to the released constituents can cause a detrimental effect on the environment and public health. This administrative regulation will expedite the identification of release sites and standardize requirements for closure and corrective action. The cabinet believes that the standardization of these requirements will speed site remediation and thus be more protective of public health and environmental welfare within the Commonwealth. The overall benefit to Kentucky and its citizens will be to decrease the number of overall health threats posed by releases.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, conflict, or duplicate any statute, administrative regulation, or governmental policy. The amendments to this administrative regulation clarify existing requirements of KRS 224.60 and 40 CFR Part 280 Subpart G.

a. Necessity of regulation if in conflict: There is no conflict.

b. If in conflict, was the effort made to harmonize the administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: The requirements established by this administrative regulation establish a voluntary program for sites which completed closure or had a confirmed release prior to April 18, 1994. In no way does this administrative regulation prevent an owner or operator from performing closure in accordance with the requirements in place at the time of removal or the release.

12. TIERING: Is tiering applied? Tiering was applied. This administrative regulation establishes a tiered approach for response to a release encountered during closure from a UST system. This tiered approach includes steps to: perform closure activities; if a release is present, conduct a site characterization to determine the extent of a release; and initiate corrective action procedures to remediate the effects of the release.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 is a state mandate that requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting releases, corrective actions, closure, and financial responsibility to protect human health and the environment. KRS 224.06-105 also requires the cabinet to adopt a regulatory program

that implements federal regulatory requirements for underground storage tanks. KRS 224.60-137 is a state mandate that requires the cabinet to promulgate regulations to establish standards for corrective action to protect human health and the environment, that shall be based upon the study performed by the Petroleum Storage Tank Environmental Assurance Fund Commission. Pursuant to these mandates, this administrative regulation establishes a voluntary closure program for owners of underground storage tank systems who notified the Division of Waste Management prior to April 18, 1994 of their intent to permanently close the underground storage tank systems. The requirements in this administrative regulation are consistent with federal underground storage tank requirements of 40 CFR Part 280 Subpart G, 40 CFR Part 281, and 42 USC 6991 et seq.

2. State compliance standards: This administrative regulation provides a simplified set of closure criteria for owners of underground storage tank systems who notified the Division of Waste Management prior to April 18, 1994 of their intent to permanently close the underground storage tank system. This administrative regulation allows owners of underground storage tank systems to voluntarily meet the requirements within this proposed administrative regulation for permanent closure or follow the requirements specified in 401 KAR 42:070.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation. 40 CFR Part 280 establishes general underground storage tank system standards applicable to facilities across the United States. The federal requirements are general in nature and they defer to the state regulatory agencies to establish detailed, state-specific standards. This administrative regulation establishes a classification scheme for petroleum underground storage tank systems and clean-up levels for petroleum in compliance with KRS 224.60-137. This administrative regulation provides a simplified set of closure criteria for owners of underground storage tank systems who notified the Division of Waste Management prior to April 18, 1994 of their intent to permanently close the underground storage tank system. This administrative regulation allows owners of underground storage tank systems to voluntarily meet the requirements within this proposed administrative regulation for permanent closure or follow the requirements specified in 401 KAR 42:070.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation. KRS 224.60-105(2) requires the cabinet to establish minimum standards for underground storage tanks to protect the public health and the environment. KRS 224.60-137 requires that the cabinet establish standards based on a corrective action study conducted for the Petroleum Storage Tank Environmental Assurance Fund Commission, unless the cabinet justifies deviation from the standards recommended in the study. Additionally, the federal program looks to the states to establish program details consistent with the state's needs and certain broad, federal criteria. This administrative regulation provides a simplified set of closure criteria for owners of underground storage tank systems who notified the Division of Waste Management prior to April 18, 1994 of their intent to permanently close the underground storage tank system. This administrative regulation allows owners of underground storage tank systems to voluntarily meet the requirements within this proposed administrative regulation for permanent closure or follow the requirements specified in 401 KAR 42:070.

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 any state, county, or local office of government that is the owner or operator of a underground storage tank system regulated under 401 KAR Chapter 42.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.60-105 requires the cabinet to regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, recordkeeping, reporting requirements, corrective actions, closure, and financial responsibility to protect human health, safety, and the environment. This administrative regulation allows facilities who have notified the Division of Waste Management prior to April 18, 1994 of their intent to permanently close underground storage tanks to voluntarily meet the requirements within this proposed administrative regulation for permanent closure or follow the requirements specified in 401 KAR 42:070. The agencies referenced in item 2 of this fiscal note will be subject to these requirements.

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 impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): Because the proposed amendments to this administrative regulation establishes a voluntary program that clarifies existing requirements and do not impose new standards, there will be no increase in cost to state, county, or local governments.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 50:065. Conformity of general federal actions.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 40 CFR 51.850 to 51.860, 42 USC 7401 to 7671p

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 40 CFR 51.850 to 51.860, 42 USC 7506(c)

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation provides for determining the conformity of general federal actions to the State Implementation Plan (SIP). 40 CFR 51.850 to 51.860 require that the applicable federal agencies implement the conformity determination in consultation with agencies of the Commonwealth of Kentucky.

Section 1. Definitions. As used in 40 CFR 51.850 to 51.860, the following terms shall be defined as provided in this section:

(1) "Local air quality agency" means an air pollution control district created pursuant to KRS Chapters 77 and 224.

(2) "State air quality agency" means the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 51.850 to 51.860, (40 CFR 51, Subpart W), Determining Conformity of General Federal Actions to State or

Federal Implementation Plans, as published in the Federal Register, 58 FR 63247, November 30, 1993, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105-1507, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) London Regional Office, 85 State Police Road, Regional State Office Building, Room 345, London, Kentucky, 40741-9008, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1995

FILED WITH LRC: July 13, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed administrative regulation will be conducted on August 31, 1995, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact in writing, at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation incorporates the federal regulation in 40 CFR 51.850 to 51.860, (40 CFR 51, Subpart W), Determining Conformity of General Federal Actions to State or Federal Implementation Plans, as published in the Federal Register, 58 FR 63247, November 30, 1993. The federal regulation applies to federal actions in nonattainment areas and maintenance areas which are not financed or developed under Title 23 USC or the Federal Transit Act (49 USC 1601 et seq.), which do not require a Title V permit, and which emit an amount of a criteria pollutant that either is ten percent or more of that pollutant in the given nonattainment or maintenance area, or equals or exceeds the annual amount that would make a stationary source in that area a major source. This administrative regulation is being promulgated by the cabinet so that the State Implementation Plan (SIP) will include criteria and procedures for determining conformity of applicable federal actions in 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. There are no

costs or savings beyond those which are described in the proposed rule at 58 FR 13836 (March 15, 1993) and in the final rule at 58 FR 63214 (November 30, 1993) of the federal regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where the federal actions are implemented beyond the costs described in the proposed and final rulemakings.

(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 compliance, reporting, or paperwork requirements beyond those which are described in the proposed rule at 58 FR 13836 (March 15, 1993) and in the final rule at 58 FR 63214 (November 30, 1993) of the federal regulation.

2. Second and subsequent years: As mandated in the final rule at 58 FR 63214 (November 30, 1993), an ongoing federal action requires the renewal of the conformity determination every five years. There are no compliance, reporting, or paperwork requirements for such a renewal beyond those described for the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will be consulted by the federal agencies, and will assess conformity determinations as part of the division's normal day-to-day operations. The costs of this activity will be absorbed as a part of the operating budget.

2. Continuing costs or savings: An ongoing federal action requires the renewal of the conformity determination every five years. The renewed consultations and assessment are part of the division's normal day-to-day operations and are budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to assess conformity determinations and issue emissions data for each facility as stated in (a)1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no known effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of federal actions beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Kentucky SIP will contain criteria and procedures for determining conformity of applicable federal actions in the Commonwealth.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have no effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There is no known detrimental effect on environment or public health that would result if the

administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: There is no known detrimental effect that would result.

(9) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate the federal regulation, 40 CFR 51, Subpart W, so that Kentucky can continue working with the Federal agencies in upholding our SIP. If the proposed regulation is not promulgated, the lack of criteria and procedures for determining conformity to the SIP would result in a delay in the implementation of federal actions in Kentucky. In addition, inadequate criteria and procedures would lead to a determination that the Kentucky SIP is incomplete, and may result in federal sanctions.

(11) TIERING: Was tiering applied? Yes. The provisions of this administrative regulation shall apply as stated in item (1) of the Regulatory Impact Analysis. The cabinet is incorporating by reference the provisions of this federal regulation without change. There is no tiering of requirements in the federal regulation and no tiering of requirements by the state.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. The Air Pollution Control District of Jefferson County (APCDJC).

3. State the aspect or service of local government to which this administrative regulation relates. The APCDJC will be consulted by Federal agencies responsible for federal actions in Jefferson County. The APCDJC will assess whether these federal actions conform with the Jefferson County portion of Kentucky's SIP.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7506 mandates that federal agencies developing, funding, or approving activities in the Commonwealth consult with the state and local agencies to ensure that the federal actions are in conformity with the State Implementation Plan (SIP), and authorizes the Commonwealth to assess whether the federal actions do conform with the SIP. The federal regulation which implements this mandate is found in 40 CFR 51, Subpart W, as published in the Federal Register, 58 FR 63247, November 30, 1993.

2. State compliance standards. The federal regulation contains compliance standards for determining the conformity to the SIP of all facilities affected by 40 CFR 51, Subpart W and provisions for assessing the conformity determination. The provisions in the state

regulation are identical to the federal regulation which is incorporated by reference.

3. Minimum or uniform standards contained in the federal mandate. The federal agencies required to write a conformity determination are identified in 40 CFR 51.850, 51.853, and 51.854. The de minimis annual emissions of criteria pollutants appear at 40 CFR 51.853(b), and the regionally significant emissions of criteria pollutants appear in 40 CFR 51.853(h)(4)(i). Reporting requirements are given at 40 CFR 51.855, public participation requirements appear at 40 CFR 51.856, the frequency required of conformity determinations appears in 40 CFR 51.857, the criteria and procedures for conformity determination appear in 40 CFR 51.858 and 51.859, and the measures required to mitigate air quality impacts appear at 40 CFR 51.860.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

JUSTICE CABINET Division of Charitable Gaming (New Administrative Regulation)

500 KAR 11:030. Charity game ticket standards.

RELATES TO: KRS 238.545

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(2)

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish certain standards for charity game ticket construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of charity game tickets and for the conduct of play of charity game tickets.

Section 1. Charity Game Ticket Construction Standards. The following standards shall govern the construction of charity game tickets:

(1) Charity game tickets shall be constructed so that concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the charity game ticket using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, constructed, glued and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each charity game ticket in a deal shall bear the same serial number. Only one (1) serial number shall be used in a deal. No serial number used in a deal of charity game tickets shall be repeated by the same manufacturer on that same manufacturer's form within a three (3) year period.

(4) The numbers or symbols on a charity game ticket shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol(s) to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) The window slits on each charity game ticket shall be perforated on the three (3) cut sides. All charity game tickets shall be glued on all four (4) edges and between each window. The glue shall be of sufficient strength and type to prevent the undetectable

separation or delamination of the charity game ticket.

(6) The following information shall be printed on a charity game ticket measuring one and one-fourth (1¼) inches by two and one-fourth (2¼) inches or larger, unopened:

- (a) The name of the manufacturer, or its distinctive logo;
- (b) The name of the game;
- (c) The manufacturer's form number;
- (d) The price per individual charity game ticket, unless accompanied by a flare with that information;
- (e) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket; and
- (f) The number of winners and respective winning numbers or symbols, and specific prize amounts, unless accompanied by a flare with that information.

(7) The following information shall be printed on a charity game ticket measuring less than one and one-fourth (1¼) inches by two and one-fourth (2¼) inches, unopened:

- (a) The name of the manufacturer, or its distinctive logo; and
- (b) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket.

Section 2. Randomization. The following randomization standards shall govern the manufacture of charity game tickets:

(1) The deal shall be assembled so that winning tickets are placed throughout the deal.

(2) The deal shall be assembled and packaged in a manner which prevents isolation of winning tickets from variations in size, the appearance of a cut edge, or other markings of the tickets.

(3) The deal shall be assembled and packaged in a manner which prevents detection of winning tickets through variations in printing graphics or colors.

(4) Winning charity game tickets shall be distributed and mixed among all other charity game tickets in a deal so as to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning charity game ticket may be determined.

(5) The charity game ticket deal shall be assembled so that no placement of winning or losing charity game tickets exists that allows the possibility of prize manipulation.

Section 3. Packaging and Distribution. (1) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal which includes a warning to the purchaser that the deal may have been tampered with if the package, box or other container was received by the purchaser with the seal broken.

(2) A deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container.

(3) Manufacturers shall seal or tape, with a tamper-resistant seal or tape, every entry point into a container of charity game tickets prior to shipment. The seal or tape shall be constructed to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

Section 4. Flares. Every deal of charity game tickets shall contain a flare that has printed or affixed on it the following information:

- (1) The name of the game;
- (2) The manufacturer's name or logo;
- (3) The manufacturer's form number;
- (4) The ticket count;
- (5) The prize structure that includes the number of winning charity game tickets by denomination, with their respective winning symbols or number combinations;
- (6) The cost per play; and
- (7) The game serial number.

Section 5. Tracking by Manufacturer. Every manufacturer of charity game tickets shall maintain records sufficient to track each

deal of charity game tickets from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 6. Tracking by Distributor. Every distributor of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 7. Defects. (1) Should a defect in packaging or in the construction of a charity game ticket game be discovered by, or reported to the division, the division shall take immediate steps to notify the manufacturer of the game containing the alleged defect.

(2) Should the division, in consultation with the manufacturer, determine that a defect actually exists, and should the division determine that the defect affects game security or otherwise threatens public confidence in the game, the division may, with respect to deals for use still located within the Commonwealth of Kentucky, require the manufacturer to:

(a) Recall the deals affected that have not been sold at retail to licensed organizations;

(b) Recall the deals, by form number, from the distributor level; or

(c) Issue a total recall of all affected deals.

(3) In choosing and directing a particular recall from subsection (2) of this section, the division shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;

(b) Whether the defect affected game security;

(c) Whether the defect affected game playability;

(d) Whether the defect was limited to a specific number of deals of a particular form number;

(e) Whether the defect was easily detectable by a charitable gaming organization, or a suborganization or subordinate organization thereof;

(f) Whether the defect was easily detectable by members of the general public;

(g) Whether the defect threatens public confidence in the game; or

(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

Section 8. Rules of Play. The following rules of play govern the conduct and sale of charity game tickets:

(1) The flare described in Section 4 of this administrative regulation shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.

(2) Charity game tickets shall not be sold to the public from the original packing box or container.

(3) If a deal of charity game tickets is received in two (2) or more boxes, packages or containers, all of the charity game tickets from the boxes, packages or containers shall be placed out for play at the same time.

(4) No charity game tickets which have been marked, defaced, altered, tampered with or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing shall be placed into play.

(5) All winning charity game tickets shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(6) All winning charity game tickets with a prize value of fifty (50) dollars and above, all seal card winners with a prize value of fifty (50) dollars and above, and all unsold charity game tickets shall be retained by the licensed charitable organization for a period of twelve (12) months to allow auditing by the staff of the division.

(7) All used nonwinning charity game tickets and seal cards, and

all winning and unsold charity game tickets and seal cards which have been retained for the required twelve (12) month period, shall be disposed of by burning, shredding, destroying or defacing in some manner to prevent reuse of any charity game ticket or seal card or any portion thereof.

(8) An authorized representative of the charitable organization conducting the event at which charity game tickets are sold shall verify the serial numbers or winner protections for all winning charity game tickets redeemed.

(9) If a deal is not played to completion and there remain unsold winning charity game tickets, the licensed charitable organization conducting the gaming shall sell the remaining charity game tickets on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. If no winning charity game tickets remain in the deal, the licensed charitable organization shall consider the deal closed or completed and shall retain unsold charity game tickets as required in subsection (6) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the deal to complete play of the deal.

(10) If a seal card from a deal or deals is not played to completion, the licensed charitable organization shall sell the remaining charity game tickets necessary to play out the seal card on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the seal card from the deal to complete play of the deal or the seal card.

(11) No individual involved in any capacity in the conduct of a charitable gaming event at which charity game tickets are sold shall be permitted to purchase or play charitable game tickets.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: July 13, 1995

FILED WITH LRC: July 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995, at 9 a.m. at the Civic Center, Meeting Rooms A/B/C, Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by August 16, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed manufacturers (currently 47), licensed distributors (currently 51), and licensed

charitable organizations (currently 636).

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

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

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

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

1. First year following implementation: The administrative regulation imposes on manufacturers and distributors doing business in the Commonwealth of Kentucky the duty of retaining records of sales for a specific time period, and this requirement will call for extensive paperwork or recordkeeping functions on these entities. It should be noted, however, that manufacturers (all of whom are currently located out-of-state) have similar (if not more stringent) recordkeeping requirements imposed on them by other states with which they do business. The construction standards and actual distributing rules imposed by the regulation are also fairly accepted industry-wide practices. The charitable organizations will be required to maintain certain records and to retain certain winning and unsold charity game tickets. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the rules of play established by the administrative regulation.

2. Second and subsequent years: The administrative regulation imposes on manufacturers and distributors doing business in the Commonwealth of Kentucky the duty of retaining records of sales for a specific time period, and this requirement will call for extensive paperwork or recordkeeping functions on these entities. It should be noted, however, that manufacturers (all of whom are currently located out-of-state) have similar (if not more stringent) recordkeeping requirements imposed on them by other states with which they do business. The construction standards and actual distributing rules imposed by the regulation are also fairly accepted industry-wide practices. The charitable organizations will be required to maintain certain records and to retain certain winning and unsold charity game tickets. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the rules of play established by the administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None known.

2. Continuing costs or savings: None known.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: To the extent charitable organizations or other entities report defects in charity game tickets, the Division of Charitable Gaming will have reporting requirements associated with informing the distributors and/or manufacturers of the reports and the Division of Charitable Gaming will necessarily have tracking requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

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

(b) Kentucky: None known.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Division of Charitable Gaming, in devising these charity game ticket standards, relied heavily on the standards adopted by "NAGRA" North American Gaming Regulators Association). These

standards have been adopted, in whole or in part, by many other states and Canadian provinces which have laws authorizing charitable gaming.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable, as statutory authority does not provide for tiering.

**JUSTICE CABINET
Division Of Charitable Gaming
(New Administrative Regulation)**

500 KAR 11:040. Bingo standards.

RELATES TO: KRS 238.545

STATUTORY AUTHORITY: KRS 238.515(2), (9)

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish standards for the construction and distribution of bingo materials and equipment and rules of play. This administrative regulation establishes standards for the construction and distribution of bingo materials and equipment and for the conduct of play of bingo.

Section 1. Bingo Material Construction Standards. The following standards shall govern the construction of bingo materials:

(1) The paper used shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through a packet thereby obscuring other numbers or cards.

(2) Perm numbers shall be displayed in the center square of the card.

(3) Numbers printed on the card shall be randomly assigned.

(4) Each set of cards shall be comprised of cards bearing the same serial number. No serial number shall be repeated by the same manufacturer within one (1) year.

(5) Cards assembled in books or packets shall be glued. Staples shall not be used.

(6) A label shall be placed on the exterior of each carton of bingo cards listing the following information:

- (a) Type of product;
- (b) Number of booklets or loose sheets;
- (c) Series numbers;
- (d) Serial number of the top sheet;
- (e) Number of cases;
- (f) Cut of paper; and
- (g) Color of paper.

Section 2. Bingo Equipment Approval. (1) All bingo equipment, including but not limited to, designators, receptacles, display boards, other selection devices, and other bingo equipment used in the selection and display of game numbers, shall be made available for inspection or testing by the division at any time.

(2) Equipment referenced in subsection (1) of this section shall assure randomness and be free of any defects when used in a bingo

game.

Section 3. Tracking by Manufacturer. Every manufacturer of bingo materials shall maintain records sufficient to track the bingo materials from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 4. Tracking by Distributor. Every distributor of bingo materials shall maintain records sufficient to track the bingo materials from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by division staff.

Section 5. Rules of Play. The following rules of play govern the conduct of bingo games:

(1) All individuals involved in any way in the conduct of bingo shall be trained in the proper conduct of the game and the control of funds.

(2) Except for Braille cards intended for use by blind players, bingo cards shall not be reserved by the charitable organization for any player(s). Legally blind players may use their own cards if the licensee does not make Braille cards available.

(3) No two (2) sets of disposable paper bingo cards shall be sold for use in the same game if they have the same series number.

(4) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be awarded.

(5) Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game. This information shall also be posted in a conspicuous place or listed in an occasion program.

(6) All selection equipment shall be free of defects.

(7) After selecting each number, the bingo caller shall:

(a) Clearly announce the number;

(b) Display the ball or other device used as a designator in a manner allowing the players to see the number;

(c) Cause the designator to be placed in a receptacle so as to prevent it from being placed back in the selection pool; and

(d) Enter each letter and number called on a flash board or similar device for player viewing.

(8) Neither a player nor the charitable organization may separate cards on one (1) sheet or from a packet.

(9) All players shall be physically present at the location where the bingo game is held to play the game or to claim a prize offered.

(10) Winners are determined when the preannounced pattern of squares is covered by a player on a card.

(11) It is the player's responsibility to notify the game operator or caller that the player has a winning bingo combination as announced. When a player declares a winning card, the following steps are required for winner verification:

(a) The game shall be stopped before the next number is called. If the next number has already been called, it shall be secured to ensure that if the declared "bingo" is invalid, the game may continue.

(b) A volunteer for the charitable organization shall take the winning card from the player, holding it in front of a neutral player, and call back the perm number if an electronic verifier or verifier book is used. If any other system is used, a volunteer for the charitable organization shall take the winning card from the player, holding it in front of a neutral player, and call back the winning combination.

(12) If more than one (1) winner is declared in a bingo game, the following method of awarding prizes shall apply:

(a) Cash prizes shall be divided equally among the verified winners.

(b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall be awarded.

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Section 6. Winner Verification and Registration. (1) Manufacturers of bingo cards shall make available for purchase a verification book or other system for all cards manufactured.

(2) The charitable organization conducting a bingo game shall use a reliable verification system that corresponds with the set of cards in play.

Section 7. Prizes. (1) The values of bingo cards or free packets or charity game tickets awarded players, whether awarded as door or bingo prizes, as birthday prizes, or for any other reason, shall be included in the prize limit of \$5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1).

(2) Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(3) Carryover, cumulative or progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if prizes awarded on carryover, cumulative or progressive games are included in the prize limit of \$5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1) regardless of the method by which a player is eligible to participate. The licensed charitable organization shall be responsible for ensuring that the value of any carryover, cumulative or progressive game prize, when added to the values of the other prizes of the same date or occasion, does not exceed the \$5,000 limit. All receipts on carryover, cumulative or progressive games shall be reported to the division as gross receipts for the date collected pursuant to KRS 238.550.

(4) Any method by which players pay money to be eligible for a drawing, whether or not connected to a bingo game or conditioned on winning a bingo game, shall be considered a raffle.

(5) Each licensed charitable organization awarding a door prize of a value exceeding thirty (30) dollars shall maintain accurate records of the following:

(a) The name and address of the individual to whom the door prize was awarded;

(b) The date on which the door prize was awarded;

(c) A description of the door prize;

(d) The fair market value of the door prize; and

(e) An acknowledgment by the individual to whom the door prize was awarded verifying the information in this subsection and verifying receipt of the door prize.

(6) All door prizes shall be initiated and awarded on the same date and shall be included in the prize limit of \$5,000 per twenty-four (24) hour period as prescribed in KRS 238.545(1).

Section 8. Twenty-four (24) Hour Period Defined. "Twenty-four (24) hour period", for purposes of the bingo prize limits and the frequency and duration of the conduct of bingo established in KRS 238.545(1), means a twenty-four (24) hour period commencing at 12:01 a.m. and ending at 12 midnight.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: July 13, 1995

FILED WITH LRC: July 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995, at 9 a.m. at the Civic Center, Meeting Rooms A/B/C, Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is

made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by August 16, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed manufacturers (currently 47), licensed distributors (currently 51), and licensed charitable organizations (currently 636).

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

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

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

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

1. First year following implementation: The administrative regulation imposes on manufacturers and distributors doing business in the Commonwealth of Kentucky the duty of retaining records of sales for a specific time period, and this requirement will call for extensive paperwork or recordkeeping functions on these entities. It should be noted, however, that manufacturers (all of whom are currently located out-of-state) have similar (if not more stringent) recordkeeping requirements imposed on them by other states and Canadian provinces with which they do business. The construction standards and actual distributing rules imposed by the regulation are also fairly accepted industry-wide practices. The charitable organizations will be required to maintain certain records and to retain certain records of prizes awarded, including door prizes. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the rules of play established by the administrative regulation.

2. Second and subsequent years: The administrative regulation imposes on manufacturers and distributors doing business in the Commonwealth of Kentucky the duty of retaining records of sales for a specific time period, and this requirement will call for extensive paperwork or recordkeeping functions on these entities. It should be noted, however, that manufacturers (all of whom are currently located out-of-state) have similar (if not more stringent) recordkeeping requirements imposed on them by other states and Canadian provinces with which they do business. The construction standards and actual distributing rules imposed by the regulation are also fairly accepted industry-wide practices. The charitable organizations will be required to maintain certain records and to retain certain records of prizes awarded, including door prizes. Moreover, the charitable organizations will be required to take steps to ensure continuing compliance with the rules of play established by the administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None known.

2. Continuing costs or savings: None known.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: The Division of Charitable Gaming will necessarily have tracking functions in reviewing records and reporting on chains of distribution.

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

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

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

(b) Kentucky: None known.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Division of Charitable Gaming, in devising these bingo standards, relied heavily on the standards adopted by "NAGRA" (North American Gaming Regulators Association). These standards have been adopted, in whole or in part, by many other states and Canadian provinces which have laws authorizing charitable gaming.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable, as statutory authority does not provide for tiering.

**JUSTICE CABINET
Division of Charitable Gaming
(New Administrative Regulation)**

500 KAR 11:050. Raffle standards.

RELATES TO: KRS 238.545

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.550(1).

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish standards for the construction and distribution of raffle materials and for the conduct of raffles. This administrative regulation establishes standards for the construction and distribution of raffle materials and for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section and shall be consecutively numbered.

(2) The detachable section of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number.

(3) The following information shall be printed on each ticket:

(a) The date(s) and time(s) of the drawing(s);

(b) The location(s) of the drawing(s);

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization's license number or exemption number, if any;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over \$500.

(4) The requirements of subsections (2) and (3) of this section shall be waived if:

(a) The raffle sales are initiated and concluded and all winners are selected within a twenty-four (24) hour period and the total fair market value of all raffle prizes awarded in any twenty-four (24) hour period does not exceed \$250; or

(b) The raffle sales are initiated and concluded and all winners

are selected at a special charitable fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at licensed special limited charitable games.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed for good cause. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) No person shall be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections of all tickets sold prior to the drawing.

(4) Before drawing, the charitable organization shall place each stub or other detachable section of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

Section 4. Raffle Ticket Sales Records. (1) For a period of thirty-six (36) months following the date of the raffle drawing, the charitable organization shall maintain accurate records as to the raffle tickets sold. The records shall include:

(a) The name of the charitable organization;

(b) The total number of tickets printed;

(c) The sale price per ticket; and

(d) The date of the raffle drawing.

(2) Other raffle records. The charitable organization shall retain the winning ticket stubs and an accounting of the total amount of proceeds received from the raffle and the expenses of the raffle for a period of thirty-six (36) months following the date of the raffle drawing.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: July 13, 1995

FILED WITH LRC: July 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995, at 9 a.m. at the Civic Center, Meeting Rooms A/B/C, Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by August 16, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed charitable organizations (estimate approximately 800 during start-up phase) and those charitable organizations qualifying for exemption from licensure requirements under KRS 238.535 (estimate as many as 500 per year).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Any charitable organization conducting raffles will incur cost of printing of detachable raffle tickets.

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

1. First year following implementation: All charitable organizations conducting raffles will be required to maintain records on the raffles conducted. Each charitable organization shall devise its own recordkeeping mechanisms (computer-generated, manual, etc.).

2. Second and subsequent years: All charitable organizations conducting raffles will be required to maintain records on the raffles conducted. Each charitable organization shall devise its own recordkeeping mechanisms (computer-generated, manual, etc.).

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: It is anticipated that records of charitable organizations conducting raffles will be made available to the Division of Charitable Gaming's personnel, if requested in the course of an inspection or investigation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to Question #11.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? All charitable organizations conducting raffles in the Commonwealth of Kentucky will conduct raffles in the same manner and all raffle participants will have the same basic information at the time a raffle ticket is purchased. Tiering was not applicable in this instance as regulation applies equally to all charitable organizations.

JUSTICE CABINET
Division of Charitable Gaming
(New Administrative Regulation)

500 KAR 11:060. Tipping prohibited.

RELATES TO: KRS 238.540(4)

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.540(4)

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming. Charitable gaming is to be conducted and administered only by the charitable organization using volunteer personnel. No person engaged in the conduct and administration of charitable gaming is to receive compensation of any kind. This administrative regulation prohibits tips or other gratuitous conduct.

Section 1. Tipping Prohibited. (1) Tipping or other gratuitous conduct constitutes compensation prohibited by KRS 238.540(4). The charitable organization conducting gaming shall take appropriate measures to inform the public that its volunteers are unable to accept tips or other forms of gratuitous conduct.

(2) Except as provided in subsection (3) of this section, a charitable organization shall not pay remuneration or expenses other than those authorized in KRS 238.550(4), or award or otherwise provide any sort of benefits, to or for or on behalf of any person engaged as a volunteer in the conduct of charitable gaming sponsored by the charitable organization.

(3) A charitable organization shall be permitted to provide volunteer workers the following:

(a) Food or drink of a value not to exceed ten (10) dollars in one (1) day to be consumed on the premises where charitable gaming occurs; and

(b) Any article of clothing worn by the volunteers on the premises where charitable gaming occurs which identifies the volunteer worker as a volunteer for the charitable organization.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: July 13, 1995

FILED WITH LRC: July 13, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995, at 9 a.m. at the Civic Center, Meeting Rooms A/B/C, Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by August 16, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, PH: (502) 564-5528, FAX: (502) 564-6625.

REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed charitable organizations (approximately 800) and those charitable organizations qualifying for exemption from licensure requirements under KRS 238.535 (estimate as many as 500 per year).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No costs or savings.

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No costs or savings.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See response to Question #11. The statute prohibits consideration of alternatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Regulation applies equally to all charitable organizations conducting gaming.

DEPARTMENT OF CORRECTIONS (New Administrative Regulation)

501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 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 promulgate 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.

Section 1. (1)(a) Green River Correctional Complex Policies and Procedures, July 13, 1995 is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(2) Green River Correctional Complex Policies and Procedures include:

GRCC 01-05-01 Procedures Officer

GRCC 01-09-01 Duty Officer Responsibilities

GRCC 01-10-01 Smoking: GRCC Facility

GRCC 05-01-01 Information System

GRCC 10-01-01 Special Management Unit

GRCC 11-01-01 Good Service Guidelines

GRCC 11-02-01 Food Service: Security

GRCC 11-03-01 Dining Room Guidelines

GRCC 11-04-01 Food Service: Meals

GRCC 11-04-02 Food Service: Menu, Nutrition and Special Diets

GRCC 11-06-01 Health Requirements of Food Handlers

GRCC 11-07-01 Food Service: Inspections and Sanitation

GRCC 11-08-01 Food Service Purchasing, Storage and Farm Products

GRCC 16-02-01 Inmate Correspondence and Privilege Mail

GRCC 16-03-01 Inmate Telephone Communications

GRCC 18-01-01 Classification and Assessment

GRCC 18-02-01 Meritorious Housing

GRCC 19-01-01 Inmate Work Programs

GRCC 20-01-01 Educational Programs

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: July 13, 1995

FILED WITH LRC: July 13, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 24, 1995 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Susan Alley and Carol Shirley, 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: 209 employees of the correctional institutions, 550 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, 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: 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) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

- (a) Geographical area in which administrative regulation will be implemented: None
- (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
- (c) If detrimental effect would result, explain detrimental effect: 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. 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.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(New Administrative Regulation)

601 KAR 12:070. Driving privilege withdrawal for child support nonpayment.

RELATES TO: KRS 186.570

STATUTORY AUTHORITY: KRS 186.570

NECESSITY AND FUNCTION: KRS 186.570(2) requires the Transportation Cabinet to deny a license to or suspend the license of an operator of a motor vehicle upon receiving written notification from the Cabinet for Human Resources that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year on nonpayment. Pursuant to KRS 186.570(3), the Transportation Cabinet is required to offer an opportunity for an administrative hearing prior to withdrawing driving privilege. The Human Resources Cabinet offers an administrative hearing on child support arrearage pursuant to 904 KAR 2:410. Further, the appeal procedure set forth in Section 4 of 904 KAR 2:400 meets the requirements of KRS 186.570(3). Therefore, rather than require a person to go through two (2) administrative hearings covering exactly the same information, the hearing held by the Human Resources Cabinet pursuant to 904 KAR 2:410 is designated by this administrative regulation to also be the hearing required pursuant to KRS 186.570(3). Further, the administrative regulation sets forth the events which must have occurred prior to the restoration of driving privilege which was withdrawn pursuant to KRS 186.570(2).

Section 1. Hearing Procedure. In accordance with KRS 186.570(3) the Transportation Cabinet designates the Human Resources Cabinet as the appropriate agency to hold the administrative hearing on child support nonpayment and the associated withdrawal of driving privilege.

Section 2. In order to have driving privilege restored which has been withdrawn pursuant to KRS 186.570(2) the following events shall have occurred:

- (1) The Cabinet for Human Resources shall have submitted written authorization to the Transportation Cabinet for the restoration of driving privilege; and
- (2) The person shall have complied with the reinstatement procedure set forth in KRS Chapter 186.

NORRIS BECKLEY, Commissioner

DON C. KELLY, P. E., Secretary

APPROVED BY AGENCY: May 30, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 29, 1995 at 3 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by August 24, 1995 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 24, 1995. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on August 29, 1995. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra G. Pullen

(1) Type and number of entities affected: All persons whose child support arrearage has accumulated a year's worth beginning with January 1, 1994.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A (No public hearing) and no anticipated affect.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A (No public hearing) and no anticipated affect.

(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: Additional driving privilege withdrawal and reinstatement procedures will have to be gone through by the Division of Driver Licensing.

(a) Direct and indirect costs or savings: Dependent on the number of notices received from the Human Resources Cabinet.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: For each individual the Human Resources Cabinet sends notice to the Transportation Cabinet, the cabinet will generate approximately four letters.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: N/A (No public hearing) and no anticipated affect.

(b) Kentucky: N/A (No public hearing) and no anticipated affect.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of holding a hearing in addition to the one being held by the Human Resources Cabinet was rejected because of the large amount of cost involved, Human Resources will have all of the available information, and the discussions during the 1994 General assembly all centered on one hearing so as not to further burden the individual already having financial problems.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This administrative regulation coordinates with Human Resources administrative regulation 904 KAR 2:410.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not applied because the Child Support Enforcement Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(New Administrative Regulation)

780 KAR 2:021. Repeal of State Board for Adult and Technical Education administrative regulations: 780 KAR 2:045, 780 KAR 2:050, 780 KAR 2:070, 780 KAR 2:080, and 780 KAR 2:150.

RELATES TO: KRS Chapter 151B

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY AND FUNCTION: 780 KAR 2:045, 2:050, 2:070, 2:080, and 2:150 are no longer necessary in that the regulatory language contained in these administrative regulations has been merged and provided for in amendments to administrative regulations being promulgated at this time.

Section 1. 780 KAR 2:045, 780 KAR 2:050, 780 KAR 2:070, 780 KAR 2:080, and 780 KAR 2:150 are hereby repealed.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes

to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: This repeals 780 KAR 2:045; 780 KAR 2:050; 780 KAR 2:070; 780 KAR 2:080 and 780 KAR 2:150 because they are no longer needed.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. N/A

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. N/A

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

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

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

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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. N/A

WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(New Administrative Regulation)

780 KAR 2:035. Advisory boards and committees for Kentucky TECH schools primarily serving postsecondary students.

RELATES TO: KRS 151B.025, 151B.110

STATUTORY AUTHORITY: KRS 151B.025

NECESSITY AND FUNCTION: KRS 151B.025 and KRS 151B.110, respectively, gives the State Board for Adult and Technical Education the function and authority to develop and adopt policies and regulations by which the Department for Technical Education is to be governed in planning, coordinating, administering, supervising, operating, and evaluating the education programs, services, and activities within the department. This administrative regulation establishes responsibilities and requirements for advisory boards and committees for postsecondary schools in the Kentucky TECH System.

Section 1. Each Kentucky TECH facility serving predominately postsecondary students shall have a school advisory board appointed in accordance with Kentucky TECH policies and procedures. The school advisory board shall be made up of business, industry, labor, education, civic and lay representatives.

Section 2. The school advisory board may consult, counsel, and advise the administrator of the Kentucky TECH facility, the regional executive director of vocational-technical education and staff, the Executive Director of Kentucky TECH, and the Commissioner of the Department for Technical Education on matters pertaining to the operation of the school and may include:

- (1) Annual and long-range program planning;
- (2) Safety;
- (3) Programs to be offered;
- (4) Implementation of curriculum;
- (5) Advocacy of the programs in the community;
- (6) In-service training of personnel;
- (7) Equipping and maintaining the facilities;
- (8) Program evaluation; and
- (9) Job placement of students.

Section 3. Program advisory committees shall be organized at the program level. The membership of these committees shall be representative of the businesses and industries for which the program provides education and training. Members shall represent the various levels of management and labor of the business or industry. Program advisory committees shall have at least two (2) meetings per year. The program advisory committees shall counsel, advise, and consult with the program staff on:

- (1) Implementation of curriculum;
- (2) Safety;
- (3) Equipment needs;
- (4) Projects for student learning;
- (5) Advocacy of the program in the community;
- (6) Recruitment of students;
- (7) Work-based learning; and
- (8) Job placement of students.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Business, industry, labor, education, civic and lay representatives who serve on advisory boards and committees for the KY TECH schools.

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

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

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

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

(1) First year following implementation: 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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None
2. State compliance standards. None
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? None
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (New Administrative Regulation)

780 KAR 4:030. Standards for secondary programs.

RELATES TO: KRS 151B.025

STATUTORY AUTHORITY: KRS 151B.025

NECESSITY AND FUNCTION: KRS 151B.205 establishes responsibilities for secondary vocational-technical program standards. This administrative regulation establishes standards for secondary programs.

Section 1. Schools offering secondary programs shall conform to specific program standards established by the State Board for Elementary and Secondary Education, in consultation with the Commissioner for the Department for Technical Education. The secondary programs may be offered from middle school through high school. The programs shall offer a variety of learning experiences and related services. Students shall be able to explore career options and technology and to apply technical, personal, and academic skills in laboratory and work-based experience. A continuum of learning skills shall be provided to enable students to enter the workplace or advanced education at the postsecondary level.

Section 2. Secondary vocational-technical programs shall be modified with reasonable accommodations for students with special needs. Special vocational-technical programs in specific occupational areas or incorporating a variety of occupational areas shall be permitted when the disabling conditions warrant.

Section 3. Instructional and administrative personnel in secondary vocational technical programs shall meet the teacher certification requirements as specified by the Education Professional Standards Board.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written

comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: KY TECH schools - all secondary programs in KY TECH schools are 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 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: State and federal funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None
2. State compliance standards. None
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. N/A

**WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(New Administrative Regulation)**

780 KAR 4:040. Standards for postsecondary programs.

RELATES TO: KRS 151B.145

STATUTORY AUTHORITY: KRS 151B.145

NECESSITY AND FUNCTION: KRS 151B.145 mandates a state vocational-technical education program under the jurisdiction of the State Board for Adult and Technical Education. This administrative regulation provides the authority to establish standards for postsecondary programs.

Section 1. Postsecondary programs shall be designed for occupational preparation of persons who have completed or left the regular high school and meet the admission requirements referenced in 780 KAR 2:130. Students may enroll either full time or part time in the scheduled classes during the day or evening hours. Students entering postsecondary classes may be placed at a continuation level based on the successful completion of competencies at the secondary level. Students may receive college credit in programs in cooperation with community college and universities. Such joint programs shall be approved by the State Board for Adult and Technical Education.

Section 2. Continuing education programs shall be designed to meet the lifelong learning needs of the general public who need short-term training, retraining or upgrading of skills for employment or job advancement.

Section 3. Customized training programs may be provided at the request of specific businesses or to train new workers or retrain experienced workers.

Section 4. Instructional and administrative personnel in postsecondary vocational-technical programs shall meet the requirements specified by the State Board for Adult and Technical Education.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: KY TECH schools - all secondary programs in KY TECH schools.

- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 - (1) First year following implementation: 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: State and federal funds - cost recovery for continuing education and customized training.
 - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: None
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: None
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (10) Any additional information or comments: None
 - (11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

- 1. Federal statute or regulation constituting the federal mandate. None
- 2. State compliance standards. None
- 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. N/A

**WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(New Administrative Regulation)**

780 KAR 4:050. Certificate requirements for Kentucky TECH students.

RELATES TO: KRS 151B.110

STATUTORY AUTHORITY: KRS 151B.110

NECESSITY AND FUNCTION: KRS 151B.110 gives the State

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Board for Adult and Technical Education all necessary power and authority in administering the state's vocational-technical educational programs. This administrative regulation is necessary in order to set a statewide standard for awarding certificates to postsecondary students in Kentucky TECH schools.

Section 1. Program Completion Certificate. To be awarded a program completion certificate, a student shall complete the requirements for the program as described in the approved Kentucky TECH Program Listing.

Section 2. Continuing Education Certificate. A continuing education certificate may be awarded upon completion of courses not meeting program certificate requirements.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: KY TECH schools - all certificate programs in KY TECH schools are 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 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: Tuition for continuing education programs.

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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. N/A

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (New Administrative Regulation)

780 KAR 4:060. Kentucky TECH guarantee.

RELATES TO: KRS 151B.110

STATUTORY AUTHORITY: KRS 151B.110

NECESSITY AND FUNCTION: KRS 151B.110 gives the State Board for Adult and Technical Education all necessary power and authority in administering the state's vocational-technical program. This administrative regulation allows the establishment of the Kentucky TECH guarantee.

Section 1. A graduate of a diploma level vocational-technical program may receive specific retraining without charge, if a written certification by his employer:

(1) States that his performance on the approved task list for the program from which he graduated is unsatisfactory; and

(2) Is received by the school within two (2) years after graduation.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be

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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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: KY TECH students completing diploma requirements and receiving KY TECH guarantee.

(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: State funds in lieu of tuition for retraining.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

None

2. State compliance standards. None

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. N/A

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (New Administrative Regulation)

780 KAR 7:032. Corrections education center standards.

RELATES TO: KRS 151B.110, 151B.150

STATUTORY AUTHORITY: KRS 151B.110, 151B.150

NECESSITY AND FUNCTION: To establish standards for corrections education centers.

Section 1. A corrections education center shall meet the standards established by the Department for Technical Education.

Section 2. Each vocational-technical education program offered in the school shall meet the state requirements for teachers, curriculum, and equipment as established by the Department for Technical Education and approved by the State Board for Adult and Technical Education.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: 12 correctional education centers owned by the Corrections Cabinet, but operated through a memorandum of agreement to deliver training to inmates.

(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:

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(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 the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (New Administrative Regulation)

780 KAR 7:036. Repeal of State Board for Adult and Technical Education administrative regulations: 780 KAR 7:035 and 7:050.

RELATES TO: KRS Chapter 151B

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY AND FUNCTION: 780 KAR 7:035 and 7:050 are no longer necessary in that the regulatory language contained in these administrative regulations has been merged and provided for in amendments to administrative regulations being promulgated at this time.

Section 1. 780 KAR 7:035 and 7:050 are hereby repealed.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort,

Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: This repeals 780 KAR 7:035 and 780 KAR 7:050 because they are no longer needed.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received.

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

(1) First year following implementation:

(2) Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

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

(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:

(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 environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied?

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

ADMINISTRATIVE REGISTER - 452

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? None

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education (New Administrative Regulation)

780 KAR 8:011. Repeal of State Board for Adult and Technical Education administrative regulations: 780 KAR 8:010.

RELATES TO: KRS Chapter 151B

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY AND FUNCTION: 780 KAR 8:010 is no longer necessary in that the regulatory language contained in these administrative regulations has been merged and provided for in amendments to administrative regulations being promulgated at this time.

Section 1. 780 KAR 8:010 is hereby repealed.

J. LARRY STINSON, Chairman

APPROVED BY AGENCY: April 21, 1995

FILED WITH LRC: July 14, 1995 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1995, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 3rd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: This repeals 780 KAR 8:010 because it is no longer needed.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. N/A

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. N/A

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

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

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

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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. N/A

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:010. Application for employer account; reports.

RELATES TO: KRS 341.190

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires each employing unit to make application for an employer account and to make other additional reports as required by the division.

Section 1. Each employing unit having in the state in covered employment one (1) or more workers shall request from the Division of Unemployment Insurance an "Application for Unemployment Insurance Employer Reserve Account" UI-1 (Rev. 6/91), incorporated by reference herein, and shall submit this form to the division providing all information requested in the instructions to this form.

Section 2. Each employing unit shall make additional reports as required on the forms prescribed by the division in accordance with the instructions contained on the forms. These forms include UI-1S

Supplemental Application for Unemployment Insurance Employer Reserve Account (Rev. 1/93), UI-3 Employer's Quarterly Unemployment Wage and Tax Report (Rev. 4/94), UI-3R Reimbursing Employer's Quarterly Unemployment Wage Report (Rev. 4/94), UI-3S Employer's Quarterly Unemployment Wage and Tax Substitute Report (Rev. 8/93), UI-3X Employer's Quarterly Unemployment Wage and Tax Report (yellow express envelope) (Rev. 4/94), UI-3.1A Summary Contribution Report (Rev. 10/92), UI-3.2 Request to Place Subject Employer's Account in Inactive Status (Rev. 1/90), UI-14B Employer Schedule of Wage Report Adjustments (Rev. 1/90), UI-21 Report of Change of Ownership or Discontinuance of Business in Whole or Part (Rev. 10/93), UI-47 Claim for Refund of Contributions (Rev. 8/93), UI-74 Application for Partial Payment Agreement (Rev. 4/88), UI-412A Notice to Employer of Claim for Unemployment Insurance Benefits (Rev. 9/92), UI-203 Overpayment and Fraud Detection (Rev. 9/94), UI-414 or UI-414A Report of Hire or Return to Work (Rev. 1-95) and are incorporated by reference the same as if reproduced in full herein. These forms are on file for public inspection in the Office of the Commissioner for Employment Services, 275 E. Main Street, 2W, Frankfort, Kentucky 40621.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the Cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:010 was formerly codified at 903 KAR 5:010. There are no substantive changes only regulatory realignment

from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

**CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)**

787 1:020. Change of status; discontinuance of business.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires subject employers to notify the division of any change of ownership or control of their business.

Section 1. Subject employers shall notify the Division of Unemployment Insurance within fifteen (15) days of any change in ownership or control of their business, whether in whole or in part, or of the discontinuance of their business.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:020 was formerly codified at 903 KAR 5:020. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT

**Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)**

787 KAR 1:030. Employer contributions.

RELATES TO: KRS 341.260, 341.300

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets the due dates upon which employer contributions are payable to the division.

Section 1. The initial due date for payment of contributions by an employing unit is the last day of the month following the close of the calendar quarter during which the employing unit first becomes a subject employer. Thereafter, except as provided in Section 2 of this administrative regulation, the due date for contributions is the last day of the month following the calendar quarter for which they are

payable.

Section 2. The due date for payment of contributions shall be extended if a subject employer has erroneously paid contributions due under KRS Chapter 341 to another state or federal agency, or if an authorized representative of the division has misinformed an employer as to his liability or erroneously determined an employer's status on the basis of correct reports furnished to the division by the employer or his representative. In these cases, the due date shall be the 20th day following the mailing date of the first notice issued to the employer advising him of any amount due the division.

Section 3. Contributions shall be considered paid as of the date on which they are received by the Division of Unemployment Insurance as defined in 787 KAR 1:230.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:030 was formerly codified at 903 KAR 5:030. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no

additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services

Division of Unemployment Insurance

(New Administrative Regulation)

787 KAR 1:040. Posting notice to employees.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires the division to promptly notify an employing unit of its liability and to furnish employers with posters informing employees of their unemployment insurance rights.

Section 1. The Division of Unemployment Insurance shall promptly notify an employing unit of any determination as to its liability as a subject employer.

Section 2. The division shall furnish each subject employer with posters (UI-5.1) informing the workers that the employer is a subject employer under the Kentucky Unemployment Insurance Law and of their potential rights to claim benefit payments for weeks of partial unemployment. The employer shall post and maintain the posters at conspicuous places on the premises at which his payroll records are maintained.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel,
Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor,
500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral effect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:040 was formerly codified at 903 KAR 5:050. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services

Division of Unemployment Insurance

(New Administrative Regulation)

787 KAR 1:050. Social Security number required of employees.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires each worker engaged in covered employment to secure a Federal Social Security Account Number and report the number to the employing unit.

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Section 1. Each worker engaged in covered employment for a subject employer shall procure a Federal Social Security Account Number and report his number to every subject employer for whom he is engaged in covered employment.

Section 2. Each worker who is engaged in covered employment, for a subject employer, who does not have a Federal Social Security Account Number shall file an application therefor not later than three (3) days after the first day on which he is engaged in covered employment for a subject employer. It shall be the duty of each employer to procure the appropriate form for application for a Social Security Account Number and to furnish the application form to each worker engaged in covered employment in his employ who does not have such a number.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue

neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:050 was formerly codified at 903 KAR 5:060. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants

within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

**CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)**

787 KAR 1:060. Separation for cause; reports.

RELATES TO: KRS 341.370, 341.530

STATUTORY AUTHORITY: 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires the employing unit to notify the division of a worker's separation from employment for cause by returning notices sent to the employer after an initial or reopened claim for benefits has been filed.

Section 1. When an initial claim for benefits is filed by a claimant or when a reopened claim for benefits is filed by a claimant who has been employed since last claiming benefits, the Division of Unemployment Insurance shall immediately notify the claimant's most recent employer of the filing on Form UI-412A. If the claimant has worked for his next most recent employer in less than ten (10) weeks, the division will also notify his next most recent employer of the claim filing on Form UI-412A. If the claimant worked for neither his most recent nor next most recent employer in each of ten (10) weeks, the most recent employer for whom the claimant worked in each of ten (10) weeks, back to the beginning of the base period, will be notified of the filing on Form UI-412A. If the claimant was separated from any notified employer's employ for a reason other than lack of work, the employer shall complete and return the "employer's notice of initial claim" or "employer's notice of reopened claim" to the local office indicated thereon.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a

transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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

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(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:060 was formerly codified at 903 KAR 5:070. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:070. Reasonable time for protesting claim.

RELATES TO: KRS 341.370(4), 341.530(3)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation

defines the term "reasonable time" within which an employer must protest a claim by a former worker. A nonmost recent employer is now given fifteen (15) days within which to protest if he has not received Form UI-412A, "employer's notice of initial claim" or "employer's notice of reopened claim" instead of ten (10).

Section 1. Except as provided in Section 2 of this administrative regulation the reasonable time referred to in KRS 341.370(4) and 341.530(3) shall not extend beyond ten (10) days after the date of the first notice to the employer from the department that a claim has been filed. In computing this ten (10) day period, the day following the date of mailing of the notice shall be considered the first day, and the date the employer's return notice is received by the department as defined in 787 KAR 1:230 shall be considered the date it is received by the department.

Section 2. If the employer is not the worker's most recent employer and has not received Form UI-412A as provided in 787 KAR 1:060, the reasonable time referred to in KRS 341.530(3) shall not extend beyond fifteen (15) days after the date of first notice to the employer from the department that a claim has been filed. In computing the fifteen (15) day period the day following the date of mailing of the notice shall be considered the first day, and the day the employer's return notice is received by the department as defined in 787 KAR 1:230 shall be considered the date it is received by the department.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet

for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity

who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:070 was formerly codified at 903 KAR 5:080. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:080. Labor dispute or strike; notification.

RELATES TO: KRS 341.360

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires the employer to notify the division when a labor dispute or strike begins and ends.

Section 1. When an initial claim for benefits or a reopened claim for benefits is filed by a claimant, the Division of Unemployment Insurance shall immediately notify the claimant's most recent employer of the filing on Form UI-412A. If the claimant is unemployed because of a strike or other bona fide labor dispute, the employer, in addition to the notice required under KRS 341.360(1), shall indicate on the form the reason for such claimant's unemployment and return the form to the division within ten (10) days after the date appearing thereon as the date of mailing. In computing the ten (10) day period the day following the date of mailing of the notice shall be considered the first day, and if the tenth day falls on a day during which the division's office is closed, the next day thereafter on which the office is open shall be considered the tenth day.

Section 2. Within ten (10) days after the termination of an alleged strike or labor dispute the employer shall notify the division in writing of the termination. In computing the ten (day) period the day following the termination of the alleged strike or labor dispute shall be considered the first day, and if the tenth day falls on a day during which the division's office is closed, the next day thereafter on which the office is open shall be considered the tenth day.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:080 was formerly codified at 903 KAR 5:090. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)

787 KAR 1:090. Claimant's reporting requirements.

RELATES TO: KRS 341.350, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth the registration and reporting requirements that the claimant must meet to draw benefits and the date when the claim will be valid. It further sets out the length of time a claim may be backdated and the procedures for mail claims.

Section 1. Registration for Work. (1) A worker shall be registered for work with the state employment service before he shall be eligible to receive benefits. The procedures a claimant shall follow to meet the work registration requirement depend on the claimant's reemployment prospects. At the time a claimant completes an initial application for benefits, he is assigned a group classification code (A, B, C, or D) based upon his reemployment prospects. Group A includes claimants who definitely have depended on their work for their individual or family support and whose employment record indicates a firm attachment to the labor market. This group includes workers unemployed due to a temporary layoff with good return prospects but no definite recall date, workers with a steady employment record and unemployment due to lack of work, or workers with a highly specialized employment record. Group B includes workers unemployed as a result of a mass layoff who have positive return prospects with their last employer, workers unemployed because of a labor dispute in the establishment where they have been employed, unemployed workers of a local employer whose performance strongly indicates reemployment for such workers even though a definite recall date has not been set, claimants who are working part time with a regular employer but who are eligible for partial benefits, and claimants who are members of unions which are responsible for securing their future employment. Group C includes workers whose work record indicates continuing questions of availability or ability for work. Those claimants who provide incomplete information shall be placed temporarily in group C. Group D is the same as group C except availability or ability questions require closer and more frequent scrutiny. During any benefit year, a claimant may be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(2) The completion of an initial application for benefits shall serve as work registration for "B" claimants. "A", "C", and "D" claimants shall report to the state employment service for an in-depth interview and completion of an ES-511 form in order to receive full job placement service. The registration shall remain active during the worker's benefit year as defined in KRS 341.090(2).

Section 2. Initial and Reopened Claims for Benefits. (1) In order for a worker to file an initial or reopened claim for benefits he shall report in person with the following proof of identity: Social Security card, valid driver's license with a photograph or other acceptable photo-identification to a state employment office which serves unemployment insurance claimants to complete an initial claim form and certifications required by the secretary to make a determination as to the worker's benefit eligibility. If any issues regarding the claimant's eligibility as defined in KRS 341.350 or a potentially disqualifying circumstance as defined in KRS 341.360 or 341.370 are

detected, a fact-finding interview shall be scheduled at which the claimant may present all facts in support of his application.

(2) In areas serviced by a full-time state employment office which serves unemployment insurance claimants, the initial or reopened claim shall be dated as of the first day of the week in which the worker first reports to the state employment office for the purpose of filing a claim for benefits.

(3) In areas serviced by a part-time state employment office which serves unemployment insurance claimants, the initial or reopened claim shall be dated as of the first day of the week in which the worker becomes unemployed provided he reports to the part-time office for the purpose of filing a claim for benefits on the first day the office is open following his last day of work; otherwise the claim shall be dated as of the first day of the week in which the worker reports at a part-time or full-time state employment office which serves unemployment insurance claimants.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section the initial or reopened claim may be dated as of the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer, provided the worker reports to a state employment office which serves unemployment insurance claimants for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for that week.

(5) Upon the presentation by the worker of reasons found to constitute good cause for failure to report at an earlier date, the secretary may authorize the backdating of initial or reopened claims in an area serviced by a full-time state employment office which serves unemployment insurance claimants to the first day of a week which ended not earlier than fourteen (14) days prior to the day on which he first reported or indicated his desire to file a claim, and in an area serviced by a part-time state employment office which serves unemployment insurance claimants, to the first day of the week which ended not earlier than twenty-eight (28) days prior to the day on which he first reported.

Section 3. Continued Claims for Benefits. (1) In order for a worker, who has filed his initial claim for benefits and has established a benefit year, to file a continued claim for benefits he shall report in person, except as hereinafter provided, to a state employment office which serves unemployment insurance claimants to complete a continued claim form and certification required by the secretary to determine the worker's continued eligibility for benefits as defined in KRS 341.350, 341.360 or 341.370.

(2) Continued claims for benefits shall cover the week or the two (2) weeks of unemployment (depending on whether the worker is reporting on a weekly or biweekly basis) immediately prior to the date on which they are filed.

(3) Upon the presentation by the worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary may authorize the backdating of continued claims in an area serviced by a full-time state employment office to cover a week or weeks of unemployment ended not earlier than twenty-eight (28) days prior to the date on which they are filed and in an area serviced by a part-time state employment office which serves unemployment insurance claimants to cover a week or weeks of unemployment ended not earlier than thirty-five (35) days prior to the date on which they are filed.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, a continued claim may be dated as the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer and for which week he filed a continued claim, provided the worker reports to a state employment office which serves unemployment insurance claimants for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for that week.

(5) Continued claims for partial benefits shall be certified as to

earnings when so required by the secretary, except that the failure of an employer to properly certify earnings shall not result in a denial of benefits otherwise due under the law.

Section 4. Mail Claims. (1) The secretary may authorize an individual to file his continued claims by mail if reporting in person would require expenditure of an unreasonable amount of travel or money. A continued claim shall cover the week or weeks indicated on the claim form.

(2) Claims filed by mail shall be considered filed on the day they are deposited in the mail and postmarked. The provisions of this administrative regulation governing the dating and backdating of continued claims filed in areas serviced by a full-time state employment office shall also apply to claims filed by mail, and unless the claims are filed within the time prescribed herein, they shall not be allowed.

Section 5. Claims by Reemployed Workers. Notwithstanding the provisions of Section 3 of this administrative regulation, a worker, who having filed his initial claim for benefits and having established a benefit year and who by reason of having returned to full-time employment is unable to report in person to a state employment office, may file a continued claim for benefits by completing a continued claim form and certifications required by the secretary to determine the worker's continued eligibility for benefits and submitting the form by mail to the Division of Unemployment Insurance. The continued claim shall cover the week of unemployment indicated on the claim form provided that the week of unemployment ended not earlier than thirty-five (35) days prior to the date on which the claim was deposited in the mail.

Section 6. Eligibility Review. An unemployed worker claiming benefits shall report in person to a state employment office, as directed, on a periodic basis for the purpose of continued benefit eligibility review.

Section 7. Failure to Comply with Administrative Regulations. Notwithstanding any other provisions of this administrative regulation, if the secretary finds that the failure of any worker to file a claim for benefits, and register for work within the specified time, was due to the failure on the part of the employer to comply with any of the provisions of these administrative regulations, or to coercion or intimidation exercised by the employer to prevent the prompt filing of a claim or to failure by the division's personnel to discharge necessary responsibilities, the worker shall have fourteen (14) days after he has received appropriate notice of the findings of the secretary, within which to file a claim, provided that no claim shall be allowed which is filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed adminis-

trative 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:090 was formerly codified at 903 KAR 5:100. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:100. Week of unemployment defined.

RELATES TO: KRS 341.080

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation defines the term "week of unemployment."

Section 1. The term "week of unemployment" as used in KRS 341.080(3) shall mean a calendar week of seven (7) consecutive calendar days, beginning 12:01 a.m., Sunday and ending 12 midnight the following Saturday. A week of unemployment beginning in a benefit year shall be deemed to be wholly in that benefit year.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:100 was formerly codified at 903 KAR 5:110. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:110. Appeals.

RELATES TO: KRS 131.570(1), 341.430(2), 341.440, 341.450(2)
STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets up the appeals process and general rules for the conduct of hearings.

Section 1. Appeals to Referee. (1) The presentation of an appeal to a referee.

(a) Any interested party wishing to appeal to a referee from a notice of determination, or from a notice of income tax refund intercept issued by the Revenue Cabinet in full or partial satisfaction of an outstanding benefit overpayment may do so by filing with the Division of Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal within the time limits prescribed by statute.

(b) An appeal to a referee shall be considered filed at the time it is received by the department as defined in 787 KAR 1:230.

(2) Notification of hearings. All hearings shall be scheduled promptly and notices thereof shall be mailed to all interested parties at least seven (7) days before the date of hearing specifying the time and place of hearing, except that, the referee may, when the exigencies of the situation in his judgment require, set a case for hearing before the expiration of seven (7) days, only then, however, upon agreement of all interested parties. Any party may request the rescheduling of a hearing for compelling circumstances, subject to the approval or denial of the referee.

(3) Disqualification of referees. No referee shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any referee shall be heard and decided by the commission.

(4) Hearing of appeals.

(a) The claimant and any other party to the appeal may present evidence as may be pertinent and may question the opposite party and his witnesses. The referee shall, if he deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The referee may take any additional evidence which he deems necessary; but, if additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the same.

(b) The parties to an appeal, with the consent of the referee, may stipulate the facts involved, in writing. The referee may decide the appeal on the basis of this stipulation or may schedule a hearing and take further evidence as he deems necessary.

(c) The hearing shall be scheduled and held at a place where the claimant can attend without undue expense or inconvenience, giving consideration to the claimant's place of employment.

(d) The hearing may be conducted via teleconference if the residence of the claimant and his former employer's place of business are not in close geographic proximity, or if other circumstances warrant.

(e) The referee may in his discretion grant a continuance of a

hearing in order to secure necessary evidence.

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing must immediately mail copies of the documents to the referee and the opposing party. Failure to provide both the referee and the opposing party with copies of the evidence may result in its being excluded from the record.

(5) Decisions.

(a) After the hearing is concluded the referee shall promptly set forth in writing his finding of facts on the issues involved, his decision and the reasons therefor; provided, however, that if the appellant fails to appear and prosecute his appeal, the referee may summarily affirm the determination.

(b) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the division's files.

(c) The mechanical recording of the hearing shall be retained in the division's files pending further appeal. If no appeal is initiated, the recording shall be destroyed sixty (60) days from the date the final administrative decision is mailed.

(d) Any referee decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(e) If the decision is such that previously awarded benefits are to be denied either retroactively or forthwith, then a stop payment directive shall be issued to the division by the referee on the date the decision is mailed to the claimant.

Section 2. Appeals to the Commission From a Referee Decision.

(1) Presentation of an appeal to the commission.

(a) Any interested party wishing to appeal to the commission from a decision of a referee may make written application with the commission, the division or its authorized representative for leave to appeal in any form which clearly indicates the party's intention to appeal. A notice of application for leave to appeal shall be mailed by the division to other interested parties.

(b) An application for leave to appeal shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230.

(c) The commission may grant or deny the application for leave to appeal without a hearing or may notify the parties to appear at a specified place and time for argument on the application.

(2) Hearing of appeals.

(a) Except in instances where the commission orders cases removed to it from a referee, all appeals to the commission may be heard upon the records of the division and the evidence and exhibits introduced before the referee. In the hearing of an appeal on the record, the parties may, if they desire, present written arguments and, at the commission's discretion be allowed to present oral arguments. The party presenting an appeal to the commission (appellant) shall have ten (10) days from the date of mailing of the commission's notification of appeal receipt within which to file written argument. The appellee shall have seven (7) days thereafter within which to file response. Written argument shall be considered filed when it is received by the department as defined in 787 KAR 1:230. The commission may extend the time for filing written argument upon a showing of good cause by either party to the appeal.

(b) The commission may, however, direct the taking of additional evidence before it, if needed, in order to determine the appeal. If, in the discretion of the commission, additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place the evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.

(c) The commission, at its discretion, may return any case or issue to a referee for the taking of additional evidence as it desires. The referee shall take the testimony in the manner prescribed for the

hearing of appeals before referees and shall thereupon return the record to the commission for its decision thereon.

(3) The hearing of appeals by the commission on cases ordered removed to it from any referee. Any case ordered by the commission to be removed to it, shall be heard and decided by the commission in the manner prescribed in Section 3 of this administrative regulation.

(4) The determination of appeals before the commission.

(a) Following the conclusion of a hearing the commission shall promptly announce its decision, which may be either an affirmation of the decision of the referee, or a separate finding of facts, decision and reasons therefor. The decision shall be in writing and shall be signed by the members of the commission who heard the appeal. At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstance. Decisions designated as precedent shall be binding on all lower levels of determination.

(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(5) Reconsideration.

(a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within twenty (20) days of the mailing date of the decision, file application for reconsideration of the commission's decision. The commission may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230. The commission shall respond to requests for reconsideration by mail within three (3) working days after receipt.

(b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court, if the application is denied.

(6) Precedent decision process and digest. The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid. The manual shall be available, on request, at a fee established by the commission. Individual decisions shall be available on request without charge.

Section 3. Appeals to the Commission From an Employing Unit.

(1) Presentation of an appeal to the commission:

(a) Any employing unit wishing to make application for review of any administrative determination pursuant to KRS 341.430(2), or to appeal from a notice of income tax refund intercept issued by the Revenue Cabinet in full or partial satisfaction of any outstanding contribution, interest or penalty assessment, may do so by filing with the commission, the division or its authorized representative a written statement clearly indicating the employing unit's intention to appeal within the time limits prescribed by statute.

(b) An application or appeal shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230.

(2) Notification of hearings. Upon receipt of an appeal made under this section, unless denied as untimely, a hearing shall be scheduled promptly to gather pertinent evidence. Notices thereof shall be mailed to all interested parties at least seven (7) days before the date of hearing specifying the time and place of hearing, except that, the commission may, when the exigencies of the situation in its judgment require, set a case for hearing before the expiration of seven (7) days, only then, however, upon agreement of all interested parties. Any party may request the rescheduling of a hearing for compelling circumstances, subject to the approval or denial of the commission or its authorized representative.

(3) Appointment of commission representative. The commission may direct that any hearing be conducted on its behalf by an

authorized representative, provided, however, that no representative shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any representative shall be heard and decided by the commission.

(4) Hearing of appeals.

(a) Any party to the appeal may present pertinent evidence and may question the opposite party and his witnesses. The commission shall, if it deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The commission may take any additional evidence which it deems necessary; but, if additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the same.

(b) The parties to an appeal, with the consent of the commission or its authorized representative, may stipulate the facts involved, in writing. The commission may decide the appeal on the basis of this stipulation or may schedule a hearing and take further evidence as it deems necessary.

(c) The hearing shall be scheduled and held at a place where the parties can attend without undue expense or inconvenience.

(d) The hearing may be conducted via teleconference if circumstances warrant.

(e) The commission may in its discretion grant a continuance of a hearing in order to secure necessary evidence.

(f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the hearing, must immediately mail copies of the documents to the commission and to the opposing party. Failure to provide both the commission and the opposing party with copies of this evidence may result in its being excluded from the record.

(5) Decisions.

(a) Following the conclusion of a hearing the commission shall promptly set forth in writing its finding of the facts, its decision and its reasons therefor; provided, however, that if the appellant fails to appear and prosecute his appeal, the commission may summarily affirm the administrative determination or notice of income tax refund intercept from which the appeal was made. The decision shall be signed by the members of the commission who considered the appeal. At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstance. Decisions designated as precedent shall be binding on all lower levels of determination.

(b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

(c) Copies of the decision shall be mailed to all interested parties.

(d) The mechanical recording of the hearing shall be retained by the commission pending further appeal. If no appeal is initiated, the recording shall be destroyed sixty (60) days from the date the final administrative decision is mailed.

(e) Any commission decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.

(6) Reconsideration.

(a) Any party adversely affected by a decision of the commission may, within twenty (20) days of the mailing date of the decision, file application for reconsideration of the commission's decision. The commission may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230. The commission shall respond to the requests for reconsideration by mail within three (3) working days after receipt.

(b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court, if the application is denied.

Section 4. General Rules for Referee and Commission Appeals.

(1) Issuance of subpoenas. Subpoenas requested by a claimant or an employer to compel the attendance of witnesses or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance thereof setting forth the substance of the anticipated proof to be obtained and the need therefor.

(2) Appeal record. All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the division which have been written, sent, or made in connection with an appeal shall constitute the record with respect to the appeal.

(3) Supplying information from the records of the Division of Unemployment Insurance. Information from the records of the division shall be furnished to an interested party or his representative to the extent necessary for the proper presentation of the party's case, only upon written request therefor. All requests for information shall state, as clearly as possible, the nature of the information desired. Nothing in this administrative regulation shall prevent an interested party or his representative from examining a record in the hands of a referee, the commission or its authorized representative at a hearing.

(4) Conduct of hearings. All hearings shall be conducted informally without regard to common law, statutory or technical rules or procedure and in a manner as to determine the substantial rights of the parties. The parties and their witnesses shall testify under oath or affirmation. All issues relevant to the appeal shall be considered and passed upon.

(5) Reopening hearings. Any party to an appeal who fails to appear at the scheduled hearing may, within seven (7) days from the date thereof, request a rehearing. The request shall be granted if the party has shown good cause for his failure to appear. The request shall be in writing and shall set forth the reasons for this failure to attend the scheduled hearing. The request shall be mailed or delivered to the office where the appeal was filed, to the Appeals Branch, Division of Unemployment Insurance, Frankfort, Kentucky, or to the Unemployment Insurance Commission, Frankfort, Kentucky. Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.

(6) Providing a testimony (tapes) to interested parties.

(a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at a hearing by contacting the Kentucky Unemployment Insurance Commission at the address listed on the decision.

(b) There shall be no charge for this service; however, parties should forward blank cassette tapes with their request in numbers sufficient to record the requested testimony.

Section 5. Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Cabinet for Workforce Development, 275 East Main Street, Frankfort, Kentucky 40621, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the Provisions of KRS 341.450(2).

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the

hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral effect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment

Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:110 was formerly codified at 903 KAR 5:130. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)

787 KAR 1:120. Fees for representing claimant.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets the maximum fee that may be charged for representing a claimant.

Section 1. The fee to be charged for representing a claimant in any proceeding before a referee, the commission, or any court, or all three (3) shall not exceed twenty (20) percent of the maximum amount of potential benefits payable with respect to the claim under adjudication.

Section 2. The fee agreed to by the claimant and his representative, if within the maximum established in Section 1 of this administrative regulation, shall be deemed to have been approved by the commission.

Section 3. Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the claimant. The fee shall not be deducted, either in whole or in part, from the benefit checks otherwise due and payable to the claimant.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory

ry realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:120 was formerly codified at 903 KAR 5:140. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)

787 KAR 1:130. Determination defined.

RELATES TO: KRS 341.410

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation defines the term "determination" as used by the division.

Section 1. Any decision rendered by the Division of Unemployment Insurance or its duly authorized representatives in writing affecting a worker's claim for unemployment benefits or the charges to an employer's reserve account for benefits paid or payable shall be a "determination."

TREVA B. WRIGHT-DONNELL, Commissioner
 WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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

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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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:130 was formerly codified at 903 KAR 5:150. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:140. Unemployment insurance fund payments.

RELATES TO: 341.500, 341.510

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets the procedure to be used between the Division of Unemployment

Insurance, the treasurer of the unemployment insurance fund, the Finance and Administration Cabinet and the Secretary of the Cabinet for Workforce Development for the certification of checks to be written and paid for benefits under the program.

Section 1. All transfers to the state's account in the Unemployment Trust Fund or refund payments made from the clearing account shall be made by the treasurer of the unemployment insurance fund immediately upon receipt of a written order for the action signed by the Director of the Division of Unemployment Insurance or a person designated by the commission and approved by the Secretary of the Cabinet for Workforce Development.

Section 2. Requisitions from the state's account in the unemployment trust fund shall be made by the treasurer within twenty-four (24) hours after the receipt of a written order for the requisition signed by the Director of the Division of Unemployment Insurance or a person designated by the commission and approved by the Secretary of the Cabinet for Workforce Development. Withdrawals, when effected, shall immediately be deposited in the benefit account.

Section 3. (1) A computerized tape and benefit payment register for the payment of benefits shall be prepared and presented to the treasurer and certified as correct to the Finance and Administration Cabinet on Form DOA-19 by the Director of the Division of Unemployment Insurance or a person designated by the commission and approved by the Secretary of the Cabinet for Workforce Development. The computer tape and benefit payment register shall show:

- (a) Claimant's name;
- (b) Claimant's Social Security account number;
- (c) Amount of payment to be made;
- (d) The compensable period for which payment is made;
- (e) The serial number and the date of issuance; and,
- (f) Other information that from time to time shall be deemed necessary for proper control.

(2) After approval by the Secretary of the Finance and Administration Cabinet, the secretary shall present to the treasurer of the unemployment insurance fund a warrant for the issuance of benefit payment vouchers. Upon presentation, the treasurer shall issue benefit payment vouchers with his signature affixed thereto and they shall become a demand upon the depository bank for payment of the amounts specified thereon.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral effect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:140 was formerly codified at 903 KAR 5:160. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services

Division of Unemployment Insurance

(New Administrative Regulation)

787 KAR 1:150. Interstate claimants.

RELATES TO: KRS 341.145, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation governs the division in its administrative cooperation with other states for the payment of benefits to interstate claimants.

Section 1. The following administrative regulation shall govern the secretary in his administrative cooperation with other states adopting a similar administrative regulation for the payment of benefits to interstate claimants.

Section 2. Definitions. As used in this administrative regulation,

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unless the context clearly requires otherwise:

(1) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(2) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one (1) or more liable states through the facilities of an agent state. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the secretary finds that this exclusion would create undue hardship on claimants in specified areas.

(3) "State" includes Puerto Rico and District of Columbia.

(4) "Agent state" means any state in which an individual files a claim for benefits from another state.

(5) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(6) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state.

(7) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.

Section 3. Registration for Work. (1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

Section 4. Benefit Rights of Interstate Claimants. (1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) For the purposes of this administrative regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

(3) The benefit rights of interstate claimants established by this administrative regulation shall apply only with respect to new claims (notices of unemployment).

Section 5. Claims for Benefits. (1) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan.

(2) Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustment required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(3) Claims shall be filed in accordance with agent state administrative regulations for interstate claims in local employment offices, or at an itinerant point, or by mail.

(a) With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one (1) week, or one (1) reporting period, late. If a claimant files more than one (1) reporting period late, an initial claim must be used to begin a claim series and no continued

claim for a past period shall be accepted.

(b) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to the claims under the law of the agent state.

Section 6. Determinations of Claims. (1) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question the facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

Section 7. Appellate Procedure. (1) The agent state shall afford all reasonable cooperation in taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulga-

tion to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:150 was formerly codified at 903 KAR 5:170. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:160. Time extension for reports and notices.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation allows an extension of time for filing reports and paying contributions due to an act of God.

Section 1. The secretary may extend for a reasonable period of time the due date for filing reports and paying contributions as prescribed in 787 KAR 1:030, and the specified time for notifying the division of separations for cause as prescribed in 787 KAR 1:070, if, upon the presentation of sufficient facts by the employer, he finds that failure to file the reports, pay contributions, or notify the division of separations within the time specified was due to an act of God.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:160 was formerly codified at 903 KAR 5:180. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services

Division of Unemployment Insurance

(New Administrative Regulation)

787 KAR 1:170. Cash value of board and lodging.

RELATES TO: KRS 341.030

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth the reasonable cash value of board and lodging when they are

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in lieu of wages received by the worker and are not specified under the contract of hire.

Section 1. Board, lodging, or any other payment in kind received by a worker in employment from his employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be wages paid by his employing unit.

Section 2. The commission shall determine or approve the cash value of the payments in kind, and the cash value shall be used in determining the wages paid to a worker in employment and in computing contributions due under the law.

Section 3. Where a money value for board or lodging or both furnished an individual in employment is agreed upon in a contract of hire, the amount so agreed upon shall, if more than the rate specifically determined by the commission or the rates prescribed herein, be deemed the cash value of the board and lodging. If in a given case a rate for board and lodging is determined by the commission, board and lodging furnished in addition to money wages shall be deemed to have not less than the following values:

Full board and room weekly	\$80
Meals per week	\$30
per day	\$5
per meal	\$2
Lodging per week	\$50

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regu-

ry realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:170 was formerly codified at 903 KAR 5:220. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)

787 KAR 1:180. Employer's records.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth the records that must be maintained by each employing unit with respect to covered employment and the length of time that the records must be kept.

Section 1. Each employing unit shall establish, maintain and preserve for not less than six (6) years records with respect to covered employment performed in its service, which records shall show:

- (1) For each pay period:
 - (a) The beginning and ending date of the pay period.
 - (b) The total amount of wages paid for covered employment in the pay period.
 - (c) The largest number of workers in covered employment in any one (1) day of each calendar week.
- (2) For each worker:
 - (a) The name and social security account number.
 - (b) His wages paid, showing separately cash payments, the reasonable cash value of remuneration in any medium other than cash, the date on which the payments were made, and the pay period during which the services so remunerated were performed. If the remuneration is in a medium other than cash, show the nature and amount thereof.
 - (c) His total wages payable for each calendar quarter.
 - (d) The date on which he was hired, rehired, or returned to work

after a temporary layoff, and the date on which he was separated from covered employment.

Section 2. Each employing unit shall establish and maintain for not less than two (2) years certain additional records for each worker in its employ.

(1) The records shall be maintained on a calendar week basis, except that, if the employing unit is operating on a seven (7) day pay period basis, the required individual records may be maintained on the basis of such employing unit's seven (7) day period. The records shall show for each seven (7) day period:

- (a) The amount of wages earned.
- (b) The number of hours worked.
- (c) The number of hours of additional work available which was not accepted.
- (d) The rate of pay for the additional work.

(2) Each employing unit shall upon request furnish to the Division of Unemployment Insurance or to a worker a certification of the wages earned and the hours worked, the number of hours of additional work available but not accepted, and the rate of pay for the additional hours of work during the week of unemployment for which the worker claims benefits. This information shall be available by the employing unit not later than seven (7) days after the last day of the seven (7) day period to which the records apply. Any employing unit failing to grant the certification within the specified time shall not be permitted to subsequently contest the amount of benefits paid for the week of unemployment.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory

ry realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:180 was formerly codified at 903 KAR 5:230. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:190. Recoupment and recovery.

RELATES TO: KRS 341.415

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation defines the term "departmental error" for the purpose of recovery and recoupment of improperly paid unemployment insurance benefits and requires that the department shall provide a listing of overpayments with liens to credit reporting agencies. This administrative regulation shall ensure that department liens shall be considered on a parity with other liens listed in KRS 341.415(3), and to facilitate recoupment.

Section 1. "Departmental error" means:

- (1) Errors in computing benefit rate;
- (2) Incorrect weekly payment due to failure to consider deductible amount;
- (3) Payment beyond the expiration of the benefit year;
- (4) Payment in excess of maximum benefit amount;
- (5) Payment under incorrect program where no program adjustment can be made;
- (6) Retroactive nonmonetary determinations;
- (7) Monetary redeterminations;
- (8) Payment during a period of disqualification;
- (9) Payment to wrong claimant;
- (10) Erroneous payments resulting from a malfunction of automatic data processing equipment provided the malfunction is the result of human error in the data entry process.

Section 2. Filing of Liens. The department shall, on a monthly

basis, compile a listing of outstanding overpayments on which a lien has been created. The listing shall be made available to credit reporting agencies. The listing shall be compiled in an electronic format if requested by the credit reporting agency. Liens are not filed on overpayments that result from departmental error, and they shall not be made available to credit reporting agencies.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:190 was formerly codified at 903 KAR 5:250. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services

Division of Unemployment Insurance

(New Administrative Regulation)

787 KAR 1:200. Maximum weekly benefit rate.

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1995, and prior to July 1, 1996. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

- (1) The "total monthly employment" reported by subject employers for the calendar year of 1994 was 18,059,106;
- (2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,504,926;
- (3) The "total wages" reported by subject employers for the calendar year of 1994 was \$33,842,048,247;
- (4) The "average weekly wage" for the calendar year of 1994 for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was \$432.45;
- (5) Fifty-five (55) percent of the average weekly wage of \$432.45 for the calendar year of 1994 was \$237.85.

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July 1995, and prior to the first day of July 1996, is determined to be \$238.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: All eligible UI recipients for the year July 1, 1995, through June 30, 1996.

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

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

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

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

1. First year following implementation: An additional \$4 million paid to eligible UI recipients.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First Year: An additional \$4 million paid from the Unemployment Insurance Trust Fund to UI recipients.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: The number of people filing UI claims may increase or decrease.

(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: 100% federal funds (FCFA).

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available in accordance with statutory requirements.

(8) Assessment of expected benefits:

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

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

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

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

(10) Any additional information or comments: This regulation satisfies the statutory requirements of KRS 341.380(3), which mandates that the secretary determines the maximum weekly rate prior to July 1 of each year.

(11) TIERING: Is tiering applied? Tiering was not applied as all claimants are treated equally.

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)

787 KAR 1:210. Employer contribution rates.

RELATES TO: KRS 341.270

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.270 requires the Secretary for Workforce Development to determine the rate schedule for employer's contributions. The rate schedule in effect for each calendar year is determined by the "trust fund balance" as of December 31 of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1994 was \$418,365,150.84.

(2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1994.

Section 2. Rate Schedule. On the basis of the findings in Section 1, and in accordance with KRS 341.270, Schedule A of Table A shall be in effect for calendar year 1995, because the "trust fund balance" equals or exceeds \$350,000,000 on December 31, 1994. Rates listed in Schedule A of Table A are listed below.

Employer Reserve Ratio	Rate Schedule
8.0% and over	0.30%
7.0% but under 8.0%	0.40%
6.0% but under 7.0%	0.50%
5.0% but under 6.0%	0.70%
4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%
3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%
-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%
-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than -8.0%	9.00%

TREVA B. WRIGHT-DONNELL, Commissioner
 WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any

person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: 77,107 Kentucky employers.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: None

1. First Year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Possible increase in UI Trust fund receipts due only to natural wage increases and increased number of employers.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal funds (FCAA).

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All taxpaying employers are treated equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a

local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Either all or part of a local government could be affected. Entities such as county health departments, water districts, libraries, etc., could be affected based upon their independent exercise of unemployment reporting options.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects the unemployment tax assessed based on the payroll of those local governments which have elected to make quarterly unemployment tax payments.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The great majority of local governments have elected to reimburse any unemployment benefits attributable to their employment. However, approximately 700 governmental entities have elected to pay quarterly unemployment taxes. By specifying the tax rate schedule in effect for 1995, this regulation determines in part the amount of tax which will be due from these tax paying entities. The tax rate schedule set forth in this regulation remains the same as the previous year.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services

Division of Unemployment Insurance

(New Administrative Regulation)

787 KAR 1:220. Required reports and due dates.

RELATES TO: KRS 341.190, 341.262

STATUTORY AUTHORITY: KRS 151B.020, 341.115, Internal Revenue Procedures 93-18, 93-31

NECESSITY AND FUNCTION: KRS 341.190 authorizes the Secretary of the Cabinet for Workforce Development to require the furnishing of certain information and records by employing units concerning wages paid, employment and other related matters. KRS 341.262 provides that a penalty will be assessed for failure to submit reports when due. Internal Revenue Procedures 93-18 and 93-31 require employers of more than 250 workers to report wage data for federal purposes using magnetic media, or incur penalties prescribed in Internal Revenue Code Section 6721. This administrative regulation delineates the required reports and information with attendant due dates, and adopts the federal magnetic media reporting requirements for reporting of wage information for state unemployment insurance purposes.

Section 1. Required Reports. (1) For the purpose of this administrative regulation, following are the required reports, which are incorporated by reference: Employer's Quarterly Unemployment Wage and Tax Report (UI-3), and Reimbursing Employer's Quarterly Wage and Tax Report (UI-3R).

(2) For employers with more than five (5) workers performing service in covered employment during the quarter being reported, a report shall not be considered filed unless it includes the name, social security number and wages of each worker.

(3) For employers with more than 250 workers performing service in covered employment during the quarter being reported, a report shall not be considered filed unless the name, Social Security number, and wages of each worker are reported using magnetic media in a format approved by the department for this purpose. The secretary or his authorized representative shall waive this requirement

upon a showing of a lack of automation, severe economic hardship, or other good cause. Good cause shall include proof that the employer has been exempted from reporting wage information using magnetic media under any like provision of federal law. Request for waiver from this requirement shall be made in writing specifying the reason for the request.

Section 2. Due Dates. (1) Except as provided in subsection (2) of this section, the due date for the filing of a required report shall be the last day of the month following the close of the calendar quarter in which wages are paid in covered employment.

(2) The initial due date for the filing of a required report by an employing unit newly subject under the provisions of KRS 341.070 shall be the last day of the month following the quarter in which the employing unit is first given notice by the department of its liability as a subject employer, provided that:

(a) For the purpose of this administrative regulation, no employing unit shall be deemed to be newly subject if:

1. Prior to beginning employment in Kentucky, it has previously been determined subject under the unemployment compensation law of any other state; however, it shall be deemed to be newly subject if all wages paid in covered employment in Kentucky were reported to another state unemployment compensation program by the due date specified by that state; or

2. If it has previously been determined subject under the provisions of KRS 341.070 but subsequently terminated subjectivity under the provisions of KRS 341.250(2); and

(b) This subsection shall not apply if the employing unit has failed to file a required report due to willful intent to evade filing. In this case the provisions of subsection (1) of this section shall apply.

Section 3. Reports shall be considered received by the department as defined in 787 KAR 1:230.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral effect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no

substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:220 was formerly codified at 903 KAR 5:300. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:230. Due dates.

RELATES TO: KRS 341.262, 341.300, 341.430, 341.450

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation defines the date received by the department as used in KRS Chapter 341 and Kentucky administrative regulations as it relates to the timely filing of reports, protests, appeals, or the payment of contributions, and extends the due date when the due date falls on a day the office of the department is closed.

Section 1. A contribution payment, report, protest, or appeal shall be considered received by the department as of the date it is delivered to any office of the department or deposited in the mail or with a commercial postal service on or before the due date, as indicated by the postmark applied by the U.S. Postal Service or official mark applied by a commercial postal service. The mark made by a privately-held postage meter shall not be considered in determining the date of receipt.

Section 2. When a due date falls on a day the office of the department is closed, the next day the office is opened shall be considered the due date.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral effect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:230 was formerly codified at 903 KAR 5:310. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

ADMINISTRATIVE REGISTER - 486

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:240. Fraud disqualifications.

RELATES TO: KRS 341.370

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.370(2) provides that a worker shall be disqualified from receiving benefits for any week with respect to which he knowingly made a false statement to establish his right to or the amount of his benefits, and, within the succeeding twenty-four (24) months, for the additional weeks immediately following the date of discovery, not to exceed a total of fifty-two (52), as may be determined by the secretary. This administrative regulation establishes the number of additional weeks of disqualification to be imposed.

Section 1. Unreported Earnings. If a determination is issued finding that a claimant with fraudulent intent did not report wages earned during a week of unemployment for which unemployment insurance benefits were claimed, in addition to the disqualification imposed for each week, an additional period of disqualification will be imposed for each week of unreported earnings as follows: six (6) weeks for each week the unreported earnings are less than one and one-fourth (1¼) times the weekly benefit amount and twelve (12) weeks for each week the unreported earnings are equal to or more than one and one-fourth (1¼) times the weekly benefit amount, except that no period of additional disqualification will be less than twelve (12) weeks.

Section 2. Misrepresentation or Nondisclosure. If a determination is issued that a claimant through fraudulent misrepresentation or nondisclosure of fact, other than unreported earnings which is addressed in Section 1 of this administrative regulation, attempted to establish his right to or the amount of his unemployment insurance benefits, in addition to the disqualification imposed for that week, an additional twenty-six (26) week period of disqualification will be imposed from the date of discovery of the misrepresentation or nondisclosure.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel,
Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor,
500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:240 was formerly codified at 903 KAR 5:320. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:250. Release of notice of levy.

RELATES TO: KRS 341.820(1)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.820(1) authorizes the release of levy upon all or part of the property or rights to property levied upon if it is determined that the action will facilitate collection of liability. This administrative regulation establishes the conditions under which levy may be released.

Section 1. The secretary or his designated representative may release levy when either:

(1) The delinquent employer enters into a satisfactory arrangement placing property in escrow to secure payment of the liability, including expenses of levy;

(2) The delinquent employer furnishes an acceptable bond conditions upon payment of the liability, including expenses of levy;

(3) A payment is made of an amount determined to be equal to the interest of the division in the seized property or of the part of the seized property to be released. A release of levy under this section is not to be confused with the discharge of property from the tax lien. However, the amount to be paid under this release provision would be determined in the same manner;

(4) The delinquent employer enters into a partial payment agreement; or

(5) The value of the interest of the division in the seized property to be released is insufficient to cover the expenses of the sale.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:250 was formerly codified at 903 KAR 5:330. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this

administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:260. Voluntary election of coverage.

RELATES TO: KRS 341.070(9), 341.250(3)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation establishes the process for approval of voluntary election of coverage.

Section 1. An employing unit seeking election of coverage under KRS 341.250(3) shall include in its written election the following information:

(1) For the two (2) calendar years preceding the date of election, or for the total length of existence of the organization, whichever is less:

(a) A list of all funding sources, the revenues received from each, and duration of funding provided from each, accompanied by supporting documentation including grant applications, funding approval letters, and any other relevant material;

(b) A list of all employees along with gross salaries paid.

(2) For the two (2) calendar years following the date of election:

(a) A list of all anticipated funding sources, the revenues expected from each, and expected duration of funding from each, accompanied by any available documentation supporting these projections;

(b) The number of workers anticipated, and projected salaries for each position.

Section 2. Approval of voluntary election of coverage shall be made only if the employing unit seeking coverage satisfies each of the following:

(1) Stability or growth of employment over the period of time specified in Section 1 of this administrative regulation;

(2) Reliability of funding sources;

(3) Reasonable assurance of continuity or growth of funding levels over the period of time specified in Section 1 of this administrative regulation.

Section 3. Notwithstanding the above, no approval shall be granted for voluntary election in any calendar year if, in the preceding calendar year, the revenues deposited to the Unemployment Trust Fund were less than the total benefits paid.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:260 was formerly codified at 903 KAR 5:340. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

ADMINISTRATIVE REGISTER - 490

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:270. Covered employment.

RELATES TO: KRS 341.050, 341.055

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth conditions affecting certain covered and noncovered employment.

Section 1. Service by Officers, Directors, and Stockholders of Corporations. Within a corporation:

(1) An officer is presumed to be in covered employment if, under the corporation's charter, bylaws, or minutes he is required to perform some service, whether or not the service is actually performed.

(2) Stockholder, directors, or officers who received remuneration in the form of salaries or wages (that is, carried on the corporation payroll records or provided for in its bylaws or minutes) are presumed to be in covered employment whether or not services are actually performed.

(3) Directors of corporations who perform no other service for the corporation other than to attend directors' meetings are not in covered employment.

Section 2. Family Exempt Employment. In applying family exemption:

(1) Family exemption applies only in proprietorships or partnerships. In a partnership, an exempt relationship must exist with each partner in order for employment to be noncovered.

(2) Stepchildren under age twenty-one (21) who are employed by their parent(s) shall bear the same family exempt relationship as that of natural or adopted children, but only if the stepparent(s) claim them as exemptions on federal and state income tax returns.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral effect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:270 was formerly codified at 903 KAR 5:350. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)

787 KAR 1:280. Limitation on pension deductions.

RELATES TO: KRS 341.390

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: Under KRS 341.390(3)(a) a pension, retirement or retired pay, annuity or other similar periodic payment received by a worker under a plan contributed to by a base period or chargeable employer is 100 percent deductible from a worker's unemployment insurance benefit amount. The statute provides the authority to limit the deduction if the worker contributed to the payment plan. The purpose of this administrative regulation is to provide for a limitation.

Section 1. If the worker contributed to a pension, retirement or retired pay, annuity or other similar periodic payment plan deductible under KRS 341.390(3)(a), the amount deducted from the worker's

weekly benefit amount shall be limited to fifty (50) percent of the amount of the payment received by the worker for that week.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and

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enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:280 was formerly codified at 903 KAR 5:360. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 1:290. Contract construction rates.

RELATES TO: KRS 341.070, 341.272

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation defines contract construction for the purposes of rate assignment under KRS 341.272.

Section 1. Definition. For the purpose of rate assignment, those types of service to be considered as contract construction are those listed in the Federal Standard Industrial Classification Manual, 1987, under Major Groups 15, 16, and 17, and those listed under Major Group 87 engaged in management of construction carried out by others, which are adopted by reference. Copies of these chapters are available for public inspection and copying in the office of the Tax Status and Accounting Branch, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. to 4:30 p.m. Monday through Friday, or may be obtained by writing to the above address or by telephone at (502) 564-2272.

Section 2. To be considered a contract construction employer, one-half (½) or more of the service upon which liability is established under KRS 341.070 shall be in contract construction.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This

is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral effect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services

to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:290 was formerly codified at 903 KAR 5:370. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)

787 KAR 1:300. Successorship.

RELATES TO: KRS 341.070, 341.540

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth the conditions under which one (1) employing unit shall be found to be successor to another.

Section 1. Determination of Successorship. Successorship shall be deemed to have occurred between two (2) employing units when the following conditions exist:

(1) Negotiation occurs to bring about the transfer, either directly between the parties to the transfer, or indirectly through a third party intermediary.

(2) At least two (2) of the following conditions are met, provided that this condition shall not be satisfied if only paragraphs (c) and (d) of this subsection are met:

(a) The business was a going concern when acquired. For the purpose of this administrative regulation, a going concern shall also include a business which has temporarily ceased subsequent to the

date on which negotiations to transfer the business were begun.

(b) The subsequent owner or operator continued or resumed basically the same type of business in the same location.

(c) The subsequent owner employed fifty (50) percent or more of the previous owner's workers in covered employment.

(d) The previous owner employed fifty (50) percent or more of the subsequent owner's workers in covered employment.

(e) The subsequent owner acquired work contracts or commitments from the previous owner.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no effect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

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(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

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(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:300 was formerly codified at 903 KAR 5:380. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

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local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT
Department for Employment Services
Division of Unemployment Insurance
(New Administrative Regulation)

787 KAR 1:310. Claimant profiling.

RELATES TO: KRS 194.030(9), 341.350(2)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: 42 USC 503(a)(10) and 503(j) require states to establish profiling systems to identify unemployment claimants who would be likely to exhaust regular benefits for referral to reemployment services, and to hold claimants ineligible to receive unemployment benefits if they fail to participate in reemployment services after having been so identified. KRS 341.350(2) was amended by the 1994 General Assembly to conform to this requirement, and made the Secretary of the Cabinet for Workforce Development responsible for establishing a profiling system. The purpose of this administrative regulation is to prescribe conditions, consistent with the provisions of 42 USC 503(a)(10), which enable a claimant to be treated as having satisfied the requirement to participate in reemployment services as a condition of receiving benefits.

Section 1. Any claimant who, pursuant to KRS 341.350(2) is required to participate in reemployment services, such as job search assistance services, as a condition of receiving unemployment insurance benefits, shall be deemed to have satisfied this requirement if:

(1) The claimant has completed the services to which he is referred; or

(2) There is justifiable cause for the claimant's failure to participate in the services. For the purpose of this administrative regulation, "justifiable cause" shall be interpreted to mean what a reasonable person would do in like circumstances.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed adminis-

trative 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: Participants with the unemployment insurance program. During calendar year 1994 there were 76,000 employers and approximately 300,000 claimants. This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds support the unemployment insurance program within the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance.

(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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the unemployment insurance program. Local governments are employers. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 1:310 was formerly codified at 903 KAR 5:392. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the unemployment insurance program. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. It may affect the personnel arm of local government entities that participate in the unemployment insurance program. As stated, it is technical repromulgation.

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 (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral dependent upon participation in the unemployment insurance program.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Department for Employment Services Division of Unemployment Insurance (New Administrative Regulation)

787 KAR 2:010. Veterans' benefits.

RELATES TO: KRS 194.030(9)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: 38 USC authorizes the states to implement veterans' employment and training programs. The Cabinet for Workforce Development is authorized by KRS 151B.020 to adopt

such rules and regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this administrative regulation is to implement the veterans' training and benefit programs in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the veterans' programs as authorized by 38 USC, and as regulated in 20 CFR Parts 652 and 653, the following CFRs, federal statutes and bulletins are adopted by reference:

(1) 20 CFR Parts 652 and 653, dated March 30, 1984, which includes implementation procedures for providing veterans and eligible persons the maximum employment and training opportunities with priority given to the needs of disabled veterans and veterans of the Vietnam era.

(2) 38 USC Chapter 41, as amended through January 14, 1983, which mandates the establishment of a job and job training counseling service program, an employment placement service program and a job training placement service program for eligible veterans and other eligible persons and the provision of maximum employment and training opportunities to veterans, with priority given to the needs of disabled veterans and veterans of the Vietnam era through existing programs, coordination and merger of programs and implementation of new programs.

(3) Veterans Employment Representative (VER) Bulletins A through 17 which contain implementation procedures for employment services provided to veterans in fulfillment of responsibilities mandated by law.

(4) Federal Contractor Job Listing (FCJL) Bulletins 1 through 4, which contain updated instructions and procedures for processing federal contractor job listing under the mandate of PL 93-50 requiring federal contractors and subcontractors to list suitable job openings with the appropriate local office of the Department for Employment Services.

(5) PL 96-466, The Veterans Rehabilitation and Education Amendments of 1980, which revised the disabled veterans vocational rehabilitation program and established the Disabled Veterans Outreach Program.

(6) PL 98-77, The Emergency Veterans' Job Training Act of 1983, which addresses problems of service and continuing unemployment among veterans by providing payments to defray the costs of training and incentives to employers to hire and train certain war time veterans who have been unemployed for long periods of time for stable and permanent positions that require significant training.

(7) PL 97-300, The Job Training Partnership Act, which establishes programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically-disadvantaged individuals and other individuals facing serious barriers to employment who are in special need of training to obtain productive employment. Title II, Part C of the Act specifically authorizes programs for veterans recently separated from military service, Vietnam-era veterans and disabled veterans.

(8) 41 CFR Parts 60-250, dated June 25, 1976, which mandates and provides procedures for ensuring compliance with Section 402 of the Vietnam-era Veterans Readjustment Act of 1974, which requires government contractors and subcontractors to take affirmative action to employ and advance the employment of qualified disabled veterans and veterans of the Vietnam era.

(9) PL 98-543, The Veterans Benefits Improvement Act of 1984, which increased various rates of compensation or benefits paid to eligible veterans in various programs administered by the Veteran Administration, extended the Veterans' Readjustment Appointment Authority to September 30, 1986, extended several provisions of PL 98-77, and established the Special Program for Veterans in Receipt of Individual Unemployability and the Special Training Program for

Veterans in Receipt of Pensions, which are administered by the Veterans Administration.

Section 2. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621, and in local employment services office located throughout the state.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development, Department for Employment Services.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and general funds support the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment 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 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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in programs administered by the Department for Employment Services, Cabinet for Workforce Development. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 2:010 was formerly codified at 903 KAR 6:050. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the programs offered by the Department for Employment Services. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. As stated, it is technical repromulgation. It should not affect any particular unit of government

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year

the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services

Division of Unemployment Insurance

(New Administrative Regulation)

787 KAR 2:020. Confidentiality of records of the Department for Employment Services.

RELATES TO: KRS 195.020, 195.040

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: The Cabinet for Workforce Development is authorized by KRS 151B.020 to develop and to adopt administrative regulations to protect the confidential nature of records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet. The function of this administrative regulation is to designate certain records of the cabinet's Department for Employment Services as confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

Section 1. The following documents and records pertaining to the cabinet's implementation of the Job Training Partnership Act (JTPA) in Kentucky are deemed confidential and not subject to disclosure by the Department for Employment Services.

(1) JTPA-1, application form.

(2) JTPA-20, verification of eligibility form and related source documents.

Section 2. Department for Employment Services records other than JTPA. The Cabinet for Workforce Development, Department for Employment Services has determined the following records to be confidential and not subject to disclosure:

(1) ES-507, temporary application form for selected employers.

(2) ES-508, job referral card.

(3) ES-511, application card.

(4) ES-514, job order form.

(5) ES-518, test record card.

(6) ES-519, test record card.

(7) ES-614, counseling record and employability plan.

Section 3. Access to records of the Division of Unemployment Insurance shall be governed by the provision of KRS 341.190.

Section 4. Sharing of Information as Authorized by Law. Nothing in this administrative regulation shall prohibit the sharing of confidential information in accordance with KRS 194.060(2) and 341.190.

TREVA B. WRIGHT-DONNELL, Commissioner

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16,

1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development, Department for Employment Services.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and general funds support the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment

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 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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the unemployment insurance program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in programs administered by the Department for Employment Services, Cabinet for Workforce Development. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 2:020 was formerly codified at 903 KAR 6:060. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the programs offered by the Department for Employment Services. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. As stated, it is technical repromulgation. It should not affect any particular unit of government

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Employment Services

Division of Unemployment Insurance

(New Administrative Regulation)

787 KAR 2:030. Classifying a person as unemployed; appeals.

RELATES TO: KRS 141.065, Administrative Order HR 86-1

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 141.065 provides a credit to taxpayers for hiring a person classified as unemployed. The Department for Employment Services is required by Administrative Order HR 86-1 to perform all administrative functions pertaining to the Unemployment Tax Credit Program. The Secretary of the Cabinet for Workforce Development may adopt rules and administrative regulations as are necessary to implement the Unemployment Tax Credit Program and as are necessary to cooperate with the Revenue Cabinet for the proper administration of the program. The function of this administrative regulation is to establish when a person is classified as unemployed for purposes of the Unemployment Tax Credit Program, and to establish the appeals process and general rules for the conduct of hearings regarding the denial of the unemployment tax credit to a taxpayer.

Section 1. Definitions. (1) "Actively seeking work" means a person making a reasonable effort to obtain work at least sixty (60) days prior to hire as might be expected of a prudent person under like circumstances, including occupations, salary, number of employing firms in area and distance involved.

(2) "Full-time employment" means, for labor market attachment purposes, if a person worked more than twenty-three (23) hours per week or more than 100 hours per month for at least thirty (30) days prior to the sixty (60) day, minimum unemployed period.

(3) "Labor market attachment" means had full-time employment before the sixty (60) day minimum unemployed period. Self-employment can be used to meet this requirement.

(4) "Readily available" means a person who at least sixty (60) days prior to hire was willing and able to enter into full-time employment; and possessing the ability to overcome any barriers, including arranging child care, part-time work or school schedules, transportation, or other conditions that would prevent an individual from accepting full-time employment.

Section 2. (1) A person shall be considered "classified as unemployed" for purposes of the Unemployment Tax Credit Program if:

(a) Prior to the sixty (60) day minimum unemployment period, the person had prior labor market attachment; and

(b) During the sixty (60) day minimum unemployment period prior to being hired:

1. Was not working; or

2. Was employed not more than twenty-three (23) hours per week; or

3. Was employed not more than 100 hours per month; and

4. Was actively seeking and readily available for full-time employment.

(2) Involvement in a strike or labor dispute during the sixty (60) day minimum unemployment period does not meet the definition of unemployment for purposes of the Unemployment Tax Credit Program.

Section 3. Request for Reconsideration. (1) Any party aggrieved as a result of the denial of the unemployment tax credit to a taxpayer shall request a reconsideration of the denial by contacting the state tax credit until the request for reconsideration shall be in writing. The request for reconsideration shall be filed within fifteen (15) days of the

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mailing date of the denial notice.

(2) The aggrieved party shall submit any additional information to be considered during the reconsideration process in writing within ten (10) days of the mailing date of the request for reconsideration.

(3) The state tax credit unit shall issue its decision within forty-five (45) days of receipt of the request for reconsideration. Upon reconsideration, a certificate may be issued or a second denial letter stating appeal rights for a formal hearing may be issued.

Section 4. Appeals to Hearing Officer. (1) Within fifteen (15) days of the mailing date of a second denial notice, an aggrieved party shall file a written request for hearing with the state tax credit unit. Upon receipt of the written request for hearing, the Secretary of the Cabinet for Workforce Development shall appoint an impartial hearing officer to hear and decide appealed denials.

(2) A hearing shall be scheduled and commenced within sixty (60) days of receipt of the request for hearing. Notice of the hearing shall be mailed by certified mail, return receipt requested, to the parties.

(3) Prior to the formal hearing, and upon seven (7) days written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses, and any other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences are to be open to the public. A written prehearing conference report shall be part of the record.

(4) Any party to a hearing and the administering agency may be represented by counsel and may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. No depositions shall be permitted for the purpose of discovery; however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas, and may admit relevant and probative evidence, and shall conduct the hearing in accordance with reasonable administrative practice.

(5) All testimony at the hearing shall be recorded.

(6) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument, and may terminate or exclude irrelevant or redundant evidence, testimony, or argument.

(7) Within thirty (30) days of adjournment of the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the record of the proceeding.

TREVA B. WRIGHT-DONNELL, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor,

500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development, Department for Employment Services.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 95-289, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and general funds support the Department for Employment Services, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment 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 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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the Unemployment Insurance Program to facilitate the transfer of the Department for Employment Services to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in programs administered by the Department for Employment Services, Cabinet for Workforce Development. However, this is a technical promulgation to perfect the transfer of the Department for Employment Services to the Workforce Development Cabinet pursuant to Executive Order 95-289. 787 KAR 2:030 was formerly codified at 903 KAR 6:070. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the programs offered by the Department for Employment Services. As stated, no additional burden or responsibility is being imposed on participants within the unemployment insurance program. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. As stated, it is technical repromulgation. It should not affect any particular unit of government

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 95-289.

CABINET FOR WORKFORCE DEVELOPMENT Office of Training and Reemployment (New Administrative Regulation)

788 KAR 2:010. Job Training Partnership Act.

RELATES TO: KRS 194.030(9)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: PL 97-300, the Job Training Partnership Act authorizes the states to implement a job training program. The Cabinet for Workforce Development is authorized by KRS 151B.020 to adopt such rules and administrative regulations as are necessary to implement programs mandated by federal law or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this administrative regulation is to implement the Kentucky Job Training Program in accordance with applicable federal laws and regulations.

Section 1. In order to facilitate the administration of the Job Training Program as authorized by PL 97-300, the 1986 Amendments

and as regulated in 20 CFR Parts 626 through 636, the following CFR, Public Law and Conference Report are adopted by reference:

(1) 20 CFR Parts 626 through 636, dated April 1, 1986, which contains regulations regarding the implementation of the Job Training Partnership Act (JTPA) and includes operational procedures for: determining eligibility of grant recipients and funding; preparing the Governor's Coordination and Special Services Plan; involving the State Job Training Coordinating Council; implementing interstate JTPA agreements; distribution of state funds; ensuring state education coordination and awarding grants; implementing training programs for older individuals; awarding state incentive grants; designating JTPA service delivery areas (SDA) and private industry councils; selection of SDA grant recipients; preparing, reviewing and approving job training plans; prohibiting use of public service employment for JTPA purposes; determining eligibility for need-based payments and benefits and assessing working conditions; ensuring compliance in the areas of grant payments, program income, insurance, procurement, management systems, reporting and recordkeeping, budgetary classifications and limitations, matching funds, property management standards, audits, program oversight, sanctions for Act violations, program close-out and performance standards; filing requests for and conducting grievance hearings; handling of administrative, civil and criminal complaints and reports of fraud, abuse and other criminal activity; and implementing summer youth employment and training programs, native American employment and training programs, migrant and seasonal farmworker programs and veterans employment programs.

(2) PL 97-300, the Job Training Partnership Act of 1982 and the amendments issued in PL 99-496 dated October 16, 1986 which concerns the state and local service delivery system and general program and administrative issues including the authority and program requirements of the governor, state job training coordinating councils, private industry councils and chief elected officials; processes for designating local service delivery areas; preparing local plans and selecting local service providers; development of performance standards and procedures for implementation; fiscal control; monitoring and recordkeeping; training programs for disadvantaged youth and adults, including the areas regarding funding and eligibility and summer youth training and job programs; implementing training and employment aid program for dislocated workers including consultation with private industry councils; funding and implementation of employment and training programs for native Americans, migrant workers and veterans; Job Corps; labor market information systems; functions of the National Commission for Employment Policy; and coordination between the Work Incentive Program and the job training delivery system.

(3) Job Training Partnership Act, Conference Report, issued September 28, 1982, which is a joint explanatory statement of the Committee of Conference on the Job Training Partnership Act which explains the action agreed upon by the House and Senate managers and expresses the intent of the Congress.

(4) Interpretations of Job Training Partnership Act Rules and Regulations dated June 18, 1986, which contains interpretations pertaining to: Summer Youth Employment and Training Programs; Maximum and Minimum Limitations on Expenditures; Job Training Partnership Act, States' Responsibilities in Incident Report Procedures; and Job Training Partnership and Wagner-Peyser Acts Funds Availability. Also contained therein is an amendment to Part 629.38(e)(2)(iii) concerning Single Unit Charge Agreements involving Training of Youth as well as 20 CFR, Volume 51, Notices: No. 22, Job Training Partnership Act, Performance Standards for Program Years (PY) 1986 and 1987; No. 88, Job Training Partnership Act, Semiannual Status Report for Titles II-A and III Programs, and Title II-B Summer Performance Report; No. 117, Job Training Partnership Act, Annual Status Report for Titles II-A and III Programs.

Section 2. In order to coordinate the Job Training Program and

provide for uniform service to the public, the following plan, instructions and procedures are adopted by reference:

(1) Governor's Coordination and Special Services Plan (GCSSP) for program years 1986 and 1987, dated May 15, 1986. This plan contains the identifying information of the applicant which includes the name and address of the grantee, date of submission, and time period covered. The program information includes the criteria for coordinating activities under the Act, including Title III activities, with programs and services provided by state and local agencies determined to have a direct interest in employment and training and human resource utilization within the state. It describes the use of resources provided to the state and its service delivery areas under the Act. It describes the projected use of resources, including education coordination, oversight, and support activities, priorities and criteria for state incentive grants, and performance standards and incentive award systems for the state-supported programs. It also addresses adjustments in Kentucky's performance standards as well as incentive awards and the method used in making the adjustments. It includes information on any of the activities listed in Section 121(c) of the Act which the state intends to conduct. It provides a statement indicating that the state had adequate methods of administration to assure compliance with Section 167 of the Act. It provides for a method of modification in accordance with procedures established by the Department of Labor if major changes occur in labor market conditions, funding, or other factors during the period covered by the plan.

(2) Program Announcement for a Request for Proposal (RFP) for Older Individuals, dated May 30, 1986. This packet includes a letter of request seeking proposals to provide innovative employment and training programs for individuals age fifty-five (55) and older (older workers); also the procedures for the submission of a program request of funding for activities authorized under JTPA, Title II-A. These procedures include information on the purpose, objectives, authorized activities, approach and methodology, length of project, level of support and funding information, matching, service providers, list of service delivery areas (SDAs); also, the project application that includes name of project and agency, summary, requested funds, number of slots, budget summary and detailed budget, project description and design, performance standards, staff job descriptions, DES and SDA concurrence forms, EEO statement, and deliverer of training services.

(3) Program Announcement for a Request for Proposal (RFP) for postprogram data collection, dated June 23, 1986. This packet includes a letter of request seeking proposals from organizations which will gather data on former participants who received services which were funded through specific resources of JTPA, Title II-A (adults and Title III); also, the program announcement that includes the purpose, methodology, response requirements, project scope and duration and contracts. The RFP contains the description, outline and informational attachments. Included in these three (3) items are: special conditions and requirements, content specifications, evaluation criteria, selection process, general conditions, summary sheet application, budget summary, narrative instructions, narrative proposed work plan, demonstrated effectiveness of bidder, experience of key personnel, organizational/management systems, required inclusions, SDA listing, estimate of PY 1986 trainees, required questions in the survey and data entry form.

(4) Program Announcement for a Request for Proposal (RFP) for Audit of Funds Under the Job Training Partnership Act (JTPA) dated February 20, 1986. This packet includes a letter of request seeking applications from all certified public accounting firms interested in submitting bids for the audit of funds distributed to agency contractors under JTPA. The proposal package contains five (5) enclosures, including specification schedule, application and certification, list of audits to be conducted, JTPA federal regulations, and a copy of the Job Training Partnership Act (PL 97-300).

(5) Job Training Partnership Act On-the-job Training (OJT)

Manual JTPA Titles II-A and III dated January 1, 1986, which contains updated information and instructions for state administered OJT Programs. This packet includes operational procedures and implementation for developing OJT contracts and determining employer and occupational eligibility for the program under JTPA, Title II-A and III. These procedures include information on: the purpose; performance standards; employer, occupational and participant eligibility; number of allowable trainees and their wages; working conditions and labor laws; apprenticeable occupations; development, negotiation, duration, completion, modification and monitoring of contracts; linkages and waiver of OJT procedures; matching funds; payment procedures (responsibility for payment, allowable costs, reimbursement procedures); copies of JTPA forms used in the program and line instructions for completing the forms.

(6) Job Training Partnership Act Financial Management Guide dated July 1, 1986. This guide sets forth minimum requirements for recipients of JTPA funds in the disbursement of, accounting for, and reporting of program funds. Included are sections pertaining to: definitions of JTPA financial terms; compliance standards for recipients in the control and accountability of assets, liabilities, funds, and expenditures by the various titles of JTPA; procedures to be followed in order to minimize the time elapsing between the receipt of JTPA funds and disbursement of those funds; the responsibilities and standards to be followed in order to ensure that a financial and compliance audit is conducted on all JTPA funds; the responsibilities of the state and the SDAs in the financial monitoring of recipients of JTPA funds, in order to identify problem areas in recipient programs; procurement policies required to be followed in order to meet minimum federal, state, and local requirements; property management standards to be used by recipients in maintaining accountability of all property purchased with JTPA funds and transferred from the CETA Program; the responsibilities of the state and the service delivery areas in the purchase, maintenance, and use of the single integrated management information system for JTPA; and the instructions for completing the JTPA Quarterly Status Report and the JTPA Annual Status Report. Also included are JTPA forms and instructions for the completion thereof.

(7) JTPA Grievance Procedures (state level) dated January 1987, which provides for a participant grievance system to be adopted by all contractors (including their subcontractors) having JTPA funded contractual agreements with the state, a mechanism for hearing complaints that have not been resolved at the SDA (service delivery area) level and a formal procedure for the resolution of nonparticipant complaints and which includes the time frames and procedures to follow during the appeals process as well as forms to be used by the parties involved in the process.

Section 3. All documents incorporated by reference herein are on file for public inspection in the Office of the Commissioner for Employment Services, 275 East Main Street, Frankfort, Kentucky 40621, and in local service delivery area offices located throughout the state.

WILLIAM H. GAUNCE, Executive Director

WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: June 16, 1995

FILED WITH LRC: June 23, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. at the Health Services Auditorium, Cabinet for Human Resources, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of

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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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development, Capital Plaza Tower, 2nd Floor, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Treva B. Wright-Donnell, Commissioner

(1) Type and number of entities affected: This is a technical repromulgation moving existing administrative regulations from the Cabinet for Human Resources to the Cabinet for Workforce Development, Office of Training and Reemployment.

(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: This repromulgation has no affect because we are transferring existing administrative regulations pursuant to Executive Order No. 94-577, to perfect the regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing has been requested. The repromulgation will have a neutral affect on all entities.

(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 burden or responsibilities are being imposed on the business community.

2. Second and subsequent years: This repromulgation is revenue neutral on the business community during the 1st, 2nd and 3rd years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: Only direct costs will be typesetting changes for brochures, pamphlets and forms. All documents will be used before we reprint.

1. First Year: Negligible

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Revenue neutral.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and general funds support the Office of Training and Reemployment, Cabinet for Workforce Development.

(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 one requested a public hearing nor were comments received by the cabinet. Consequently, no comments are available.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: This repromulgation is necessary to transfer the regulatory authority from the Cabinet for Human Resources to the Workforce Development Cabinet, Department for Employment 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 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:

(a) Necessity of proposed regulation if in conflict: No regulation is in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was no need to harmonize regulations.

(10) Any additional information or comments: It is important to note that the Cabinet for Human Resources is repealing all administrative regulations concerning the Department for Employment Services to facilitate the transfer of the Department to the Cabinet for Workforce Development.

(11) TIERING: Is tiering applied? No. Tiering is not applicable to this promulgation. As stated, this is a technical repromulgation with no substantive changes.

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. This administrative regulation may affect any entity who participates in the JTPA program administered by the Office of Training and Reemployment, Cabinet for Workforce Development. However, this is a technical promulgation to perfect the transfer of the JTPA Program to the Workforce Development Cabinet pursuant to Executive Order 94-577. 788 KAR 2:010 was formerly codified at 903 KAR 6:040. There are no substantive changes only regulatory realignment from the Cabinet for Human Resources to the Cabinet for Workforce Development.

2. State what unit, part or division of local government this administrative regulation will affect. It may affect any unit that participates in the programs offered by the Department for Employment Services. As stated, no additional burden or responsibility is being imposed on participants within these programs. We are repromulgating administrative regulations which were promulgated pursuant to KRS Chapter 13A.

3. State the aspect or service of local government to which this administrative regulation relates. As stated, it is technical repromulgation. It should not affect any particular unit of government

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Revenue neutral.

Expenditures (+/-): Revenue neutral.

Other Explanation: As stated, this is a technical realignment of an existing administrative regulation from one cabinet to another. This is necessary to perfect Executive Order No. 94-577.

PUBLIC PROTECTION AND REGULATION CABINET

Public Service Commission
(New Administrative Regulation)

807 KAR 5:013. Management and operation audits.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040, 278.255

NECESSITY AND FUNCTION: KRS 278.255(4) provides that the Public Service Commission (hereinafter referred to as "commission") shall adopt rules and administrative regulations setting forth the scope and application of audits, and procedures for conducting management and operations audits of regulated utilities.

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Section 1. Definitions. (1) "Audit" means an examination, inspection, evaluation and investigation of records, administrative regulations, policies, objectives, goals, plans, practices, methods or other criteria utilized by management of a utility to conduct its business, and may include appropriate recommendations for improved management and operation techniques.

(2) "Bidders list" means a list of independent firms which have notified the commission of their interest in performing audits.

(3) "Staff" means commission staff.

(4) "Utility" means a utility as defined by KRS 278.010(3).

Section 2. Procedures for Audits Performed by an Independent Firm. (1) When the commission decides to employ an independent firm to audit a utility, the commission shall issue a request for proposal to all firms on the bidders list.

(2) The request for proposal shall include the objectives and scope of the audit, the proposed role of staff in the audit, proposed contractual arrangements, selection criteria, and items, including testimony, reports, and work papers, to be performed or supplied as part of the audit.

(3) The commission shall evaluate all proposals received. It may select one (1) bidder and enter a contract with the successful bidder and the utility, which shall govern performance of the audit, or it may reject all proposals and reissue the request for proposal.

(4) The auditing firm shall forward all invoices for payment to staff. After review and verification of the invoices, staff shall forward the invoices to the utility which shall pay the auditing firm directly.

Section 3. Minimum Requirements of Audits. The following materials shall be submitted to the utility and the staff when the audit is performed by an independent auditing firm and to the utility when the audit is performed by staff:

(1) Detailed work plans describing the technical procedures for performing the work.

(2) Initial draft report describing preliminary findings and conclusions.

(3) A final draft report including a management summary and recommendations.

(4) A final report including:

(a) A management summary.

(b) An action plan for each recommendation detailing the reason for each recommendation, a proposed improvement baseline, an estimate of monetary savings, or other benefits to be realized from implementing it, and an estimate of implementation costs.

(5) Work papers identifying the source of information upon which each finding is based and any other documentation the staff finds necessary shall be provided with the final report.

Section 4. Opportunity for Comment. The utility may comment in writing within the following times:

(1) Fifteen (15) working days from receipt of the draft request for proposal.

(2) Fifteen (15) working days from receipt of each bidder's proposal including the initial work plan.

(3) Twenty (20) working days from receipt of the preliminary draft report.

(4) Ten (10) working days from receipt of the final draft report.

Section 5. Implementation of Audit Recommendations. (1) The utility shall respond to all action plans and shall adopt, adopt with exception, or reject each recommendation. The response shall include detailed steps by which the utility proposes to implement each recommendation adopted or adopted with exception. The utility shall provide a detailed basis for rejecting any recommendation.

(2) Except for recommendations which staff has agreed are complete, the utility shall file progress reports for each open recommendation every six (6) months for the first two (2) years after the

final audit report is issued, and annually thereafter.

Section 6. Deviations from Rules. For good cause shown, the commission may permit deviations from these rules.

GEORGE EDWARD OVERBEY, JR., Chairman

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: July 11, 1995

FILED WITH LRC: July 14, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 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 August 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 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 Mills, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, (502) 564-3940.

REGULATORY IMPACT ANALYSIS

Agency Contact: Aaron Greenwell or Rebecca Goodman

(1) Type and number of entities affected: The PSC has been conducting management audits for more than 10 years. 18 audits have been initiated during that time. This regulation will not impose any additional costs or achieve any additional savings due to codification of the management audit procedures. This regulation could affect any utility under PSC jurisdiction if and when that utility was selected to be audited. Generally, no more than 1 or 2 audits are initiated each year, so few entities will be affected at any one time.

(a) Direct and indirect costs or savings to those affected: KRS 278.255 provides that the utility bear the direct cost of the audit. Potential savings to the utilities would result from increased management effectiveness and operating efficiencies. No indirect costs or savings have been identified.

1. First year: Direct payments to the management audit consultants are made periodically for work performed under contract specifications. Costs and savings depend upon the recommendations made by the consultant and the degree and speed of implementation of the recommendations by the utility.

2. Continuing costs or savings: Since audits are utility specific it is impossible to quantify and in most cases, identify specific costs or savings to the utility until the utility has implemented the consultant's recommendations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None identified.

(b) Reporting and paperwork requirements: Responses are required of the utility at various stages of the audit, including the initial work plan. The utility is given an opportunity to comment on preliminary audit drafts prior to issuance of the final audit report. Progress reports on the implementation of management audit recommendations are due periodically.

(2) Effects on the promulgating administrative body: Since audits have been conducted since 1984, there are no new effects on the agency.

(a) Direct and indirect costs or savings: None. See Item (2).

1. First year: None. See Item (2).

2. Continuing costs or savings: None. See item (2).

3. Additional factors increasing or decreasing costs: None. See

Item (2).

(b) Reporting and paperwork requirements: None. See Item (2).

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is required by KRS 278.255 which provides the general frame work for the audit process. Thus, no alternatives were considered.

(5) 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.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. The statute authorizing this administrative regulation provides the commission with the discretion to audit any utility under its jurisdiction, therefore, no tiering was applied.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
(New Administrative Regulation)

815 KAR 8:040. Heating, ventilation and air conditioning (HVAC) contractor application reviews.

RELATES TO: KRS 198B.658, 198B.666

STATUTORY AUTHORITY: KRS 198B.658

NECESSITY AND FUNCTION: KRS 198B.64 requires the Board of Heating, Ventilation and Air Conditioning (HVAC) Contractors to promulgate administrative regulations to administer, coordinate and enforce the HVAC contractor's law. This administrative regulation is a supplement to 815 KAR 8:010 and 8:020, and establishes a mechanism for the board to review and approve equivalent experience when an applicant seeks to become licensed as an HVAC master contractor or journeyman mechanic by examination. This administrative regulation is necessary to treat qualified persons similarly and not to unfairly discriminate or deny equal protection with respect to residents and nonresidents, alike.

Section 1. Procedure for Board Review. For applicants seeking to be licensed on the basis of experience and examination:

(1) The board may authorize the Department of Housing, Buildings and Construction to review all applicants and issue licenses to all persons who meet the technical requirements of 815 KAR 8:010 and 8:020.

(2) Any application which is not approvable by the department, pursuant to subsection (1) of this section, shall be referred to and reviewed by the board, pursuant to this administrative regulation.

(3) The board shall review the credentials of the applicant and approve the application if it finds that the applicant's credentials are equivalent to the requirements provided in 815 KAR 8:010 and 8:020.

Section 2. Equivalency Standard. The board may consider the following in reviewing an applicant's credentials:

(1) Installation, maintenance, alteration, servicing, repair of HVAC systems;

(2) The skilled instruction of others in HVAC activities and knowledge;

(3) Any other related technical, mechanical or educational experiences relating to the skills, knowledge and techniques needed for type of license requested;

(4) The quality and duration of the experience, without regard to the time frame or the location in which the experience was completed;

(5) Other information and documentation as the board may deem necessary or appropriate.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: July 12, 1995

FILED WITH LRC: July 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, August 22, 1995 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 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 in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Scope of administrative regulation is very limited. Impact indeterminate and estimated to be less than 20 potential HVAC contractors and 40 journeymen mechanics each year.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Additional cost of living or employment for 40 HVAC journeyman mechanics will be \$2,000 (40 x \$50).

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Additional cost of doing business for 20 HVAC contractors will be \$2,000 (20 x \$100).

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None beyond companion regulations, 815 KAR 8:010 and 8:020.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Negligible cost due to limited scope.

2. Continuing costs or savings: Negligible cost due to limited scope.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None, administrative and records maintenance procedures already in place.

(4) Assessment of anticipated effect on state and local revenues: \$4,000 in additional state revenue the current fiscal year. No local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Business fees of \$100 for 20 HVAC contractors and \$50 for 40 journeyman mechanics.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a new program and this administrative

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regulation is necessary to treat qualified persons similarly and not to unfairly discriminate or deny equal protection with respect to residents and nonresidents alike.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will slightly increase pool of persons licensed to perform HVAC work throughout the state.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Although limited, the detrimental impact would be limited to the number of persons that would not otherwise be licensed.

(c) If detrimental effect would result, explain detrimental effect: Fewer persons licensed to perform HVAC work sharply reduces consumer protection.

(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:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was applied in original administrative regulations referenced in (2)(c) above when the type of license (master, journeyman and apprentice) was established and the level of responsibility and fees were graduated accordingly.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Fire Prevention (New Administrative Regulation)

815 KAR 10:050. Kentucky Fire Prevention Code.

RELATES TO: KRS Chapters 198B, 227

STATUTORY AUTHORITY: KRS 227.300

NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.300 to establish reasonable administrative regulations based upon good engineering practice and principles to provide a reasonable degree of safety for human life against the emergencies of fire and panic and insure against fire loss. This administrative regulation shall constitute the fire prevention code for Kentucky which shall also be known as the standards of safety and shall be used, where applicable, as a supplement to the Kentucky Building Code. This administrative regulation is necessary to establish minimum fire safety standards for operations, processes and materials and the occupancy of buildings and facilities, especially for buildings not constructed in accordance with applicable building codes in existence at the time of construction. These standards are enforceable by the State Fire Marshal, pursuant to KRS Chapter 227 and local authorities, pursuant to KRS 227.320. This administrative regulation includes the substance of 815 KAR 10:040, which is being repealed.

Section 1. Adoption of Code. (1) The 1995 Kentucky Fire Prevention Code, Second Edition, is hereby incorporated by reference as if set forth at length in this administrative regulation.

(2) This code is published by Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.

(3) This code is updated by and available from the Kentucky Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Frankfort, Kentucky 40601.

(4) A copy of this code is available to be inspected at the Department of Housing, Buildings and Construction at the above address Monday through Friday between 8 a.m. and 4:30 p.m.

Section 2. 815 KAR 10:040 is hereby repealed.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: July 12, 1995

FILED WITH LRC: July 13, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, August 22, 1995 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 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 in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Hazardous materials operations and existing commercial public buildings and multifamily dwellings.

(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: This is a revision of existing fire safety standards and no new effect should occur.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: The cost of doing business should not increase because of this administrative regulation.

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

1. First year following implementation: The compliance, reporting and paperwork requirements remain the same as under the old code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Cost of books.

1. First year: Purchase of new books for staff; \$45 x 50 inspectors and others.

2. Continuing costs or savings: No continuing cost.

3. Additional factors increasing or decreasing costs: Training required but no additional increase over past training costs.

(b) Reporting and paperwork requirements: Regular inspection reports as have been carried on for many years; no change in paperwork requirements through the citations for violations, computer adjustments, etc.

(4) Assessment of anticipated effect on state and local revenues: None anticipated beyond permits, if they so choose to enact local ordinance to require permits under the code.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Fire Marshal agency funds.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Statewide application has no economic impact.

(b) Kentucky: This code is similar to the previous code and has been amended in some ways less stringent and others more stringent; no change in impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Adoption of National Fire Codes was rejected in favor of use of BOCA National Fire Code with national standards referenced in the Appendix. More efficient because it was designed to interact with requirements of the Kentucky Building Code.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This new code is less complicated and more understandable to the public and enforcers.

(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: In the sense that the fire officials can better understand this updated version, it would be detrimental not to adopt it.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS Chapter 198B and uniform standard building code.

(a) Necessity of proposed regulation if in conflict: Need appropriate up-to-date minimum standards to require fire safety in both old buildings and maintenance of fire safety in buildings constructed under the KBC.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Article 1 of the Fire Code and the Kentucky Building Code are harmonized to avoid conflict. It allows the building official to refer to the standards if necessary and lets fire officials enforce the fire code where it was never approved when built. State Fire Marshal enforcement powers include the ability to help enforce laws relating to fire safety.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. This regulation is tiered by allowing alternatives to meet the intent of the code and to allow different treatment of existing buildings and conditions based upon whether or not they have had prior approval or met other building codes.

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. Intended to affect local government to the extent that every local government is supposed to adopt and enforce the standards of safety, pursuant to KRS 227.320.

3. State the aspect or service of local government to which this administrative regulation relates. Fire safety inspections, reporting and enforcement.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Merely provides appropriate standards for use statewide by each local government.

CABINET FOR HUMAN RESOURCES Department for Health Services Division of Health Systems Development (New Administrative Regulation)

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

RELATES TO: KRS 211.950 to 211.958, 216B.010 to 216B.130, 216B.990

STATUTORY AUTHORITY: KRS 211.952, 216B.042, 216B.105, 216B.410

NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. KRS 211.952 transfers the responsibility for licensing ambulance providers defined in KRS 211.950 to a single lead agency within the Department for Health Services, Cabinet for Human Resources. This administrative regulation provides requirements for obtaining and maintaining a license to operate an ambulance service or a tiered response emergency medical service and establishes the fee schedule for a license.

Section 1. Definitions. (1) "Advanced life support (ALS)" means an ambulance provider which:

(a) Utilizes certified and licensed emergency medical professionals to provide prehospital medical care such as:

1. Basic life support services;

2. Advanced airway management such as endotracheal intubation;

3. Defibrillation; and

4. Administration of intravenous fluids and pharmaceuticals under the authority of a physician medical director; and

(b) Meets the requirements established in 902 KAR 14:080, Sections 1 through 10 and is licensed by the cabinet to provide health care and transportation on an emergency and nonemergency basis to persons who:

1. Are sick, injured, or otherwise incapacitated; and

2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being.

(2) "Air ambulance provider" means a basic life support or ALS air ambulance service which meets the requirements of 902 KAR 14:090 and is licensed by the cabinet to provide basic, advanced, or basic or advanced specialized levels of emergency and non-emergency health care and transportation.

(3) "Basic life support" (BLS) means a basic life support ambulance provider which:

(a) Utilizes at least two (2) certified or licensed emergency medical personnel to provide prehospital medical care such as:

1. First aid;

2. Cardiopulmonary resuscitation;

3. Airway management;

4. Cervical spine control;

5. Breathing assistance;

6. Hemorrhage control; and

7. Basic patient movement procedures; and

(b) Meets the requirements established in 902 KAR 14:080, Sections 1 through 7 and 8, when applicable, and is licensed by the cabinet to provide health care and transportation on an emergency and nonemergency basis to persons who:

1. Are sick, injured, or otherwise incapacitated; and

2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being.

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

(6) "Nonemergency health transportation (NEHT)" means an ambulance provider which meets the requirements of 902 KAR 14:060 and is licensed by the cabinet to provide health care transportation on a scheduled basis to individuals whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for emergency medical treatment during transit or emergency medical treatment upon arrival at the final destination. NEHT providers shall not transport a patient who requires basic or advanced life support or a patient who has in place a temporary invasive device or equipment such as an intravenous administration device or airway maintenance device, excluding urinary catheters, or a patient who requires close observation or monitoring preceding or following an invasive technique.

(7) "Specialized ground ambulance provider" means a BLS or ALS ground or air ambulance provider which meets the requirements of 902 KAR 14:080, Section 11 or 902 KAR 14:090 and is licensed by the cabinet to provide health care and transportation on an emergency or nonemergency scheduled basis that:

(a) May be unavailable to the general public; and

(b) Has specialized or limited functions such as interfacility transfer of critical patients who may require special consideration of:

1. Equipment requirements;
2. Personnel requirements; or
3. Hours of operation.

(8) "Tiered response emergency medical (TREM) services" means a specialized nontransportation ALS emergency medical service which shares staff and equipment with a licensed ALS or BLS ambulance provider through a written agreement for operation within a specific geographic service area.

Section 2. Licenses. (1) A person shall not establish a BLS or ALS ground ambulance service, BLS or ALS air ambulance service, NEHT service, or a TREM service in Kentucky without first obtaining a certificate of need from the Kentucky Health Policy Board (referred to as the board) and shall not operate a BLS or ALS air or ground ambulance service, NEHT service, or TREMS without first obtaining a Kentucky Ambulance License, Form EMS-2 (12/94), incorporated by reference, from the licensing agency.

(2) The license shall be conspicuously posted in a public area of the facility.

(3) A "Kentucky Application for Ambulance Service Licensing," Form EMS-1 (10/94), incorporated by reference, or an "Application for License to Operate a Nonemergency Health Transportation Service," Form EMS-1N (12-94), incorporated by reference, shall be filed with the Department for Health Services, Emergency Medical Services Branch, 275 East Main Street, Frankfort, Kentucky 40621.

(4) An applicant for a license shall, as a condition precedent to licensing or relicensing, be in compliance with applicable administrative regulations under 902 KAR Chapter 14.

(5) The licensee shall, as a condition of licensing or relicensing, be in compliance with the reporting requirements established by the licensing agency and the board, unless otherwise exempted by statute:

(6) The licensee shall maintain and submit completed reports required by:

- (a) KRS 216B.410;
- (b) 902 KAR 14:040, Section 3(2)(a);
- (c) 902 KAR 14:050, Section 6;
- (d) The licensing agency; or
- (e) The Kentucky Health Policy Board.

(7) A license shall expire one (1) year following the date of issuance, unless otherwise provided in the license certificate.

(8) A license may be renewed upon payment of the prescribed

fee and compliance with the provisions for licensing.

(9) A license to operate shall be issued only for the person, service area, and premises, including the number of ambulances named in the application, and shall not be transferable.

(10) A new application shall be filed if a change of ownership occurs. A change of ownership for licenses shall be deemed to occur if more than fifty (50) percent of an existing facility, capital stock, or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another.

(11) Upon filing a new application for a license due to change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee shall be charged for the remainder of the licensure period.

(12) There shall be full disclosure to the licensing agency of the changes, such as name and address, of:

(a) A person having direct or indirect ownership interest of ten (10) percent or more in the service;

(b) Officers and directors of the corporation, if a service is organized as a corporation; and

(c) Partners, if a provider is organized as a partnership.

Section 3. Licensing Inspections. (1) Compliance with licensing administrative regulations shall be ascertained through on-site inspections of the provider by representatives of the licensing agency.

(2) Representatives of the licensing agency shall have access to the service during hours the service operates.

(3) A regulatory violation identified during the inspections shall be transmitted in writing to the provider by the licensing agency.

(4)(a) The provider shall submit a written plan for the elimination or correction of the regulatory violations to the licensing agency within ten (10) days of receipt of the statement of violation.

(b) The plan shall specify the date by which the violation shall be corrected.

(5)(a) Following a review of the plan, the licensing agency shall notify the provider in writing of the acceptability of the plan. The licensing agency may conduct a follow-up visit to verify compliance with the plan.

(b) If a portion or all of the plan is unacceptable, the licensing agency shall specify the reasons for the unacceptability. The provider shall modify or amend the plan and resubmit it to the licensing agency within ten (10) days after receipt of notice that the plan is unacceptable.

(6) Unannounced inspections may be conducted on complaint allegations, follow-up visits, and annual relicensing inspections. Inspections shall be conducted utilizing the procedures outlined under this section.

(7) The licensing agency may deny, revoke, modify, or suspend the license of a provider which:

(a) Fails to submit, amend, or modify a plan of correction in order to eliminate or correct regulatory violations;

(b) Fails to eliminate or correct regulatory violations;

(c) Falsifies an application for licensing;

(d) Tampers with, alters, or changes a license issued by the licensing agency;

(e) Attempts to obtain or obtains a license by fraud, forgery, deception, misrepresentation, or subterfuge;

(f) Provides false or misleading advertising;

(g) Falsifies, or causes to be falsified, a patient record or ambulance run report;

(h) Provides an unauthorized level of service;

(i) Has a history of staff violations which have resulted in disciplinary action under 902 KAR 13:020 and 13:090;

(j) Fails to provide the licensing agency or its representative with true information upon request, or obstructs an investigation regarding alleged or confirmed violations of administrative regulations promulgated under:

1. KRS 211.950 to 211.958;

2. KRS 211.960 to 211.968;
3. KRS 211.990(5); and
4. KRS 216B; or

(k) Issues a check for a license on an invalid account or an account with insufficient funds to pay the fee specified in Section 4 of this administrative regulation.

(8) The licensing agency may issue an order directing a provider to immediately cease and desist operating an ambulance, or providing services, if the licensing agency has reasonable cause to believe that an ambulance or service is unsafe or is being operated in an unsafe or unprofessional manner that is likely to cause harm or create imminent danger to the health and safety of the public.

(9) The licensing agency or the board may deny, revoke, modify, or suspend the license of an ambulance provider if an owner of the service is convicted of obtaining a fee by:

1. Fraud or misrepresentation; or
2. Submitting fraudulent or misleading claims for reimbursement to individuals, private insurance companies, or governmental agencies;

(10) The licensing agency shall provide notice and an opportunity for an administrative hearing related to denial, revocation, modification, or suspension of a license in accordance with:

1. Policies and administrative regulations of the board; and
2. Provisions of KRS 216B.105.

Section 4. Fee Schedule. The annual licensing fee, including renewals, shall be as follows:

(1) Nonvolunteer ambulance providers and TREM service: eighty (80) dollars;

(2) Volunteer ambulance providers and TREM service in which a majority of the ambulance runs are made by attendants who do not receive compensation for their work: twenty (20) dollars;

Section 5. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday:

- (1) Kentucky Ambulance License, Form EMS-2 (12/94).
- (2) Kentucky Application for Ambulance Service Licensing, Form EMS-1 (10/94).
- (3) Application for License to Operate a Nonemergency Health Transportation Service, Form EMS-1N (12/94).

RICE C. LEACH, M.D., Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: June 30, 1995

FILED WITH LRC: July 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W.K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 300 ground and air ambulance providers and approximately 10 nonemergency health transportation providers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. A notice of intent was published in the Administrative Register on March 1, 1995. There were no requests for a public hearing. However, this administrative regulation will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. A notice of intent was published in the Administrative Register on March 1, 1995. There were no requests for a public hearing. However, this administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this administrative regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet. Regulatory activities currently carried out by the Office of the Inspector General will be transferred to the Department for Health Services as required by HB 646 as passed by the 1994 General Assembly. The department will assign necessary staff and funding within previously approved levels.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for ground and air ambulances and nonemergency health care transportation services. This fee income and general funds will be utilized for implementation of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: A notice of intent was published in the Administrative Register on March 1, 1995. There were no requests for a public hearing. However, this regulation will not have created any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation complies with the specific legislative mandate passed by the 1994 General Assembly to establish a single lead EMS agency. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services in Kentucky by reducing or eliminating overlap-

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ping authority for EMS personnel and providers at the state level.

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

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments: The purpose of this administrative regulation is to comply with HB 646 passed by the 1994 General Assembly.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Yes. Tiering was applied because there are four (4) levels of ambulance providers: advanced life support, basic life support, nonemergency health transportation, and tiered response emergency medical services. There are separate requirements and standards for each level of service. In addition, special variances may be allowed for specialized services. The licensing fee is lower for voluntary service than for paid services.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or part or division of that local government if it operates an ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect a local government in any additional manner. It merely moves the licensing and regulatory functions for emergency medical services from the Office of the Inspector General to the Department of Health Services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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.

CABINET FOR HUMAN RESOURCES

Department for Health Services

Division of Health Systems Development

(New Administrative Regulation)

902 KAR 14:080. Basic and advanced life support ground ambulance providers.

RELATES TO: KRS 211.950 to 211.958; 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 211.952, 216B.042

NECESSITY AND FUNCTION: KRS 216B.042 mandates that the Cabinet for Human Resources promulgate administrative regulations and set standards related to licensing health facilities and health services. KRS 211.952 transferred the responsibility for licensing, regulating and inspecting ambulance providers defined in KRS 211.950 from the Division of Licensing and Regulation in the Office of Inspector General to a single lead agency within the Department for Health Services, Cabinet for Human Resources. This administrative regulation provides for the minimum licensing requirements for basic or advanced ground ambulance providers.

Section 1. Definitions. (1) "Advanced life support (ALS)" means a ground ambulance provider which:

(a) Utilizes certified and licensed emergency medical professionals to provide prehospital medical care such as:

1. Basic life support services (BLS);

2. Advanced airway management such as endotracheal intubation;

3. Defibrillation;

4. Administration of intravenous fluids and pharmaceuticals under the authority of a physician; and

(b) Meets the requirements established in Sections 1 through 10 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency basis to persons who:

1. Are sick, injured, or otherwise incapacitated; and

2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being.

(2) "Back-up ambulance" means an ambulance which complies with the requirements of Section 4(5) through (9) of this administrative regulation, and is licensed by the cabinet to provide emergency care and transportation if:

(a) One (1) of the licensed primary ambulances is not in service; and

(b) All of the primary ambulances are on runs and extreme circumstances dictate its use.

(3) "BLS" means a ground ambulance provider which:

(a) Utilizes at least two (2) certified or licensed emergency medical personnel to provide prehospital medical care such as:

1. First aid;

2. Cardiopulmonary resuscitation;

3. Airway management;

4. Cervical spine control;

5. Breathing assistance;

6. Hemorrhage control; and

7. Basic patient movement procedures; and

(b) Meets the requirements established in Sections 1 through 7 and Section 8, if applicable, of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency basis to persons who:

1. Are sick, injured, or otherwise incapacitated; and

2. May require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical well being.

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association; the National Safety Council; or the basic life support professional rescuer course of the American Red Cross, which shall include as a minimum one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(6) "Dispatch center" means the location where:

(a) Incoming calls are initially received requesting an ambulance;

and

(b) Contact is made with the ambulance provider for direction to the patient scene.

(7) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 13:100.

(8) "Emergency medical technician-first responder" means a person certified pursuant to 902 KAR 13:110.

(9) "Employee" means ambulance provider personnel who may be paid or volunteer, full time or part time.

(10) "Interfacility care" means BLS or ALS emergency or nonemergency health care provided to a patient during ambulance transportation between two (2) health care facilities.

(11) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

(12) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 9:136.

(13) "Prehospital care" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(14) "Primary ambulance" means a ground ambulance licensed by the cabinet to be utilized by an ambulance provider for the provision of:

- (a) Emergency care and transportation; or
- (b) Nonemergency runs.

(15) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(16) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin (e.g., needles, glass ampules, etc.).

(17) "Specialized ground ambulance provider" means a BLS or ALS ground ambulance provider which meets the requirements of Section 11 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency or scheduled basis that:

- (a) May be unavailable to the general public; and
- (b) Has specialized or limited functions such as interfacility transfer of critical patients who may require special consideration of:
 1. Equipment requirements;
 2. Personnel requirements;
 3. Hours of operation.

(18) "Tiered response emergency medical (TREM) service" means a specialized nontransportation ALS emergency medical service which shares staff and equipment with a licensed ALS or BLS ambulance provider through a written agreement for operation within a specific geographic service area.

Section 2. Ground Ambulance Licensing Requirements. (1) The following licensing requirements shall apply to BLS and ALS ground ambulance providers:

(a) A person shall not provide, advertise, or profess to engage in the provision of BLS, ALS, or specialized BLS or ALS emergency medical care or transportation that originates in Kentucky without having first obtained a certificate of need and a license from the licensing agency.

(b) An ambulance provider shall comply with local, state, and federal statutes and regulations.

(c) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

1. Identity and location of the base station;
2. Number and location of substations, if any, to be operated by the licensee;
3. Designation of the specific geographic area to be served by the licensee, allowing for a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area for all emergency calls. The provider shall not be precluded from responding to calls outside of its geographic service

area when providing:

- a. Mutual aid to another ambulance provider;
- b. Disaster assistance;
- c. Nonemergency transfers from damaged or closed health facilities; or

d. Interfacility care to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area;

4. Designation of the levels of care which the ambulance provider shall be authorized to provide (i.e., BLS or ALS, or specialized BLS or ALS); and

5. Designation of the number of primary and back-up ambulances to be operated by the BLS or ALS ambulance provider.

(d) Upon the effective date of this administrative regulation, no new back-up ambulances shall be licensed.

(e) Effective January 1, 1996, each ambulance provider with currently licensed back-up ambulances shall, upon application for renewal of the license, declare the total number of ambulances to be operated with no distinction made between primary and back-up vehicles. This total shall not exceed the total number of ambulances previously licensed.

(f) Each ambulance licensed shall be staffed, equipped, and available to respond to emergency and nonemergency calls.

(g) As a minimum, each ambulance provider shall provide the licensing agency with the serial number and license tag number of each ambulance licensed.

(h) The licensee shall:

1. Notify the licensing agency of any change in the number, type, or use of the ambulances to be operated; and
2. Meet the following requirements:

a. An ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that it meets the requirements of this administrative regulation. If the ambulance represents an expansion of service (e.g., an increase in the number of ambulances), the licensing agency shall verify that a certificate of need has been granted prior to the inspection; and

b. The licensing agency shall be notified, on the next licensing agency business day, following disposition of any prior approved ambulance operated by the ambulance provider (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance provider).

(i) The licensing agency procedures shall not preclude the ambulance provider from utilizing a replacement ambulance on a temporary basis if a previously approved ambulance is out of service for maintenance. The following requirements shall apply:

1. The licensing agency shall be immediately notified (or on the next business day) by phone of the need for an ambulance provider to operate a temporary replacement unit. Within five (5) days, the ambulance provider shall send the licensing agency:

a. Written notice of the make, model, license number, and vehicle identification number; and

b. Assurances that the temporary unit will be staffed and equipped in accordance with requirements of this administrative regulation;

2. If the ambulance provider plans to utilize the replacement for more than thirty (30) days, the ambulance provider shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

3. The licensing agency shall be notified if the replaced unit is back in service.

(j) The licensing agency shall maintain identifying records on all ambulances according to established procedures.

(2) A licensed BLS or ALS ground ambulance provider shall have on file proof of professional and vehicular liability insurance.

(3) The following situations shall be exempt from the provisions of this administrative regulation:

- (a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);
- (b) A vehicle serving as an ambulance during a major catastrophe;
- (c) An ambulance operated by the United States government; and
- (d) An ambulance from an out-of-state licensed ambulance provider making a nonemergency run originating from a Kentucky facility for the purpose of returning a patient who is not a Kentucky resident to his state of residence.

Section 3. BLS and ALS Ground Ambulance Management Requirements. An ambulance provider shall:

(1) Establish lines of authority (i.e., an organizational chart) to include the designation of an:

- (a) Administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and
- (b) A designee who shall serve if necessary in the absence of the administrator.

(2) Maintain adequate records and reports at the ambulance service base station to be made available for review as deemed necessary by the cabinet, including:

(a) An original, microfilm, or similar copy procedure of EMS run form, EHS-8A "Kentucky Emergency Medical Service Ambulance Run Report", for all runs originating in Kentucky.

1. Copies of completed run report forms shall be kept as required by KRS 216B.410 and guidelines established by the licensing agency in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

2. The third copy of the run form, or an electronic equivalent, shall be forwarded to the cabinet within thirty (30) days following the end of the month in which the run occurred.

(b) Personnel files on each ambulance driver and attendant shall be maintained for:

1. A minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

2. Five (5) years following the demise of the employee.

(c) Individual ambulance driver and attendant personnel files shall, as a minimum, contain evidence of:

- 1. Training;
- 2. Experience;
- 3. Current credentials including proof of CPR certification, or EMT or paramedic certification with corresponding numbers and expiration dates, or nursing or physician license;
- 4. Current and valid driver's license;
- 5. Criminal and Department of Transportation driver's records check which is updated at least every two (2) years;
- 6. Health records to include:
 - a. Written evidence of a preemployment health assessment having been conducted by a physician stating the employee is capable of performing assigned job duties; and
 - b. Health records which at a minimum meet the requirements of KRS 216B.410(3).

(3) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the ambulance provider in order to assess their effectiveness. The policies and procedures shall be developed to include the minimum areas:

- (a) Organizational structure, staffing, and allocation of responsibility and accountability;
- (b) Ambulance service mutual aid agreements and agreements with other ambulance providers;
- (c) Personnel performance guidelines; and
- (d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, ambulance, equipment, and staff if called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for the quality assessment of patient care including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

- 1. Vehicle maintenance;
- 2. Standard operating procedures (SOPS);
- 3. Patient protocols;
- 4. Ambulance response;
- 5. Transport limitations; and
- 6. Patient destination.

Section 4. BLS and ALS Ground Ambulance Operating Requirements. (1) A BLS or ALS ambulance provider shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week, basis. This provision may be met through a call system or by a written mutual aid agreement with another licensed ambulance provider.

(2) If a BLS or ALS licensed ambulance provider also makes nonemergency runs, a minimum of one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the geographic service area of the licensee. The licensee may enter into a written mutual aid agreement with another licensed BLS or ALS ambulance provider as a means to meet this requirement. If the only remaining ambulance of a licensee is being held in reserve for emergency prehospital runs, the licensee shall activate its mutual aid agreement if it receives and declines an emergency interfacility transfer request.

(3) In areas where fire departments, rescue squads, or other organizations provide first response to medical emergencies, in order to provide for the coordinated delivery of emergency medical services and the orderly transfer of patients to the ambulance service upon their arrival, the BLS or ALS ambulance provider which responds to medical emergencies for that area shall enter into a mutual aid agreement with the first response organization.

(4) Mutual aid agreements with other ambulance providers, fire departments and rescue squads shall be in writing and address the following:

- (a) The type of mutual aid assistance to be provided (e.g., ALS or BLS ambulance service, tiered ALS or BLS response, extrication);
 - (b) Response personnel including levels of training and provisions for joint in-service training where appropriate;
 - (c) Response vehicles including unit identifiers and the station or location from which the vehicles will be operated;
 - (d) How and what manner the mutual aid agreement will be activated including dispatch and notification procedures;
 - (e) Radio and other communications procedures between the ambulance provider and the other response agency;
 - (f) On-scene coordination and scene control including medical direction when several agencies respond to same incident;
 - (g) Exchange of patient information, records, and reports;
 - (h) Terms of the agreement including effective date and provision for amendment or termination.
- (5) Ambulances used in the provision of BLS or ALS ambulance services shall:
- (a) Be maintained in good operating condition and in full repair;

(b) Be designed to provide for the medical care and transportation of patients;

(c) Comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-A-1822 D (11/94) (GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification.

(d) Comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(6)(a) The BLS or ALS ambulance provider shall require that a certification decal or sticker be supplied by the manufacturer of newly purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(b) A BLS or ALS ambulance provider shall require, for units that are later modified, the conversion company to supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(7) In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

(b) The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

(c) The name of the ambulance provider shall appear on the exterior surface of the ambulance.

(8)(a) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(b) Documentation shall be maintained by the ambulance provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(9) The interior of the ambulance and its equipment shall be cleaned after each use, unless precluded by emergency conditions.

(10) Nothing in this administrative regulation shall be construed to prevent a licensed BLS or ALS ambulance provider from providing tiered first response emergency medical service at or below the level for which they are licensed through the utilization of the following:

(a) Designated, provider owned response vehicles;

(b) Provider or personally owned supervisor vehicles;

(c) Employee personally owned vehicles.

(11) The licensed BLS or ALS ground ambulance provider shall determine the minimum equipment required for tiered response vehicles operating under their license.

(12) BLS or ALS ground ambulance service tiered first response vehicles shall be operated in accordance with the provisions of KRS 189.910 to 189.950.

(13) Vehicles used to provide tiered first response emergency medical services shall be insured by the employee or through the insurance policies of the BLS or ALS ground ambulance provider.

(14) A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:

(a) If a local or regional dispatch center or 911 arrangement exists for all or part of the service area of a provider, the ambulance provider shall have a signed affiliation agreement with the dispatch center for coordination of emergency calls. If an ambulance provider is unable to secure a written affiliation agreement with the dispatch center, the ambulance provider shall have on file proof of a good faith attempt to obtain an affiliation agreement;

(b) BLS and ALS ambulances shall be equipped with two (2) way

radio communication equipment capable, under normal conditions, of contacting the ambulance dispatch center and the receiving hospital;

(c) A minimum of one (1) portable communication device per ambulance, on the ambulance radio frequency, shall be provided for personnel if away from the ambulance;

(d) A BLS or ALS ambulance provider shall have an acceptable plan to assure that all calls are promptly answered, and runs are dispatched in an expedient manner in accordance with subsection (1) of this section; and

(e) An ambulance provider shall provide orientation to all drivers and attendants related to communication protocols that have been established by the service.

(15)(a) In accordance with policies and procedures of the BLS or ALS ambulance provider concerning patient destination and ambulance response and transport limitations, a patient shall be transported to:

1. The hospital emergency room of the patient's choice; or

2. The hospital emergency room chosen by the patient's physician.

(b) Nothing in this subsection shall preclude BLS or ALS ambulance provider personnel from transporting a patient to:

1. A hospital emergency room other than the one (1) chosen by the patient or his doctor, or an appropriate emergency medical facility chosen by the attendant, if the attendant determines that it shall be necessary in order to save the patient's life or limb.

2. A hospital emergency room or emergency medical facility other than the one (1) chosen by the patient or his physician if the ambulance provider is operating under an approved local or regional diversion plan or medical triage protocols developed in conjunction with a consortium of physicians, hospitals, and ambulance providers, and which has been approved by the Kentucky Emergency Medical Services Council under KRS 211.952.

(c) The Kentucky emergency medical service ambulance run report form (EHS-8A) shall require ambulance service personnel to state:

1. The name and city of the hospital to which the patient was transported; and

2. If the destination was chosen by the:

a. Patient;

b. Patient's physician; or

c. Medical service personnel. If the destination was chosen by the medical service personnel, the attendant shall document the medical necessity on the form's case narrative section.

Section 5. Basic Life Support Personnel. (1) A BLS ground ambulance provider shall be staffed to provide, as a minimum, two (2) attendants for each run. One (1) attendant shall remain with the patient at all times during transport;

(2) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation; and

(3) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(4) As a minimum, the driver on each BLS or ALS ambulance run shall:

(a) Be at least eighteen (18) years of age, with current motor vehicle operator's license;

(b) Have at least two (2) years of licensed driver/operator experience;

(c) Complete a defensive driving training program that is developed by the ambulance provider or in conjunction with another agency or organization. The defensive driving training program shall be repeated for each driver at least every four (4) years.

1. As a minimum, the training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

2. Documentation shall be available to support training in at least

the following areas:

a. Review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

c. Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

(5) One (1) ambulance attendant on each prehospital emergency or nonemergency BLS ground ambulance run shall be certified or licensed for one (1) of the following levels:

(a) Emergency medical technician (EMT);

(b) Paramedic;

(c) Registered nurse (RN) licensed by the Kentucky Board of Nursing (KBN); or

(d) Physician licensed by the Kentucky Board of Medical Licensure (KBML).

(6) The second ambulance attendant, who may also be the driver, as a minimum shall have certification or licensing for one (1) of the following levels:

(a) EMT-first responder;

(b) EMT;

(c) Paramedic;

(d) RN licensed by the KBN; or

(e) Physician licensed by the KBML.

(7) Personnel who on occasion may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

(a) Serve as drivers only in a three (3) person crew; and

(b) Do not render any type of first aid or medical treatment; or

(c) Serve as attendants only.

(8) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports may be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

(9) A ground ambulance service may provide nonemergency transportation to individuals for whom no medical care is required or indicated during transport and for whom no emergency medical treatment is provided at the final destination. If a ground ambulance service chooses to make such runs, the ambulance run report form must be completed for each run to show that no medical care was required or indicated. For such runs, the ambulance shall be staffed by a minimum of one (1) person, who may also be the driver, licensed or certified for one (1) of the following levels:

(a) EMT-first responder;

(b) EMT;

(c) Paramedic; or

(d) Licensure as a nurse or physician.

Section 6. Equipment and Supplies. A ground ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain, in full operational order, the following minimum equipment and supplies:

(1) Suction, ventilation, and blood pressure equipment.

(a) Fixed and portable suction apparatus including:

1. Rigid tonsillar catheters; and

2. Flexible catheters in the sizes six French (6F), 8F, 10F and 14F;

(b) Disposable bag-valve-mask ventilation units in 250 ml, 500 ml, and 1000 ml with oxygen reservoir with adult, child and infant size masks (capable of use with oxygen);

(c) Nasopharyngeal and oropharyngeal airways in newborn, infant, child, and adult sizes; and

(d) Adult, obese adult, infant, and child sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement.

(2) Oxygen equipment.

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier attachment for use on the fixed oxygen tank;

(d) Adaptor and tubing;

(e) Transparent simple oxygen masks for adults, children, and infants;

(f) Transparent nonrebreather oxygen masks for adults, children, and infants; and

(g) Nasal cannulas for adults, children, and infants.

(3) Bandages and tape.

(a) Minimum of two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) Minimum of twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) Minimum of ten (10) soft roller self-adhering bandages, various sizes;

(d) Minimum of four (4) rolls of adhesive tape, minimum of two (2) sizes;

(e) Minimum of ten (10) triangular bandages with large safety pins; and

(f) Minimum of two (2) sterile burn sheets.

(4) Miscellaneous supplies.

(a) Eye protector pads and shields;

(b) Minimum of one (1) roll of aluminum foil, or an occlusive substitute approved by the licensing agency;

(c) Shears for bandages;

(d) Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the ambulance;

(e) Minimum of two (2) penlights;

(f) Minimum of two (2) sterile obstetrical kits;

(g) One (1) bottle of syrup of ipecac (with current expiration date) or one (1) bottle of activated charcoal (if in suspension, shall have current expiration date); and

(h) Sterile irrigation fluids with current expiration date, if stocked on the ambulance, shall be obtained and maintained according to local, state, and federal statutes and regulations.

(5) Splints and immobilization devices.

(a) Lower extremity traction splint, or equivalent as approved by the cabinet, for use in EMT training;

(b) Splints for arm, leg, and foot (e.g., inflatable air splints, padded boards, ladder splints, or acceptable substitute approved by the cabinet);

(c) Immobilization devices.

1. Short spine board or other acceptable extrication device, as determined by the cabinet; and

2. Long spine board with cervical immobilization accessories;

3. An orthopedic "scoop" stretcher or other full-body immobilization device as determined by the cabinet.

(d) Rigid, stiff cervical collars in large, medium, small adult, no-neck, and pediatric sizes;

(e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.

(6) Safety supplies and equipment.

(a) Minimum of two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;

(b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;

(c) Minimum of one (1) pocket mask with an isolation valve per patient attendant;

(d) Minimum of one (1) clean scrub gown (or substitute, such as disposable coveralls), disposable mask, and gloves per patient

attendant;

(e) Minimum of one (1) particulate filter face mask per attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;

(f) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towelettes;

(g) Hospital type disinfectants;

(h) Plastic bags for disposal of waste materials;

(i) Puncture resistant containers for disposal of sharp objects, if sharps are carried;

(j) A minimum of two (2) clean blankets, sheets, and pillowcases;

(k) Tissues or similar substitute; and

(l) An emesis container or similar substitute.

(7) Additional medical supplies and equipment desired for storage in the ambulance for authorized persons responding to the scene who are licensed or certified to provide medical skills that require training beyond the authorized EMT level may be considered for approval by the cabinet. For eligibility, the ambulance provider shall include documentation to assure a system of accountability for the storage and handling of the additional medical supplies and equipment. The cabinet shall have the authority to deny approval of the arrangement if it is determined that the arrangement shall not be in the best interest of quality patient medical care or safety of the patient and personnel.

Section 7. Extrication and Other Rescue Equipment. (1) For response to trauma scenes, a ground ambulance provider shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance:

(a) Minimum of two (2) pairs of eye protection goggles;

(b) Minimum of two (2) pairs of heavy work gloves;

(c) Minimum of two (2) hard hats;

(d) Minimum of one (1) spring loaded window punch or acceptable substitute; and

(e) Minimum of six (6) reflective triangles, at least ten (10) inches in height, flares, or equivalent warning devices.

(2)(a) For response to trauma scenes, a ground ambulance provider shall, as a minimum, provide one (1) vehicle, which need not be an ambulance, equipped with the following fully operational, more extensive access and extrication equipment:

1. Minimum of two (2) fifty (50) foot long seven-sixteenths (7/16) or one-half (1/2) inch static or dynamic nylon ropes;

2. Minimum of one (1) pair of pliers, vise grip;

3. Minimum of one (1) wrench, with adjustable, stable open end;

4. Minimum of one (1) set of screw drivers, four (4) sizes, regular blade;

5. Minimum of one (1) set of screw drivers, four (4) sizes, Phillips type;

6. Minimum of one (1) double action tin snip;

7. Minimum of one (1) crow bar with pinch point;

8. Minimum of one (1) hacksaw with twelve (12) blades; and

9. Minimum of one (1) hammer, three (3) pound size;

10. Minimum of one (1) fire axe;

11. Minimum of one (1) wrecking bar;

12. Minimum of one (1) bolt cutter, with a minimum of one and one-fourth (1 1/4) inch jaw opening;

13. Minimum of one (1) four (4) ton porta-power jack and spreader tool;

14. Minimum of one (1) shovel, short handle, with pointed blade;

15. Minimum of one (1) shovel, long handle, with pointed blade;

16. Minimum of one (1) come-along tool; and

17. Minimum of two (2) fire proof blankets.

(b) A ground ambulance provider which has a written agreement for this provision with a rescue squad, fire department, or an emergency service agency that meets the requirement established by

the cabinet, shall not be required to provide the more extensive access and extrication equipment on the ambulance.

Section 8. Ambulance Provider Medical Directors. (1) An ALS ambulance provider shall have a written agreement with a physician medical director.

(2) An ALS ambulance provider shall provide evidence that the medical director shall:

(a) Be a physician licensed by the KBML;

(b) Meet the qualifications specified in 201 KAR 9:171, Section 2(6). Evidence shall be on file to verify that the qualifications of the medical director have been reviewed by the KBML to assure compliance with 201 KAR 9:171, Section 2(6);

(c) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or be a physician who holds, or is in the process of completing, certification in advanced cardiac life support, and certification in advanced trauma life support or basic trauma life support, or have on file written approval from the KBML;

(d) Assume responsibilities in accordance with 201 KAR 9:171, Sections 2(1) through (5); and

(e) Assume other responsibilities as agreed upon between the medical director and the director of the ambulance service.

Section 9. ALS Ground Ambulance Providers. (1) An ALS provider shall meet the requirements of Sections 1 through 8 of this administrative regulation. It shall also meet the following additional requirements:

(a) Evidence shall be on file to verify that the ALS written medical protocols have been reviewed by the KBML.

(b) ALS services shall be provided on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through a call system or by a written mutual aid agreement with another licensed ALS provider. In order to foster development of full-time ALS coverage in counties where ALS services have not been previously available, the licensing agency may grant a waiver of the twenty-four (24) hour, seven (7) day a week requirement to a new ALS provider. A waiver of this requirement shall not exceed a period of twelve (12) months. If requested by the ALS provider, and approved by the licensing agency, additional waivers may be granted for just cause, such as inability to obtain certified paramedics.

(2) In addition to the BLS equipment required in Section 6 of this administrative regulation, at the point of patient contact and transportation, an ALS provider shall carry on each vehicle, and maintain in full operational order, the supplies and equipment as provided for in protocols established in subsection 1(a) of this section and shall include the following:

(a) An endotracheal intubation set consisting of :

1. Laryngoscope handle in adult and pediatric sizes;

2. Straight laryngoscope blades in sizes 0, 1, and 2;

3. Curved laryngoscope blades in sizes 3 and 4;

4. Extra batteries and bulbs for blades and handles; and

5. Endotracheal tubes for oral and nasal placement in adult and pediatric sizes (uncuffed tube sizes 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5; and cuffed tube sizes 5.5, 6.0, 6.5, 7.0, 7.5, and 8.0);

(b) Stylettes in adult and pediatric sizes;

(c) Magill forceps in adult and pediatric sizes;

(d) One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;

(e) Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(f) Bite block;

(g) A portable monitor defibrillator that:

1. Is capable of displaying a visual display of cardiac electrical activity;

2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range which is suitable for pediatric and adult usage;

4. Has adult and pediatric external paddle electrodes capable of utilization for immediate monitoring of heart activity and delivery of countershock in both the adult and pediatric patient;

5. Is capable of being operated from internal rechargeable batteries;

6. Has synchronized countershock capability for cardioversion. This requirement applies only to equipment purchased after the effective date of this administrative regulation;

7. Has a patient monitoring cable which has the following accessories:

a. Electrode paste or gel or equivalent;

b. Electrode pads or equivalent for use with the patient monitoring cable; and

c. One (1) additional roll of paper for hard copy printout.

(h) Needles, sterile, disposable: minimum of three (3) sizes shall be maintained in eighteen (18) to twenty-five (25) gauge;

(i) Syringes, disposable: minimum three (3) sizes shall be maintained in 1cc to 30cc sizes;

(j) Appropriate containers for the collection of blood samples;

(k) Tourniquet appropriate for use with venipuncture procedure;

(l) Dextrostix (r) or equivalent for the measure of blood glucose levels;

(m) Disposable, individually packaged antiseptic wipes;

(n) Intravenous fluids, macrodrip or microdrip fluid sets, extension sets and accessory items;

(o) Intravenous catheter over needle devices in twelve (12) to (24) gauge;

(p) Butterfly needles in nineteen (19) and twenty-three (23) gauge;

(q) Intraosseous needles;

(r) Pediatric drug dosage tape or equivalent which shall provide easy reference for pediatric and infant treatment and drug dosages;

(s) Nasogastric tubes in size 5F, 8F pediatric sizes, sizes 10 to 18 French adult, and sizes 50 or 60 cc catheter tipped syringes or equivalent;

(t) Water soluble lubricant; and

(u) Infant or neonate suction apparatus.

(3) An ALS provider shall stock and maintain drugs and medications as required by:

(a) Protocols established in accordance with Section 8 of this administrative regulation; and

(b) Local, state, and federal statutes and regulations;

(4) Controlled drugs shall be stored in a locked compartment or equivalent approved by the cabinet. An ambulance provider which stores and utilizes controlled substances shall have protocols approved by the cabinet's drug control branch.

(5) With the exception of the supplies or equipment listed in subsection (2)(p), (q), (r), and (u) of this section, and supplies and equipment listed in subsection (2), (3), and (4) of this section which require specific sizes to accommodate adult, pediatric, and infant patients, nothing in this administrative regulation shall be construed to require an ALS provider to maintain the equipment required in subsections (2), (3) and (4) of this section if the equipment is not required by the medical protocols of the ALS provider.

Section 10. Advanced Life Support Personnel. (1) Each licensed ALS ambulance shall be staffed according to the requirements of 201 KAR 9:171, Section 5.

(2) If tiered response emergency medical service vehicles are utilized by the ALS provider, the vehicles shall:

(a) Be staffed by a minimum of one (1) person who has minimum training and current certification as a paramedic.

(b) Have available the minimum equipment and supplies required by Sections 6, 7, and 9 of this administrative regulation. This may be accomplished through the coordinated response of an ambulance

from a separate ambulance provider under the provisions of a written mutual aid agreement on file with both providers.

Section 11. Specialized BLS and ALS Providers. (1) A BLS or ALS ground ambulance provider which does not provide prehospital emergency care to the general public, such as industrial based providers, neonatal transfers, and interfacility transfers requiring BLS or ALS shall be licensed as a specialized ground ambulance provider.

(2) A BLS specialized ground ambulance provider which complies with Sections 1 through 7, and 8 if applicable, of this administrative regulation, if applicable, and an ALS specialized ground ambulance provider which complies with Sections 8 and 9 of this administrative regulation, may, with prior approval by the licensing agency, be allowed certain variances.

(3) A specialized license shall specify the limitations of the provider which have been approved by the cabinet;

(4) In reference to Section 4(1) of this administrative regulation, a specialized ground ambulance provider shall not be required to provide emergency care and ambulance transportation on a twenty-four (24) hour, seven (7) days a week basis.

(5) In reference to Section 4(14)(a) of this administrative regulation, a specialized ground ambulance provider shall not be required to have an affiliation agreement with a local or regional dispatch center or 911 service.

(6) A BLS specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6 and 7 of this administrative regulation, with certain variations as approved by the cabinet.

(7) An ALS specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6, 7, and 9 of this administrative regulation, with certain variations as approved by the cabinet.

(8) A specialized emergency care provider desiring variations in equipment, supplies, or personnel shall submit the requests in writing for consideration and approval by the cabinet.

Section 12. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.

(1) Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report," (2/91).

(2) "Federal Specifications for Ambulances", KKK-A-1822 D (11/94), General Services Administration, Federal Supply Service, Washington, D.C. 20406.

Section 13. 902 KAR 20:117 is hereby repealed.

RICE C. LEACH, M.D., Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: June 30, 1995

FILED WITH LRC: July 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the

proposed administrative regulation to: W.K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 280 ground ambulance providers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. A notice of intent was published in the Administrative Register on March 1, 1995. There were no requests for a public hearing. However, this administrative regulation will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. A notice of intent was published in the Administrative Register on March 1, 1995. There were no requests for a public hearing. However, this administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this administrative regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet. Regulatory activities currently carried out by the Office of the Inspector General will be transferred to the Department for Health Services as required by HB 646 as passed by the 1994 General Assembly. The department will assign necessary staff and funding within previously approved levels.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for ground ambulance providers. This fee income and general funds will be utilized for implementation of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: A notice of intent was published in the Administrative Register on March 1, 1995. There were no requests for a public hearing. However, this administrative regulation will not have create any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation complies with the specific legislative mandate passed by the 1994 General Assembly to establish a single lead EMS agency. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services in Kentucky by reducing or eliminating overlapping authority for EMS personnel and providers at the state level.

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

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments: The purpose of this emergency regulation is to comply with HB 646 passed by the 1994 General Assembly.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Yes. Tiering is applied because this administrative regulations addresses four (4) types of ground ambulance providers for which there are separate requirements: Basic life support, advanced life support, specialized services and tiered response service.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or part or division of that local government if it operates an ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any ambulance service operated by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect a local government in any additional manner. It merely moves the licensing and regulatory functions for emergency medical services from the Office of the Inspector General to the Department of Health Services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

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.

CABINET FOR HUMAN RESOURCES Department for Health Services Division of Health Systems Development (New Administrative Regulation)

902 KAR 14:090. Air ambulance providers.

RELATES TO: KRS 211.950 to 211.958, 216B.010 to 216B.130, 216B.990(1)(2)

STATUTORY AUTHORITY: KRS 211.952, 216B.042, 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105

mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. KRS 211.952 transferred responsibility for licensing, inspecting, and regulating ambulance providers defined in KRS 211.950 to a single lead agency under the supervision and direction of the Commissioner of Health. This administrative regulation sets forth the licensure and operation requirements for air ambulance providers.

Section 1. Definitions. (1) "Air ambulance provider" is defined in 902 KAR 14:070.

(2) "FAA" means the Federal Aviation Administration.

(3) "Licensing agency" means the Cabinet for Human Resources, Department for Health Services.

Section 2. Air Ambulance Licensing. A person shall not provide air ambulance services without having first obtained a certificate of need from the Kentucky Health Policy Board (referred to as the board) and a license from the licensing agency.

(1) The license shall designate the Kentucky geographic area to be served.

(2) The licensee shall designate the number of aircraft to be operated and provide the licensing agency with identifying information such as:

- (a) Type of aircraft;
- (b) Serial number; and
- (c) Aircraft identification.

(3) Additional aircraft shall not be operated until the licensing agency has been notified and has verified that the aircraft meets the requirements of this administrative regulation. The provider shall not be precluded from utilizing a similarly equipped aircraft on a temporary basis without notifying the licensing agency if the primary aircraft is out of service for maintenance.

(4) The licensee shall inform the licensing agency of:

- (a) Arrangements for securing aircraft for temporary use, if necessary, prior to initial licensure; and
- (b) Changes which occur after initial licensure, such as change of service directors or location where aircraft shall be based.

Section 3. Standards for the Operation of an Air Ambulance Service. An air ambulance provider shall comply with the following standards:

(1) The operator of the air ambulance service shall have a valid Air Taxi or Commercial Operators Certificate issued by the FAA.

(2) The air ambulance service shall be under the medical direction of a licensed physician who shall be qualified to provide emergency services for the patient being transported and whose responsibilities shall include:

- (a) Advising the medical flight attendant of precautions to be taken prior to and during the flight;
- (b) Developing staffing requirements for air ambulance transports based on the patient's condition;
- (c) Assuring that adequate supplies and equipment shall be on board to care for the patient being transferred;
- (d) Developing patient care protocols;
- (e) Monitoring and evaluating the quality of patient care;
- (f) Providing individual consultation to air ambulance personnel; and
- (g) Developing a continuing education program for all medical flight attendants.

Section 4. Air Ambulance Transportation Personnel. (1) If an ambulance provider is transporting a patient, the service shall be staffed by at least one (1) pilot with a valid commercial operator's certificate and one (1) medical flight attendant per patient.

(2) A medical flight attendant shall be:

- (a) A certified emergency medical technician;
- (b) A certified paramedic;
- (c) A registered nurse; or
- (d) A licensed physician.

(3) An attendant shall remain with the patient at all times during transport.

(4) If the air ambulance service transporting a patient is operating as an advanced life support unit, the medical attendant for each patient shall be:

- (a) A certified paramedic;
- (b) A registered nurse; or
- (c) A licensed physician.

Section 5. Air Ambulance Equipment and Communication. (1) An air ambulance provider shall provide emergency care equipment as required by 902 KAR 14:080, Section 6. The equipment shall be stored on board or in modular prepackaged form to be available for rapid loading and easy access aboard the aircraft at the time of response to a call.

(2) There shall be a means of securing the litter and attached patient.

(3)(a) The vehicle used by the provider shall have radio capability to communicate:

- 1. Ground-to-air;
- 2. Air-to-air; and
- 3. Air-to-ground.

(b) The radio capability shall include two (2) way radio communication equipment:

- 1. Compatible with the statewide ambulance to hospital emergency radio communications system; and
- 2. Capable of communicating with:
 - a. Ground personnel to properly coordinate the landing;
 - b. Physicians directing patient management; and
 - c. Primary medical responders on the ground who may be caring for the patient.

(4) If the air ambulance provider is operating as an advanced life support unit, the provider shall also:

- (a) Meet the requirements of:
 - 1. 201 KAR 9:161, Section 3(6); and
 - 2. 201 KAR 9:171, Section 7;

(b) Store controlled drugs in a locked compartment or equivalent approved by the cabinet. An air ambulance provider which utilizes controlled substances shall have protocols approved by the Drug Control Branch of the cabinet.

(5) If the flight attendant referred to in Section 4(1)(a) of this administrative regulation is a registered nurse or physician, the flight attendant shall follow the protocols of the medical director relating to:

- (a) Authorized procedures and drugs in addition to those referred to in subsection (4)(a)1 of this section; and
- (b) Equipment and supplies in addition to those referred to in subsection (4)(a)2 of this section.

Section 6. Air Ambulance Records and Reports. (1) An air ambulance provider shall keep accurate records and reports concerning the transportation of an emergency patient which shall be maintained at the headquarters of the licensee and shall be available for periodic review as deemed necessary by the licensing agency.

(2) The provider shall provide a full record to the receiving facility of any treatment administered at the pickup location or during transit. Required records and reports shall include:

(a) The "Kentucky Emergency Medical Service Ambulance Run Report", Form EHS-8A, incorporated by reference, or equivalent provider specific transport record acceptable to the licensing agency. The record shall be completed and forwarded to the Cabinet for Human Resources in accordance with submission dates established by the cabinet; and

- (b) Employee records which contain:

1. A resume of employee training and experience; and
2. Evidence of current certification.

Section 7. Material Incorporated by Reference. Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report," (2/91) is incorporated by reference and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 7. 902 KAR 20:155 is hereby repealed.

RICE C. LEACH, M.D., Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: June 30, 1995

FILED WITH LRC: July 13, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1995 at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1995 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W.K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Robert Calhoun

(1) Type and number of entities affected: 13 currently licensed air ambulance providers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. A notice of intent was published in the Administrative Register on March 1, 1995. There were no requests for a public hearing. However, this administrative regulation will have no effect on the cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. A notice of intent was published in the Administrative Register on March 1, 1995. There were no requests for a public hearing. However, this administrative regulation will have no effect on the cost of doing business in the state.

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

1. First year following implementation: There are no additional compliance, reporting, or paperwork requirements required in this regulation.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional costs or savings within the cabinet. Regulatory activities currently carried out by the Office of the Inspector General will be transferred to the Department for Health Services as required by HB 646 as passed by the 1994 General Assembly. The department will assign necessary staff and funding

within previously approved levels.

2. Continuing costs or savings: As above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements required in this regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state or local revenues attributable to the requirements of this regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will continue existing licensing fees for air ambulance providers. This fee income and general funds will be utilized for implementation of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: A notice of intent was published in the Administrative Register on March 1, 1995. There were no requests for a public hearing. However, this regulation will not have create any additional economic impact on providers or the public.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation complies with the specific legislative mandate passed by the 1994 General Assembly to establish a single lead EMS agency. No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: When fully implemented, this administrative regulation will have a beneficial effect on the public's health in terms of improving the quality of ambulance services in Kentucky by reducing or eliminating overlapping authority for EMS personnel and providers at the state level.

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

(c) If detrimental result would result, explain detrimental effect: No

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this regulation.

(a) Necessity or proposed regulation if in conflict:

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

(10) Any additional information or comments: The purpose of this administrative regulation is to comply with HB 646 passed by the 1994 General Assembly.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering was not applied because this administrative regulation applies to all air ambulance providers in Kentucky regardless of location; all Kentuckians, whether urban or rural, are equally served and protected by this regulation of air ambulance providers.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or part or division of that local government if it operates an air ambulance service. At this time, no local governments operate an air ambulance service.

3. State the aspect or service of local government to which this administrative regulation relates. Any air ambulance service operated

by the local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation does not affect a local government in any additional manner. It merely moves the licensing and regulatory functions for emergency medical services from the Office of the Inspector General to the Department of Health Services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None
2. State compliance standards. None
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.

CABINET FOR HUMAN RESOURCES Department for Social Services (New Administrative Regulation)

905 KAR 7:250. Kentucky Educational Collaborative for State Agency Children.

RELATES TO: KRS Chapters 158, 161, 605, 610, 630, 635, 640, 645

STATUTORY AUTHORITY: KRS 158.135, 194.050, 605.110

NECESSITY AND FUNCTION: KRS 605.110 requires that children maintained in a facility or program operated by the Cabinet for Human Resources shall so far as possible maintain a common school education. This administrative regulation sets forth policies for complying with KRS 158.135 and 605.110 in Department for Social Services (DSS), Division of Youth Services (DYS), residential, day treatment programs, and group homes; other programs operated, contracted, or financed through the Cabinet for Human Resources serving committed youth, private child caring agencies serving committed children and children, other than foster children, who are in placements financed through the Cabinet for Human Resources.

Section 1. Definitions. (1) "Cabinet for Human Resources programs" means both state-operated and state-contracted or financed programs.

(2) "Department" means the Department for Social Services (DSS), Cabinet for Human Resources.

(3) "Educational administrative staff" means a principal, assistant principal, supervisor, coordinator, director, pupil personnel worker or guidance counselor employed or contracted by the Kentucky Educational Collaborative for State Agency Children to provide educational services.

(4) "Head teacher" means the lead teacher, principal, or lead educator designated by the local district or by the Kentucky Educational Collaborative for State Agency Children (KECSAC) to be responsible for the operation of the daily education program. The program director may also be the head teacher in some facilities, if they have appropriate educational certification.

(5) "Individual education program (IEP)" means the instructional program required for state agency children identified as having educational disabilities as governed by 707 KAR 1:210.

(6) "Individual plan of instruction (IPI)" means the instructional plan required for state agency children not identified as having educational disabilities.

(7) "Individual treatment plan (ITP)" means a social and behavior-

al intervention plan, including the plan for educational instruction, that is developed for each state agency child being served by a treatment institution or facility.

(8) "Instructional calendar" means the yearly schedule of educational events, including instructional, recreational, and teacher professional development days, holidays and noninstructional days.

(9) "KDE" means the Kentucky Department of Education.

(10) "KECSAC" means the Kentucky Educational Collaborative for State Agency Children.

(11) "KERA" means Kentucky Education Reform Act.

(12) "Local school district" means the school district where state agency children are provided educational services.

(13) "On-site state agency school program" means a school program operated on the campus of a state residential facility or day treatment program. Other private facilities may apply to KECSAC for status as an on-site state agency school program.

(14) "Program director" means the administrator at a state-operated or contracted institution or day treatment facility or administrator of a private child care agency that is responsible for the safety and security of youth and staff and the operation of the treatment facility.

(15) "Private child care agency" means a private, not state-operated program, which provides care or treatment for committed children on a per child contractual or financed basis.

(16) "SAEC" means State Agency Education Council that functions as the school based decision making body for state agency children at on-site state agency school programs.

(17) "School" means the site where the educational program for state agency children is provided.

(18) "State agency children" means those children of school age committed to or in the custody of the Cabinet for Human Resources and placed in a Cabinet for Human Resources operated or contracted institution, facility or day treatment program, or placed or financed through the Cabinet for Human Resources in a private facility pursuant to child care agreements other than those for foster care; and those children of school age in home and community based services provided as an alternative to intermediate care facility services for mentally retarded as governed by KRS 158.135(1)(a).

(19) "State agency children's fund" means appropriations to support KRS 158.135 previously known as out-of-district funds.

(20) "Treatment" means the total array of services utilized to produce a positive change in children served by the treatment facility.

Section 2. Governance. (1) An advisory board for the Kentucky Educational Collaborative for State Agency Children (KECSAC) composed of twelve (12) members appointed by the Governor shall provide recommendations in policy development. The advisory board shall meet at a minimum biannually.

(2) Contracting procedures.

(a) The department shall contract with a university training resource center for the establishment of the KECSAC. The KECSAC shall be responsible for the oversight or administration of state and federal education funding and the provision of educational services to state agency children. The KECSAC shall be financed by the state agency children's fund. The KECSAC shall have knowledge and experience in the following:

1. Kentucky Education Reform Act (KERA), and Kentucky's system of schools;

2. State and federal statutes pertaining to youth with educational disabilities, e.g. Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act;

3. Kentucky Unified Juvenile Code and the operation of agency programs for juvenile offenders, status offenders and dependent children; and

4. Research regarding the education of at-risk, incarcerated and difficult to motivate youth.

(b) KECSAC shall cooperatively plan programs and state agency

children's fund budgets with the department, KDE, State Agency Education Councils (SAEC) and local school districts providing programs to state agency children. Local school districts shall be notified of projected funding levels by KECSAC by February, for the following school year.

(c) The KECSAC application to the department shall contain educational goals and objectives for the biennium for which funding is requested. The goals and objectives shall be consistent with KERA mandates, and the mandates of the Individuals with Disabilities Education Act. The educational goals and objectives shall be compatible with and complementary to the treatment goals for state agency children.

(d) The KECSAC with the cooperation of the department and KDE shall develop written procedures for the operation of the statewide education system for state agency children.

(3) Staffing.

(a) Teachers and other educational staff shall be employed or contracted with through the local school district where the treatment facility is located.

1. If the local school district is not able or willing to provide the educational personnel for the state agency children's treatment facility, the KECSAC:

a. Shall be notified in writing no later than January 1 prior to the start of the school year;

b. May contract with another school district for educational staff; or

c. Contract to employ teachers or educational staff.

2. When filling a teacher vacancy in a state-operated or contracted facility the local school district or KECSAC shall provide the state agency program director an opportunity to interview prospective new teachers for the on-site state agency school program. The state agency program director shall provide the local school district with interview results regarding the applicants suitability for teaching in the on-site state agency school program.

(b) Educational administrative staff, supervisors and teachers employed or contracted by the KECSAC shall meet Kentucky education certification requirements and shall be annually evaluated. Educational staff employed by school districts shall be evaluated in accordance with local school district policy. The KECSAC shall develop procedures for evaluating staff employed directly by the KECSAC.

(c) Each on-site state agency school program shall designate a head teacher.

(d) Education staff directly employed by the KECSAC shall be compensated at rates at least commensurate with public school employees with comparable qualifications, experience and assignments in the school district where the treatment facility is located. Statewide KECSAC positions shall be compensated at rates comparable to the average of education positions with similar responsibilities, credentials and experience providing education to state agency children.

(e) On-site state agency children programs shall have a minimum of one (1) certified special education teacher on staff by the 1995-96 school year. The employment of special education certified teachers shall reach at least one-half (1/2) of the total instructional teachers (excluding Chapter 1 teachers) employed in each state agency program by the school year 1996-97. If the on-site state agency school program has children appropriately identified as having educational disabilities the teacher's certification shall be appropriate for the children served. Exceptions shall be made only with the agreement of the agency treatment facility, the local school district, the Division of Exceptional Children's Services in KDE and KECSAC.

(f) Other specific services identified in an IEP by the admission and release committee as needed for a youth with educational disabilities may be accessed by KECSAC contracting for appropriate services. The KECSAC shall comply with the administrative regulations relating to youth with disabilities as provided in 707 KAR

Chapter 1.

(4) State Agency Education Council (SAEC). Pursuant to KERA requirements related to school-based decision making councils, state agency education programs may, upon a two-thirds (2/3) majority vote of the site's teachers, establish a state agency education council through an agreement with the KECSAC and the local school district.

(5) Policy application. Interagency agreements shall be developed between each local school district and residential agency regarding their mutual responsibility for education and care of state agency children. If a conflict arises between the local agencies regarding the development or fulfillment of the interagency agreement by either party, it shall be resolved by the KECSAC.

(6) Student eligibility. If a specific activity (e.g., football, debate, etc.) is not provided to youth in a state or private contracted agency program, the youth shall not lose eligibility to participate based on the requirements in 702 KAR 7:070. Eligibility shall be figured on a month-to-month basis (e.g., nine (9) months in a DSS facility without a formal football program leaves nine (9) months of eligibility in a local school district). The eligibility period shall not exceed one (1) additional year. Other eligibility criteria however, shall be met by the youth.

Section 3. Finance. (1) The amount of funds generated by state agency children under the Support Education Excellence in Kentucky (SEEK) Program as specified in KRS 157.360 for the guaranteed SEEK base and adjustments shall be sent to the school district providing education for state agency children to be used pursuant to contracts negotiated with the KECSAC.

(2) Distribution of state agency children's funds shall be as follows:

(a) State agency children's funds shall be used to fund the contract for the KECSAC.

(b) State agency children's funds shall be used to provide the local school district portion of the calculated base SEEK funding per child for children in residential placements.

(c) State agency children's funds may be used for educational services which benefit state agency programs in a collective manner.

(d) State agency children's funds may be used as matching funds if the match shall increase the amount of funds available to educate state agency children.

(e) After paragraphs (a), (b), (c) and (d) of this subsection have been funded the remainder of the state agency children's fund appropriation shall be divided by the total number of state agency children to be educated. The resulting per pupil amount shall be allocated for each state agency child. A state agency child identified with a disability shall have a weighted allocation in accordance with the SEEK add-on for exceptional children as governed by 702 KAR 3:270.

(f) If the state agency children's fund is appropriated with separate funds designated for state-operated and private child care programs the funds shall be averaged separately.

(3) The KECSAC shall contract with local school districts where state agency programs are located. If KECSAC provides educational services to state agency children, the KDE shall annually deduct the SEEK base and adjustments for children in day treatment programs, or the SEEK base plus adjustments less the local portion for children in residential and group homes from the school district that chose not to provide services. This amount shall be used by the KECSAC to provide educational services to state agency children.

(4) The KECSAC shall be considered the same as a school district for the generation, application, distribution and accountability of state and federal funds, other than SEEK, available to educate on-site state agency school children.

(5) An annual contract or memorandum of agreement shall be negotiated between the KECSAC and each school district providing education to state agency children. Funds shall be audited annually. An itemized budget shall be part of the contract. State agency

children's funds shall be based upon average daily membership (ADM). Each state agency children's program shall be assigned a biennium maximum rated capacity by the Cabinet for Human Resources which shall provide the basis for the generation of funds, identified in KRS 605.110, for the projected education budget.

(6) The State Agency Children's Fund as specified in KRS 158.135 shall be sent to the local school district from KDE upon approval the KECSAC and the Cabinet for Human Resources. Budgeting procedures utilized for the school year 1993-94 shall be utilized as part of the 1994-96 biennial plan for allocation of funds. By the 1996-1998 biennium, the KECSAC shall design and phase in an equitable system to distribute these funds.

(7) The KECSAC as part of the contract with each local school district shall ensure the development of a plan for professional development of certified staff. If the local school district has chosen not to provide the educational services to state agency children, the KECSAC with the State Agency Education Council, if established, shall develop and present to the KDE a plan for professional development.

(8) The KECSAC may submit to the KDE a master technology plan for on-site state agency children's programs. The KECSAC shall receive a direct allocation of technology funds which shall be matched by state agency children's funds.

(9) Pursuant to KRS 157.190, 157.110, and 160.330 the KECSAC staff shall, as part of the biennial budget plan, make a request to the Commissioner of KDE for the textbook needs of state agency children. The State Agency Educational Councils, if established, shall provide the KECSAC with projected textbook needs for the children in their specific state agency program.

(10) The KECSAC shall obtain information from the Kentucky Department of Education and the Workforce Development Cabinet regarding all discretionary and entitlement state, federal and miscellaneous funding opportunities available to local school districts and file applications or reports necessary to procure and use funds for the education of state agency children.

(11) If the Cabinet for Human Resources is opening or contracting for a new program or expanding an existing program for treatment services, the Cabinet for Human Resources shall notify KDE and KECSAC prior to the biennial budget submission regarding the projected number of youth to be educated in the new or expanded program. The education budget for the new program shall be based on rated capacity for the first year.

(12) The KECSAC shall submit an application for adult education services for youth age sixteen (16) years and above who are committed to the Cabinet for Human Resources and shall use funds received to provide adult basic education services to eligible youth. These funds shall not be used concurrently during the six (6) hour base school day funded by SEEK and state agency children's funds.

(13) If youth age sixteen (16) years through twenty (20) enter with or receive a GED while attending a state agency program as permitted by an agreement with adult education that youth may continue in the state agency program for further KERA mandated academic and vocational training and if so continue to generate SEEK funds if still working toward a high school diploma.

(14) By June 30, 1995 and annually thereafter, the Cabinet for Human Resources, Departments for Social Services and Mental Health and Mental Retardation and Medicaid, the Kentucky Department of Education, the Workforce Cabinet and other appropriate agencies shall develop an interagency agreement defining services and financial responsibilities of each state and local agency providing educational services for state agency children. The agreement shall include procedures for resolving interagency disputes.

Section 4. Operations. (1) School options for state agency children with an IEP shall be planned, when not restricted by treatment needs, using the least restrictive alternative continuum plan based on specific child needs. Additional days beyond the school

year may take place either at the local public school or on the state agency program site. If the state agency child is not restricted to the treatment site for security purposes, the continuum from least restrictive to most restrictive alternatives are as follows:

(a) A program for state agency children may send all of its children to be educated in the local public school where children in the local public school district are assigned or where their IEP indicates placement.

(b) A program for state agency children may send some of its children to be educated in the local public school as in paragraph (a) of this subsection and have on-site state agency school option for other children.

(c) A program for state agency children may have an on-site state agency school for all children due to reasons necessary for the conditions of placement in the state agency program.

(2) Assessments.

(a) KECSAC shall develop procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas and utilize health data obtained in the state agency program in order to determine educational objectives for the individual education and treatment plans. Educational goals and objectives shall be consistent with goals specified in each youth's individual treatment plan.

(b) If the youth is suspected to have an educational disability as governed by 707 KAR 1:180 and 1:190 an assessment shall be administered, following required due process procedures.

(c) School psychologists may be employed or contracted by the KECSAC for purposes of identifying educational, psychological or behavioral problems.

(3) In school districts providing educational services, the KECSAC staff and local school district staff shall coordinate the completion of required individual education plan pursuant to 707 KAR 1:180 and 1:190.

(4) Instructional services.

(a) The teacher pupil ratio for on-site state agency school programs serving state agency children shall be no more than ten (10) students to one (1) teacher without a classroom aide and fifteen (15) students to one (1) teacher with a classroom aide or comply with 707 KAR 1:230 relating to students with educational disabilities.

(b) An individual plan of instruction shall be developed for state agency children with goals and objectives that relate to the education goals set out in KRS 158.6451. The individual plan of instruction shall be developed in coordination with the ITP. If a youth is determined to have an educational disability the IEP requirements as governed by 707 KAR 1:180 shall apply.

(c) A 230 day school calendar year shall be in operation unless specified otherwise in the youth's ITP. The head teacher in consultation with the local school district and program director shall submit a 230 day school calendar to the KECSAC with the annual contract for services. The calendar shall specify instructional, professional development, holiday and vacation days for the school year beginning July 1 of the contract year.

(d) State agency children who are fourteen (14) years of age or older who do not have an identified educational disability with an IEP and who do not read at a sixth grade level as measured by a standardized achievement test, shall be provided developmental reading, listening and writing instruction.

(5) Accountability.

(a) State agency children shall have the same assessments administered as other public school youth in A-5 and A-6 schools as specified in 703 KAR 4:080. The average daily attendance data for day treatment programs and the results of the assessments shall be included in the accountability index of the last A-1 school the youth attended prior to admittance to a state agency program or the A-1 school the youth would have attended if the youth had remained in that local school district.

(b) State agency children shall develop portfolios consistent with

the content requirements of the state's assessment program. A youth's portfolio shall be sent to the receiving school as part of the educational records when youth transition from the state agency program.

(c) An accountability system shall be designed by the KECSAC for state agency school programs.

(d) State agency children's school programs shall be in compliance with accreditation standards of the American Correctional Association and the Correctional Educational Association, if appropriate and if consistent with the KECSAC mission and school goals set out in KRS 158.6451.

(6) Transition.

(a) The KECSAC shall develop transition procedures for state agency children moving from the state agency education program to the next instructional or vocational setting. The transition procedures shall address responsible staff, timelines, format of information to be transmitted, support systems necessary and follow-up schedules.

(b) The transition planning to post school settings shall comply with the transition plan and service requirements of Individuals with Disabilities Education Act (IDEA) for students with educational disabilities and 707 KAR 1:220.

(c) The KECSAC shall design and implement a system to collect school follow-up data.

(d) The last school or school district a state agency youth attends prior to placement in a state agency program shall be responsible for forwarding the educational records to the state agency program within five (5) school days of receipt of the request. Upon receipt of the school records, the state agency program shall notify the sending school district office of the pupil personnel director, that the child is now in school attendance and not a drop out.

(e) The head teacher shall insure that the educational records of state agency children be forwarded to the receiving school within five (5) school days following the release of the youth from the treatment facility.

PEGGY WALLACE, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: June 13, 1995

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

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 21, 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 August 16, 1995: William K. Moore, Office of General 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 include nearly 4,000 court-committed and diverted youth who are served in 48 programs including residential facilities, group homes, day-treatment centers, and re-education programs operated or contracted by the Cabinet for Human Resources to serve as juvenile corrections for Kentucky and the 23 local educational agencies providing services to state agency children statewide as well as other local school districts that may be added in the effort to serve state agency children. In addition, some of these youth are served in private child care programs and Department of MH/MR operated or contracted programs.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: Direct and indirect costs or savings to those affected include the provision of a high quality

educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education; the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates; the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children; and the provision that all state and federal educational funds available to school districts are also available to educate state agency children. No hearing was requested as a result of the Notice of Intent being published but written comments were received and a Statement of Consideration was completed.

(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: Additional factors increasing or decreasing the costs of services to state agency children include the number of youth committed to the cabinet and their specific educational and treatment goals, the number of local educational agencies participating and the continued implementation of KERA requirements for school districts. There may be additional cost of doing business for the local school district providing services to state agency children as identified in HB 826 enacted by the 1994 General Assembly. No hearing was requested as a result of the Notice of Intent being published but written comments were received and a Statement of Consideration was completed.

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

1. First year following implementation: With the establishment of the KECSAC there will be some additional reporting and paperwork requirements for all affected entities as the KECSAC develops procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas, transitions from the treatment programs to the next instruction or vocational setting, collection of follow-up school data, and the development of programs and budget requests for each school year. Additional paperwork and reporting requirements may be imposed as the KECSAC in cooperation with the Department for Social Services and Kentucky Department of Education develop written procedures for the operation of the statewide education system for state agency children. Reporting and paperwork requirements will be consistent in collection and utilization efforts.

2. Second and subsequent years: During the second and subsequent years there may a decrease in the compliance, reporting and paperwork requirements as the KECSAC, the local school district, DSS and KDE develop written procedures for the operation of the statewide education system for state agency children. Reporting and paperwork requirements will be consistent in collection and utilization efforts.

(3) Effects on the promulgating administrative body: The effect on the promulgating agency is in the development of a contract with the KECSAC that with collaboration of the Kentucky Department of Education will include the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education; the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates; the availability of funds to educate state agency children equal to funds available to local school districts; and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children. The accomplishment of these goals will ensure the Department for Social Services meets statutory mandates pursuant to KRS 605.110 and 620.145.

(a) Direct and indirect costs or savings: Direct and indirect costs or savings to the agency include the provision of a high quality educational support service through a collaborative delivery system

involving local education agencies, the Department for Social Services, and the Kentucky Department of Education, the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates, educational funds will be available so CHR treatment funds are not diverted for educational purposes, and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

1. First year: First year direct and indirect costs or savings include the development of the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education, the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates, educational funds will be available so CHR treatment funds are not diverted for educational purposes, and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

2. Continuing costs or savings: Continuing direct and indirect costs or savings to the agency include the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education, the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates, and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

3. Additional factors increasing or decreasing costs: Additional factors increasing or decreasing the costs of services to state agency children include the number of youth committed to the cabinet and their specific educational and treatment goals, the number of local educational agencies participating and the continued implementation of KERA requirements for school districts. Using educational funds for educational purposes negates the use of treatment funds to educate state agency children.

(b) Reporting and paperwork requirements: With the establishment of the KECSAC there will be some additional reporting and paperwork requirements for all affected entities and the agency as the KECSAC develops procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas, transitions from the treatment programs to the next instruction or vocational setting, collection of follow-up school data, and the development of programs and budget requests for each school year. Additional paperwork and reporting requirements may be imposed as the KECSAC in cooperation with the Department for Social Services and Kentucky Department of Education develop written procedures for the operation of the statewide education system for state agency children. The reporting will be consistent in format and collection which will enable staff to analyze the data for the development of programs and budget request.

(4) Assessment of anticipated effect on state and local revenues: The anticipated effect on local revenues is that the local school district may experience increased or decreased costs based upon the number of youth committed to the cabinet and their specific education and treatment goals, the continued implementation of KERA requirements and the implementation of HB 826 which expands the definition of state agency children to include those children placed or financed through the cabinet in a private facility pursuant to a child care agreement and those children of school age in home and community based services provided as an alternative to intermediate care facility services for persons with mental disabilities as governed by KRS 1589.135(1)(a).

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation includes funds generated by state agency

children under the SEEK program, pursuant to KRS 157.360, for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs; a per pupil distribution of professional development funds, pursuant to KRS 156.0951; a per pupil distribution of technology funds, pursuant to KRS 156.670; a per pupil distribution of textbook funds, pursuant to KRS 157.100 and 157.190; funding for school services for state agency children authorized by KRS 158.135 and other available grants and entitlements.

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

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published but written comments were received and a Statement of Consideration was completed. There was some concern that the amount appropriated is not sufficient to cover actual costs to the local school district.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published but written comments were received and a Statement of Consideration was completed. There was some concern that the amount appropriated is not sufficient to cover actual costs to the local school district.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods of financing the KECSAC were considered including flowing the funds through the Cabinet for Human Resources in order to provide a more flexible program that could be adapted to the educational needs of the state agency children. This alternative method would have enabled the cabinet to do collective or regional educational programming to benefit state agency children (i.e., sharing of specialists such as psychologists, art and music teachers etc.) which is not possible when all funds are forwarded directly to the local school district. This alternative method was not accepted as it would have exceeded statutory authority as both statute and budget bill language provide for the flow of SEEK and out-of-district funds to go directly from KDE to the local school district.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health and environmental welfare of the geographical areas but the expected benefits include: the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education; the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates; the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children; and the provision that all state and federal educational funds available to school districts are also available to educate state agency children.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect on the environment and public health if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect on the environment and public health if this administrative regulation is not implemented.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed administrative regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed administrative regulation.

service delivery and outcome.

(10) Any additional information or comments: The cabinet will monitor the contract with the KECSAC to ensure that funds generated by state agency children will be used by the districts to provide needed educational services to state agency children. Alternative methods of financing the KECSAC may be considered including flowing the funds through the Cabinet for Human Resources in order to provide a more flexible program that could be adapted to the educational needs of the state agency children. This alternative method may enable the cabinet to do collective or regional educational programming to benefit state agency children (i.e., sharing of specialists such as psychologists, art and music teachers, etc.) which is not possible when all funds are forwarded directly to the local school district. There are no additional information or comments of which were aware.

(11) TIERING: Is tiering applied? No. Tiering was not applied as this administrative regulation establishes the KECSAC which will coordinate the development of written procedures for the operation of the statewide education system for state agency children.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. The unit or division of local government affected by this administrative regulation is the local school board.

3. State the aspect or service of local government to which this administrative regulation relates. KRS 605.110 establishes provisions relating to the education of state agency children and the responsibilities of both the Kentucky Educational Collaborative and the participating local school district. This administrative regulation implements the provisions of KRS 605.110(e) authorizing the Cabinet for Human Resources, with the assistance of the Kentucky Department of Education and the recommendation of the State Board of Elementary and Secondary Education, to promulgate administrative regulations relating to governance curriculum and other topics necessary to educate state agency children as governed by KRS 158.135.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is in effect.

Revenues:

Expenditures: The department is unable to fully estimate the effect of this administrative regulation on the expenditures of the local school districts as there are a number of factors that may increase or decrease the cost to the local school district including the number of youth committed to the cabinet and their specific educational and treatment goals, the number of local educational agencies participating and the continued implementation of KERA requirements for school districts. Additionally there may be additional cost to the local school district providing services to state agency children as identified in HB 826 enacted by the 1994 General Assembly.

Other Explanation: This administrative regulation was promulgated to establish, through the guidelines, goals of the KECSAC to provide: high quality educational support services through a collaborative delivery system involving local educational agencies, the KDE and the DSS, administrative services and leadership in an efficient and cost-effective manner, that are in compliance with the Kentucky Education Reform Act and other state and federal mandates; and a comprehensive evaluation of the effectiveness of the delivery of educational services to SAC, including the administrative process,

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the July 10, 1995

The July meeting of the Administrative Regulation Review Subcommittee was held on Monday, July 10, 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 June 5, 1995 meeting were approved.

Present were:

Members: Representative Jesse Crenshaw, Chairman; Senators John David Preston, Nick Kafoglis, Fred Bradley; Representatives Woody Allen, Jim Bruce and Tommy Lee.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines, Cindy Schweickart.

Guests: Lori H. Flanery, Jill LeMaster, Executive Branch Ethics Commission; Mack Bushart, State Board of Elections; Johnny R. Keene, Department of Personnel; Richard Carroll, Board of Accountancy; James P. Daniels, John Grant, Real Estate Appraisers Board; John Phillips, Department of Fish and Wildlife Resources; Phillip Shepherd, Robert W. Ware, Martha Hall, Julie B. Duncan, Michael R. Mills, Scott Hankla, R. Bruce Scott, Marlana Chamberlain, Tom VanArsdall, Bob Logan, Clifford C. Schneider, Jr., William H. Martin, Natural Resources and Environmental Protection Cabinet; Sarah Jackson, Division of Charitable Gaming; Susan Alley, Department of Corrections; Sandra G. Pullen, Transportation Cabinet; Betty Lindsey, Department of Education and Education Professional Standards Board; Carla H. Montgomery, Department of Insurance; Michael D. Alexander, John David Myles, Public Service Commission; Danna Droz, Edward Crews, Karan Sullivan, Ked Fitzpatrick, Anita Moore, Dr. Robert Fowler, Jr., Robert Calhoun, Cathy Mobley, Annie Hager, Cookie Whitehouse, Cabinet for Human Resources; Sherry M. Cooper, Health Policy Board; Alex Smith, UK Center for Rural Health; Mike Wilder, Roy Wilder, Con-Care; James Carlross, Kentucky Association of Realtors; David Sauer, Ashland Petroleum; David Drake, East Kentucky Power; Carl Sumner, State Farm; James M. Manakee, Manakee P.M.T. Service, Inc.; Robert L. Barnett, Jr., Kentucky Pharmacists Association; Tod Griffin, Jan Gould, Kentucky Retail Federation; Jack Underwood, Union Underwear; Bill Caylor, Kentucky Coal Association; Tony Sholar, John Brazel, Kentucky Chamber of Commerce; Ann Louise Chevroual, Attorney General's Office; Caryl M. Pfeiffer, Kentucky Utilities Company; Bruce Clark, Stites & Harbison; Kelly Ranvier Swartz, McBrayer, McGinnis, Leslie & Kirkland; Carl Breeding, Breeding, McIntyre & Cunningham.

The Subcommittee found the following administrative regulations deficient:

Cabinet for Human Resources: Department of Health Services: Emergency Medical Services and Ambulance Service Providers

902 KAR 14:060 & E. Nonemergency health transportation services. Robert Calhoun, representing the Department testified in favor of this administrative regulation; and the following persons spoke against this administrative regulation: Bruce Clark, counsel of record for Manakee Professional Medical Transfer Service, Inc., Medical Transportation Service, and Concure Medical Transport; James Manakee, President, Manakee Professional Medical Transfer Service, Inc.; Mr. Roy Wilder, Concure Medical Transport; and Mike Wilder, Concure Medical Transport.

Mr. Calhoun stated that: (1) this administrative regulation replaced 902 KAR 20:120 that was found deficient in 1994 because it prohibited the use of lights and sirens by nonemergency health transportation vehicles; (2) after 902 KAR 20:120 was found deficient responsibility for licensing all forms of ambulance and related transportation was transferred from the Office of the Inspector General to the Department; and (3) this administrative regulation: (a) does not prohibit the

use of lights and sirens by nonemergency health transportation vehicles; (b) governs the transportation provider who provides specialized medical transportation to people who: 1. do not require full emergency ambulance services or any medical care during transport; and 2. require specialized medical transportation because they are bedfast, wheel-chair bound, or cannot walk; and (c) requires the minimum level of staffing, one person who may also serve as the driver, and minimum medical equipment including a first-aid kit, fire extinguisher, and medical oxygen, that had been required by 902 KAR 20:120.

Mr. Clark stated that: (1) this administrative regulation: (a) was not as innocuous as it appeared because it would terminate and bankrupt the providers that are governed by it; (b) was promulgated pursuant to a statute that defines "ambulance" and makes no distinction between an "emergency ambulance" essential for medical trauma, and "nonemergency ambulance" for the nonemergency transport of those requiring specialized medical transport, such as the transport of a person to a hospital for dialysis treatment; and (c) contains essentially the same requirements contained in 902 KAR 20:120 and other versions in existence since 1980; (2) nonemergency medical transport was begun and provided at the request of the Cabinet to assist older Kentuckians to receive health care; (3) persons who are provided nonemergency medical transportation were reimbursed by Medicare for the cost of the transportation; (4) nonemergency medical transportation has been to such persons provided at low cost, on nonemergency runs, and without providing emergency services; (5) Medicare: (a) for reasons as yet unexplained, determined that, for Medicare reimbursement purposes, an ambulance must be one called for an emergency run; and (b) has stopped reimbursement for nonemergency transport; (6) the issue of Medicare refusal to reimburse: (a) was not before the Subcommittee in its consideration of this administrative regulation; and (b) is being challenged; (7) believed it was important that this administrative regulation comply with state law, and the issue of its compliance with state law was before the Subcommittee; (8) although Medicare has required medical transport to be provided by an emergency ambulance, state law does not require transport by an emergency ambulance; (9) the Cabinet has issued providers a letter stating that they are providing ambulance services; (10) the license issued providers of nonemergency medical transport is, in fact, an ambulance license; (11) by retaining two categories of ambulance services, this administrative regulation does not comply with state law because it does not cure the Subcommittee finding that of 902 KAR 20:120 was deficient because the Cabinet's establishment of two categories of ambulances, emergency and non emergency, was contrary to the provisions of applicable statutes that established only one category, "ambulance"; (12) the Medicare determination not to reimburse was based on the state determination that nonemergency medical transportation services are not emergency ambulances; (13) the need for which nonemergency ambulance services were issued a Certificate of Need is the need for the nonemergency transportation medical service they provide; (14) emergency ambulances cannot and should not provide nonemergency transportation services; (15) even though this administrative regulation requires one vehicle staff person to be EMT, paramedic, EMT first responder certified, or a licensed nurse or physician, it prohibits nonemergency medical transport service from providing emergency services; (16) this prohibition would prohibit the administration of necessary emergency care that would arise on the occurrence of an unexpected medical emergency during nonemergency medical transport, even though there were trained staff on board to administer emergency treatment; (17) this administrative regulation will put nonemergency medical transportation providers out of business, and preclude nonemergency medical transportation; and

(18) this administrative regulation should be amended to: (a) change the definition of ambulance to include a basic life support; and, (b) while maintaining the prohibition against nonemergency services answering an emergency call, permit them to administer emergency treatment upon an unexpected medical emergency during transport.

At the request of Chairman Crenshaw, the Regulations Compiler notified the Department that: (1) the emergency administrative regulations 902 KAR 14:070, 902 KAR 14:080, and 902 KAR 14:090 will expire September 18, 1995; (2) unless the ordinary administrative regulations were filed soon enough to be published in the October 1, 1995 Administrative Register, the emergencies will expire; (3) even if filed early enough to be published in the October 1, 1995 Administrative Register, the emergencies will expire if a public hearing is held and the administrative regulations are delayed; and (4) the ordinary administrative regulation for 902 KAR 14:060 has been filed and is before the Subcommittee, today. Subcommittee staff stated that because: (1) 902 KAR 14:060 and 902 KAR 14:070 were interrelated; (2) expiration of 902 KAR 14:070 would result in the term "NEHT" not being defined, the term "NEHT" in the definitions section of 902 KAR 14:060 is actually defined in 902 KAR 14:070 by a cross reference to the latter administrative regulation; and (3) enforcement of the administrative regulation pursuant to the definition would be impossible.

Representative Bruce stated that if nonemergency medical transportation services did not exist, more expensive emergency ambulance services would have to be used, and that this would result in greater cost to patients, the state, and Medicare. In response to questions by Representative Bruce on the Subcommittee's finding of deficiency of 902 KAR 20:120 and subsequent legislation enacted during the Session, Subcommittee staff stated that: (1) although amendments were made, it is unclear whether the failure to amend the statute that established only one category of ambulance resulted in a failure to cure the deficiency found by the Subcommittee; and (2) only in the statutes relating to Certificate of Need, are separate categories of medical transport services, emergency and nonemergency, established; (3) statutes governing licensure were not amended to define establish categories of ambulances based upon the type of medical transport services, emergency or nonemergency, provided; and (4) the administrative regulation: (a) differed from 902 KAR 20:120, because it did not contain the prohibition against the use of lights or sirens by nonemergency ambulances; and (b) was not substantially different in its retention of the category, nonemergency, to define nonemergency medical transport providers.

Representative Bruce moved, and Representative Lee seconded, to find the administrative regulation deficient because it was substantially the same as its predecessor, 902 KAR 20:120, because it established separate categories of ambulances in violation of KRS Chapter 211 which establishes only one category of ambulance.

In response to a question by Representative Allen, Department personnel stated that: (1) KRS Chapter 216B, governing certificates of need, establishes nonemergency medical transport services and vehicles as a separate category of medical service; (2) staffing and medical equipment requirements were less stringent than for emergency medical transport services; (3) 902 KAR 14:080, governing other types of services, requires two certified people on board with a higher level of training, more medical equipment such as suction devices, splint devices, equipment to monitor vital signs, which are not required of nonemergency health transport services; (4) the true distinction is not between emergency and nonemergency, but between levels of care; (5) nonemergency health transport services provide a level of care below basic life support; and (6) Medicare reimbursement is based upon the level of care that can be provided, and does not reimburse nonemergency health transportation services because the level of care it can provide does not meet Medicare requirements.

In response to a question by Representative Allen, Mr. Clark stated that: (1) nonemergency providers are paid a base rate and, for

out-of-town runs mileage; and (2) emergency providers are paid according to the same formula but charge more for their services.

In response to a question by Representative Allen, Department personnel stated that: (1) the Department agreed that a service that was lower-tiered, cost-effective, and less expensive to patient and payor was necessary; (2) this administrative regulation permits nonemergency health transportation to be provided at a lower cost; and (3) without this administrative regulation, the service could not be provided, unless providers were permitted to operate unregulated.

Chairman Crenshaw: (1) stated that he had been told that this administrative regulation would drive nonemergency health transport services out of business and that Medicare would not reimburse because of this administrative regulation; and (2) asked Mr. Calhoun whether: (a) Medicare: 1. was not reimbursing; 2. was not reimbursing because of the provisions of this administrative regulation.; 3. whether nonemergency health transport services were less expensive than emergency providers; 4. Medicare had paid for nonemergency health transportation services in the past; (b) nonemergency health transportation service provides met Medicare requirements such as those established for basic life support; and (c) licensure as a provider capable of basic life support was available to nonemergency health transportation services.

Mr. Calhoun stated that: (1) this administrative regulation did not result in Medicare's determination not to reimburse; (2) under the previous administrative regulations, Medicare had determined that the state minimum for nonemergency health transport service providers did not meet the Medicare for reimbursement for medical transportation services; (3) Medicare requires that a patient have a medical crisis that requires the medical equipment and personnel that are provided only by emergency service providers; (4) for a number of years, Medicare had paid for nonemergency health transportation services but, even though state administrative regulations governing health transportation services, or their interpretation by governing state agency, had not been changed, two years ago the Medicare carrier determined that: (a) nonemergency health transportation services did not meet minimum Medicare minimum requirements; (b) while basic life support and advanced life support requirements met Medicare minimum requirements, nonemergency health transportation service providers were not licensed to provide basic life support; (5) licensure as basic life support providers would require a certificate of need under KRS Chapter 216B, and licensure as such. Chairman Crenshaw state that it appeared that a certificate of need and licensure as basic life support would not be possible, and that this fact, the refusal of Medicare to reimburse, and the provisions of this administrative regulations would put these providers out of business.

Representative Lee stated that: (1) nursing home residents had informed him that Medicare will not reimburse for transport services provided by nonemergency health transportation providers; (2) a way be found to provide this service which is cheaper than using an emergency provider, either by working with Medicare or by legislation; and (3) emergency provider services were more expensive for all. Mr. Calhoun stated that: (1) only Congressional, not state action, could alter Medicare's determination; and (2) if the administrative regulation added requirement to raise nonemergency health transportation providers to the basic life support level for nonemergency health transportation, they would be eligible for Medicare reimbursement but the cost of operations would increase to the level of that for emergency transportation services.

Representative Lee stated that: (1) an increase in cost of operations and charges for service should be avoided because nonemergency transportation providers provided a valuable service; and (2) the definitions in KRS Chapter 211 were not amended to: (a) provide authority for the categories of medical transportation services established by Cabinet administrative regulations; (b) change the definition of ambulance; or (c) grant the Cabinet authority to establish categories of ambulances.

Senator Kafoglis asked whether the problem arose because of:

(1) a bureaucratic problem; or (2) a policy determination by Medicare not to pay for nonemergency transportation. Mr. Calhoun stated that he believed it was a policy determination by Medicare after it inquired into the state requirements for nonemergency health transport and made a determination that the requirements did not meet Medicare requirements for reimbursement.

Mr. Clark stated that: (1) nonemergency transportation providers were litigating Medicare action; (2) Medicare had changed its interpretation of its definition of ambulance; (3) Medicare: (a) defines ambulance for Medicare reimbursement purposes as meaning ambulance as defined by state law; (b) determined that the definition established by this administrative regulation precluded inclusion of nonemergency transportation services in the ambulance category; (4) this Medicare action was taken because of pressure from emergency providers; (5) the level of care Medicare subsequently determined was required was a subterfuge; (6) since Medicare has been sued, the Cabinet tells nonemergency providers that the reasons for its determination not to reimburse is because of Medicare's determination, while Medicare tells them its determination resulted from state administrative regulation requirements and definitions of services. Mr. Calhoun stated that a finding of deficiency would help solve the issue of what is an ambulance and what services are being provided under state law.

Senator Kafoglis stated that: (1) the problem appeared to be a bureaucratic problem; (2) if Medicare wants to make a policy determination that it will not pay for nonemergency transport, it should make that decision itself; and (3) the nonemergency transportation rate is more economical and should be facilitated by the Subcommittee if possible until Medicare makes a policy decision as to what it will pay for.

Mr. Clark stated that: (1) the nonemergency transportation providers wanted to be a basic life support providing an emergency service if an unexpected emergency arises during a nonemergency call; and (2) this would be consistent with statutory requirements.

Senator Kafoglis asked Mr. Calhoun if the Department could agree to Mr. Clark's proposal. Mr. Calhoun stated that this would: (1) duplicate basic life support administrative regulations; and (2) raise personnel and equipment costs for providers and patients.

Mr. Clark stated that personnel costs would not increase because nonemergency transport services: (1) already comply with Medicare requirements for a two-person staffing of vehicles; and (2) are not required to hire additional staff to be available for an emergency call because they do not make emergency calls.

In response to a question by Chairman Crenshaw, Mr. Calhoun stated that this administrative regulation is not the reason for Medicare refusal to reimburse.

Mr. Manakee stated that this administrative regulation was dangerous because: (1) contrary to the practice of none-emergency health transportation providers, it required only one person, who can be the driver, to meet certification requirements; (2) this would endanger a recipient of the service who had an unexpected emergency; and (3) he does not permit his vehicles to be staffed by only one person, the driver.

In response to a question by Chairman Crenshaw, those in opposition to this administrative regulation stated that all nonemergency units either always had two staff on board, or two staff on board for Medicare runs.

The Subcommittee approved a motion that this administrative regulation was deficient.

In response to questions relating to a finding of deficiency on an emergency administrative regulation, Subcommittee staff stated that the fact that an emergency administrative regulation was of limited duration and would expire without a finding of deficiency did not prevent the Subcommittee from determining and approving a motion that it was deficient.

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.

902 KAR 14:090E. Air ambulance service providers.

The Subcommittee determined that since the three emergency administrative regulations listed above were interrelated, the issues and objections raised regarding 902 KAR 14:060 applied to them. The Subcommittee approved a motion to find these administrative regulations deficient for the same reason as 902 KAR 14:060.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Executive Branch Ethics Commission: Ethics Commission

9 KAR 1:010. Statement of financial disclosure. This administrative regulation was amended as follows: (1) The NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and the function of this administrative regulation; (2) Section 1 was amended to delete the incorporation by reference statement and to establish applicable definitions; (3) Section 2 was amended to establish the forms on which statements of financial disclosures shall be made; and (4) Section 3 was amended as an incorporation by reference section.

9 KAR 1:040. Initial registration statement and registration card, Executive Agency Lobbying Handbook, including registration forms, expenditure statements, financial disclosure forms and termination forms. This administrative regulation was amended as follows: (1) The Title was amended to reflect the subject matter governed by this administrative regulation; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and the function of this administrative regulation; (3) various sections were amended to comply with the format requirements of KRS 13A.220(4) and the drafting requirements of KRS 13A.222; and (4) incorporation by reference statements were deleted and placed in a new incorporation by reference section.

State Board of Elections: Forms and Procedures

31 KAR 4:100. Evaluation of precinct election officers. This administrative regulation was amended to: (1) correct statutory citations in the RELATES TO and the STATUTORY AUTHORITY sections; and (2) clarify language in Sections 1 and 2 referring to criteria used to evaluate whether a person nominated to serve as a precinct election officer is qualified to serve.

31 KAR 4:110. Division of county into precincts. This administrative regulation was amended to: (1) change the title to more clearly identify the function of the administrative regulation; (2) restate language in Section 1, making the Board the active subject in the sentence; (3) include a percentage of voters in a precinct to clearly justify a standard for formation of a smaller precinct; and (4) require evidence to illustrate geographic impediments or distance which would also justify the formation of a smaller precinct.

In response to Senator Preston's inquiry, Max Bussart, representative from the State Board of Elections (State Board) stated that: (1) the State Board will only establish a precinct with fewer than 350 voters if a list of certain conditions are met; (2) the State Board: (a) pays counties \$255. dollars for each precinct within their boundaries; (b) KRS 117.055(2) provides that it: "shall not remit to a county the expenses of an election for any precinct containing less than three hundred fifty (350) registered voters unless the county has received prior approval from the state board to establish a precinct containing less than three hundred fifty (350) registered voters" and (c) this administrative regulation establishes criteria for county clerks to use in granting approval for establishing smaller precincts; (3) this criteria shall be applied when determinations are made to either: (a) change existing precincts with under 350 voters; and (b) when establishing new precincts with less than 350 voters and (4) upon the effective

date of this administrative regulation, clerks will be required to: (a) apply the new criteria and demonstrate to the State Board that existing precincts should continue to contain less than 350 registered voters; or (b) combine a smaller precinct to an adjoining precinct if such a showing cannot be made.

Representative Lee stated that he was concerned that the forming of smaller precincts may place an undue hardship on some voters who: (1) must drive a greater distance than others to the polling place; and (2) may be discouraged from voting at a time when we should be encouraging participation in the voting process.

Mr. Bussart explained: (1) there are a number of existing precincts with fewer than 350 voters throughout Kentucky; (2) KRS 117.055, which provides for the formation of smaller precincts, has been in effect for some time; (3) county clerks and voters have been dealing with this issue for a number of years; and (4) the State Board is attempting to address Representative Lee's concerns by establishing stringent conditions under which such precincts may be formed by requiring that a request to approve a smaller precinct must be supported by evidence illustrating difficulty in combining a smaller and adjoining precinct due to: (a) geographic impediments or distance to the polling place; or (b) 50% or more of the voters in the smaller precinct are physically disabled or elderly.

Representative Allen stated that: (1) statutes and administrative regulations in Kentucky should be written to encourage people to vote; and (2) in his district, which includes Butler County, there are smaller precincts formed which forces voters to drive 8 or 10 miles to vote.

Representative Lee stated that although he has some concerns about the administrative regulations, it appeared to meet statutory authority.

Board of Accountancy

201 KAR 1:300. Rules of professional conduct. Section 11(2) of this administrative regulation was amended to add the word "corporation," after the words "professional service corporation."

Kentucky Real Estate Appraisers Board

201 KAR 30:050. Examination, education, and experience requirement. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and the function of this administrative regulation; (3) various sections were amended to comply with the format requirements of KRS 13A.220(4) and the drafting requirements of KRS 13A.222(4); and (4) Section 2(2)(b) was amended to delete the reference to the Appraiser Qualifications Board because: (a) it did not refer to an established requirement; and (b) the cross reference was unnecessary since this administrative regulation established the necessary requirements.

201 KAR 30:120. Temporary appraisal licenses and certificates. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and the function of this administrative regulation; (3) various sections were amended to comply with the format requirements of KRS 13A.220(4) and the drafting requirements of KRS 13A.222(4); and (4) insert a new Section 5 to incorporate forms by reference.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Water Quality

401 KAR 5:030. Nondegradation policy implementation methodology. Chairman Crenshaw stated that: (1) this administrative regulation was filed some months ago; (2) questions were raised concerning the filing of this administrative regulation without a Notice Of Intent to promulgate a new administrative regulation; (3) this administrative regulation was allowed to be filed on the understanding that the

Subcommittee would determine whether the Notice Of Intent was sufficient; (4) notwithstanding the Notice Of Intent issues, the Subcommittee would review this administrative regulation because: (a) many people were interested in this administrative regulation which has raised a great number of substantive issues that need to be considered; (b) over 100 people attended the Notice Of Intent public hearing; (c) many of the interested parties were present at the public hearing and became aware that a new administrative regulation on nondegradation of water might be filed as a result of the hearing; and (d) in fairness to all parties the merits of this matter should be heard.

The Subcommittee agreed to consider the merits of the administrative regulation without objection.

Secretary Shepherd stated that: (1) this administrative regulation proposes one change to the existing water quality program; (2) under the Federal Clean Water Act, states are required to review and update water quality administrative regulations every three years; (3) this updating process has been going on for the last two years; (4) an advisory committee was appointed to advise the Cabinet concerning possible changes to the clean water program; (5) the advisory committee consisted of representatives from industry and individuals and environmental groups; (6) there was a very strong split of opinion as to the correct approach for the clean water program; (7) it became clear after two years that consensus could not be reached, and the cabinet was forced to consider what steps must be taken to implement Kentucky's clean water program; (8) the United States Environmental Protection Agency advised that the implementation of the antidegradation policy was a major area of deficiency in Kentucky's program; (9) "antidegradation" is another way of stating a prohibition against the pollution of our waters; that is, the waters of the Commonwealth should not be unnecessarily "degraded"; (10) the Federal Clean Water Act requires that the state develop an antidegradation policy in its permitting process; (11) in determining the state's antidegradation policy the Cabinet is called upon to resolve questions relating to the environment and socio-economic concerns; (12) social questions and economic questions should not be resolved by the Cabinet but by the community and the elected officials of that community; (13) the Cabinet should be concerned with those issues that relate to the environment and the technical side of the equation; (14) this administrative regulation protects waters of the Commonwealth that are of such high quality that any discharge of pollutants would jeopardize a resource deserving the highest degree of protection under the Federal Clean Water Act; (15) this administrative regulation places industry on notice not to discharge pollutants into any of these high quality waters; (16) all interested parties benefit from being aware of high quality waters; (17) this administrative regulation adopts a procedure for reclassifying waters to a higher level; (18) the federal government requires the state to specifically enumerate its nondegradation policy; (19) under this new program, local governments are permitted to determine the best clean water policies for the communities they represent so long as the policies adequately protect the water supply; (20) under the circumstances, this is the most appropriate step the Cabinet can take to protect the waters of the Commonwealth; (21) Kentucky has one of the best and most balanced programs in the United States for protecting its waters; (22) the waters in the Commonwealth have greatly improved over the last 20 years; (23) in 1972, 72 percent of our rivers and streams were unfishable and unswimable; (24) today, thanks to the clean water program, you can fish and swim in over 70 percent of our rivers and streams; and (25) the state's clean water program has been one of the most successful in the country.

Bill Caylor of the Kentucky Coal Association objected to this administrative regulation, and stated that: (1) it has the potential to adversely impact the coal industry's ability to mine coal; (2) the industry has done a good job of controlling pollution and water quality as coal is mined; (3) this program is not mandated by the Clean Water Act; (4) Congress is reconsidering certain provisions of the

Clean Water Act and the Cabinet should wait until after Congress has acted before it implements a regulatory program; (5) the percentage of polluted streams in Kentucky is declining; (6) the Cabinet should not require additional control measures until there is clear evidence that streams are being polluted; (7) this administrative regulation ignores many sources of pollution in Kentucky, including direct pipe discharge of home sewage into streams and rivers; (8) the Cabinet should not make standards more stringent until other pollution sources are under control; (9) there was no Notice Of Intent published in the January 1, 1995 Administrative Register of Kentucky, that the Cabinet intended to promulgate a new administrative regulation, 401 KAR 5:030, and therefore the administrative regulation is wrongfully promulgated and violated KRS 13A.015; (10) the Cabinet's policy should reflect the provisions of KRS 224.70-120, which allows the discharge of pollutants into the waters of the Commonwealth so long as a permit is issued; (11) the coal industry needs to know the standards to be applied before investing millions of dollars into new coal mining operations; (12) for example, the coal industry needs to know how close a mining operation can be to a protected stream, and not be held to have violated the state's antidegradation program; (13) while the current administration has been very fair with the coal industry, it is unclear what the next administration may require; (14) the Cabinet should provide scientific data for waters it intends to classify as "high quality"; (15) the Cabinet intends to classify a certain portion of Martin's Fork as a high quality stream although portions of that stream have been labeled as unfit for swimming; (16) the Cabinet has created a new term to replace "high quality waters", "water bodies that are necessary to support the propagation of fish, shellfish, wildlife and recreation in and out of the water", which is ambiguous and does not seem to be readily understood.

Tony Sholar, Kentucky Chamber of Commerce, stated that: (1) he supports the Cabinet's this administrative regulation with some reservations; (2) the Cabinet's proposal does not agree with the United States EPA; (3) protecting Kentucky's water quality, while at the same time allowing industry to operate, is a serious concern; (4) a great deal of time has been spent developing this program; (5) the issues raised by this administrative regulation are the same issues that caused conflict in the advisory committee 2 1/2 years ago; (6) developing a clean water program is not a perfect science; (7) the Cabinet's procedures for developing the program have been open and fair; (8) this administrative regulation resolves a number of concerns that the Chamber had with the existing program; (9) this program guarantees that streams are "use" protected until data supports reclassification to a higher or lower standard; (10) there is finally a specific procedure in this administrative regulation for nondegradation; (11) while this specific procedure protects industry from litigation if the regulatory steps are followed, industry may not always agree with the procedure; (12) industry is continuing to work with the Cabinet to resolve concerns; (13) the Cabinet has been very responsive to industry concerns; (14) on the issue of protecting the environment, the new administrative regulation is better than the existing clean water program; (15) even if this administrative regulation is found deficient, the regulated community can live with the program as it existed before this administrative regulation was promulgated; and (16) the Chamber has a position on the Notice Of Intent issue but will refrain from comment unless asked by the Subcommittee.

Representative Allen asked: (1) if this program was: (a) mandated by the Federal Government; and (b) more or less stringent than the federal program; (3) what water quality problems existed in the Commonwealth; and (4) what water sources still needed improvement.

Secretary Shepherd stated that: (1) the Federal Clean Water Act requires the state to demonstrate that it has a program that is equivalent to the provisions of the Federal Clean Water Act; (2) this program is different than the federal program; (3) the Cabinet can demonstrate that the state program is just as effective as the federal program; (4) environmental groups have criticized the Cabinet for not

taking the position of the United States EPA, that every water of the Commonwealth should be categorized as an outstanding resource water until proven otherwise; (5) EPA could decide that it wanted to promulgate its own rule on the issue and take over enforcement, but that does not appear likely; (6) EPA's program, if adopted, would be: (a) more stringent and totally unworkable in Kentucky; and (b) impossible to effectively implement; (7) improvements to water quality in the Commonwealth are being made; (8) the biggest single improvement in our water quality is the great improvements that are being made in municipal waste water treatment facilities; (9) the state now has 70 percent of its streams that are fishable and swimmable, but to improve the last 30 percent will be much more difficult; (10) streams of all sizes and locations still need improvement.

Representative Allen stated that: (1) he had been criticized by the print media and environmental groups for not supporting environmental protection measures; (2) there is no one in the state that appreciates clean water more; (3) many state and federal agencies have misled the public concerning their role in environmental protection; (4) this Subcommittee cannot kill an administrative regulation as the media likes to portray; and (5) when an administrative regulation is found deficient, the Subcommittee is merely saying that all 138 members of the General Assembly should review the program at its next Regular Session.

Representative Bruce asked: (1) how local government would be treated under this program; (2) whether local government home rule also applied to agriculture.

Secretary Shepherd stated that: (1) where local government can promulgate ordinances, the Cabinet will defer to the local government regarding water quality issues; (2) for example, if boating and fishing is the major industry in a given area, the local government may not want to allow any industrial discharge into a given lake or stream; (3) the local government may adopt an ordinance which would prohibit discharge into that lake or stream and the Cabinet would honor that ordinance even though the discharge might be otherwise permissible; (4) the Cabinet should be out of the business of making local government decisions; and (5) local government decision making would not apply to agriculture.

Senator Preston asked the Cabinet representatives to respond to the direct pipe home sewage discharge problem.

Secretary Shepherd stated that: (1) there is no question that direct pipe sewage discharge into streams is a problem; (2) an administrative regulation is not needed on the issue because the discharge is prohibited by statute; (3) there is an enforcement problem in areas where there is no access to waste water treatment facilities; (4) it is almost impossible to police all the mountain areas of Kentucky; (5) most of the persons who violate the home sewage discharge prohibition do not have the money to correct the problem, even if they could correct it; (6) the problem is regional and needs to be addressed; and (7) the Kentucky River Authority is working to develop some low cost alternatives.

In response to questions from Senator Preston concerning the insufficient Notice Of Intent, Mr. Caylor stated that:

(1) KRS 13A.015 states that a Notice Of Intent must be published when an agency wants to promulgate an administrative regulation; (2) the Cabinet failed to provide notice that it intended to promulgate a new administrative regulation on antidegradation; (3) the Kentucky Coal Association participated fully in the discussions concerning the administrative regulation and has not been harmed in any way by the failure to give notice; (4) the failure to file a Notice Of Intent to promulgate a new administrative regulation governing antidegradation likely has precluded other interest groups from participating in the discussions; (5) the General Assembly seems to have intended that a Notice Of Intent to promulgate a new administrative regulation be filed and published; (6) the purpose of the Notice Of Intent is to allow interested parties to be heard concerning the proposal; (7) there was a public hearing concerning this matter; (8) the hearing was attended by over 100 individuals; and (9) if there was a failure of notice, the

Kentucky Coal Association was not adversely affected.

In response to questions from Chairman Crenshaw, Secretary Shepherd stated that: (1) the Cabinet proposes to specify procedures for implementing its antidegradation policy; (2) under the current regulatory scheme, the Cabinet has a broad declaration of policy regarding antidegradation; (3) this broad policy statement is required by EPA; (4) any permit application must meet this broad policy requirement prohibiting the degradation of the waters of the Commonwealth; (5) it is a very cumbersome process to review each permit application and determine that the application meets the broad policy; (6) this policy also creates a significant amount of environmental litigation, when the allegation is made that the policy has not been complied with; (7) this new administrative regulation attempts to implement this broad policy statement in terms that everyone can identify, understand and comply with; (8) this new administrative regulation also will provide some protection from litigation if the specific regulatory procedures are followed; (9) the Cabinet feels that all parties are better off if "high quality waters" are specifically identified and the procedures for protection and degradation specifically enumerated; (10) the debate concerning this issue is a philosophical debate and that is why there is no consensus; (11) EPA, Regional IV, has officially adopted the position of the environmental groups that all waters should be presumed to be "high quality" until proven otherwise; (12) the Cabinet feels that EPA's approach is unworkable and will make it impossible to process a permit application; (13) the Cabinet feels that the better approach is to provide that all waters of the Commonwealth are entitled to "use" protection; (14) if streams are fishable and swimmable, they should be entitled to protection of that particular use; (15) if an applicant applies for a permit under the new administrative regulation he must prove that the activity he for which he is seeking a permit will not impair the water's particular "use"; (16) the "use" standard is a difficult standard to meet in many cases; (17) the "use" standard is very conservatively interpreted by the Cabinet; (18) this type of program has proven to work in Kentucky and the Cabinet intends to continue the "use" protection standard; (19) the Coal Association seems to argue that restrictions should not be placed on the granting of permits; (20) the Cabinet's position is somewhere between the environmental and industry point of view; (21) the Environmental Quality Commission (EQC) has chosen to adopt the environmentalist point of view on this particular regulatory issue; (22) under the plan EQC would like to have adopted, all waters would be presumed "high quality", and it would be almost impossible for industry to make a showing sufficient to obtain a permit; and (24) the Cabinet feels it can run a more effective program by continuing "use" standard protection of water.

Mr. Caylor, stated that: (1) the Kentucky Coal Association resents Secretary Shepherd's characterization of the industry as trying to do everything it can to weaken the water quality of the Commonwealth; (2) the Kentucky Coal Association has made legitimate points here today; (3) the coal industry is doing an outstanding job of implementing pollution controls; (3) probably no other industry has as many pollution safeguards as the coal industry; and (4) the questions the industry raised were legitimate and were never adequately addressed by the Cabinet.

In response to questions from Representative Allen, Secretary Shepherd stated that: (1) the Cabinet has no alternative other than to look at each permit application on a case by case basis; (2) decisions on a permit application cannot be made until the facts surrounding an application are known; (3) how far a mining operation needs to be from a stream is by nature a fact specific inquiry; (4) every watershed is different and must be treated differently; (5) the important thing about Kentucky's water program is the scientific and environmental approach taken in each case; (6) Cabinet personnel with environmental and technical expertise have objective standards to measure permit applications; (7) as long as determinations are based on scientific and technical principles the program is better off; (8) a change of secretary in 6 months is simply the nature of politics; (9)

there is always an ability to make changes; and (10) this administrative regulation continues the tradition of the last 20 years in adopting scientifically and environmentally sound programs.

Bob Ware, Assistant Director of the Division of Water, stated that the proposed amendment to the administrative regulation: (1) clarifies that "new zones of initial dilution" are prohibited in all "high quality" waters of the Commonwealth; (2) deletes the "Licking River, River Mile 165.0 to River Mile 154.5" and in "Bath and Rowan" counties from the list of "high quality" waters of the Commonwealth; (3) the term "water bodies that the quality exceeds that necessary for the propagation of fish, shellfish, and wildlife and recreation in and on the water" is used by the Cabinet in its existing administrative regulation discussing antidegradation; and (4) the term was used because the Cabinet felt it had to be consistent with the existing language.

Representative Bruce stated that: (1) he intended to vote against this administrative regulation because of the Cabinet's actions against the Christian County landfill; but (2) he now intends to vote for the administrative regulation because two wrongs don't make a right; and (3) Mr. Shepherd: (a) does a fine job; and (b) should look into the Cabinet's actions.

Chairman Crenshaw pointed out that: (1) counsel for Natural Resources, he, and Subcommittee staff met on at least three occasions concerning the Notice Of Intent issue; (2) at least 5 hours had been spent reading the public hearing materials the Cabinet provided; (3) the case of Glasser v. United States provides that in federal criminal proceedings all matters should be interpreted in the light most favorable to the government; (4) in this instance, if all the evidence is interpreted in the light most favorable to the government, it is possible to conclude that people at the public hearing were not on notice of changes to the antidegradation policy; and (5) in the future, if there is to be a new administrative regulation promulgated on a given subject, a Notice Of Intent must be filed for the new administrative regulation and all KRS Chapter 13A procedures must be followed for that new administrative regulation.

Secretary Shepherd stated that: (1) the Cabinet will be happy to comply with the Subcommittee's request, and appreciates the Subcommittee's professionalism in dealing with the matter; (2) the issue of a new administrative regulation came up late in the process and no one anticipated the problem; (4) there had been a long process leading up to the implementation of the program; (5) the Cabinet appreciates: (a) the chairman's leadership on this issue; and (b) Subcommittee staff's willingness to work with it to resolve the matter; and (6) in the future, the Cabinet will comply with Subcommittee procedures and format requirements.

This administrative regulation was amended to: (1) clarify that "new zones of initial dilution" are prohibited in all "high quality" waters of the Commonwealth; and (2) delete the "Licking River, River Mile 165.0 to River Mile 154.5" and "Bath and Rowan" counties from the list of "high quality" waters of the Commonwealth.

Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. This administrative regulation was amended to correct a reference to a Corrections Policy and Procedure citation in the material incorporated by reference.

In response to Senator Preston's inquiry about the initial reviewer's question regarding the address of a released or discharged inmate, Subcommittee staff stated that the agency is without the statutory authority to require an inmate upon release or discharge, or expiration of his sentence, to give an address where he can be found.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:005. Safety regulations. This administrative regulation was amended to correct statutory citations in the STATUTORY AUTHORITY paragraph.

Education Professional Standards Board

704 KAR 20:305. Written examination prerequisites for teacher certification. Betty Lindsey appeared before the Subcommittee representing the Board. Section 1(2) was deleted because it repeats statutory language.

Department of Insurance: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:230. Licensing requirements for administrators. This administrative regulation was amended to: (1) incorporate two forms, "Licensing Forms 99-7 & 99-8", that are required by the agency to be submitted by persons seeking licensure as an administrator; and (2) delete prohibited words and phrases in Section 5(5).

Public Service Commission: Utilities

807 KAR 5:058. Integrated resource planning by electric utilities. This administrative regulation was amended to incorporate by reference a schedule established by the Public Service Commission for electric utilities to follow when filing integrated resource plans.

Representative Bruce asked if the utility companies were satisfied with the proposed schedule.

Mike Alexander, economist with the Commission, stated that the six utilities affected by this administrative regulation were: (1) given the opportunity to express a preference in the order of filing the resource plans; (2) notified by letter of the proposed schedule which provides for a plan filing with the Commission every six months on a three year filing sequence; and (3) did not complain about the proposed schedule.

In response to Senator Preston's inquiry, Mr. Alexander: (1) described the integrated resource plans, stating that each plan: (a) includes utility load forecasts and resource plans of future electricity supply and demands; (b) ranges in physical size to a few inches in thickness to voluminous pages depending on attachments or technical studies; and (c) will vary in costs, because the cost for staff preparation time to compile the studies was perhaps greater in 1991 when the plans were first required than it has been in subsequent years; and (2) stated that utility companies have prepared these types of plans in-house for years, and it was not until 1991 that the plans were required to be filed with the Commission.

In response to Senator Kafoglis's question, Mr. Alexander stated: (1) the proposed amendment to this administrative regulation also includes a substantive change in the filing periods for utilities from two to three year intervals; (2) this change should assist both the: (a) utilities, by saving costs and staff resources; and (b) Commission by: 1. allowing more time to review each resource plan thoroughly; and 2. avoiding the cost of employing outside consultants to review and process the plans within the two year period.

Cabinet for Human Resources: Department for Health Services: Controlled Substances

902 KAR 55:095. Prescription for Schedule II controlled substance facsimile transmission or partial filling. This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to clearly state the necessity for and the function of this administrative regulation; (2) Section 1(2) was amended to add "nursing facility" and cross reference the applicable federal statute in which the term is defined; and (3) Section 2(3) was amended to: (a) delete language that limited the period during which a facsimile prescription shall serve as the written prescription; (b) require the issuing physician to deliver the original written prescription to the dispensing pharmacy; and (c) create paragraph (c) to provide that failure to deliver the original as required shall be deemed a violation of KRS 218A.1404(3).

Water Fluoridation

902 KAR 115:020. Enforcement of water fluoridation program. This administrative regulation was amended as follows: (1) provisions permitting the agency to fine regulated entities for violation of statutes

and administrative regulations relating to the fluoridation program were deleted because: (a) KRS 211.990 did not authorize the agency to impose fines; (b) the fines were fines for criminal or civil violations that could be imposed only by a court; and (c) the agency was limited to the initiation of court action; (2) Section 1 was amended to establish the procedure for agency notification of violation served on alleged violators of applicable statutes and administrative regulation; (3) The language in Section 2 was deleted in its entirety and agency hearing procedures were established in lieu thereof; (4) the language in Section 3: (a) was deleted in its entirety; and (b) replaced by an incorporation by reference statement incorporating forms relating to the Notices of Violation and Hearing, and the Request for Hearing; (5) Section 4 was deleted in its entirety, and (6) the hearing procedure that had been contained in Section 4 was deleted from Section 4, revised and transferred to Section 2.

Department for Medicaid Services

907 KAR 1:605. Medicaid procedures for determining initial and continuing eligibility. This administrative regulation was amended to restate language in: (1) Section 1(1) which was redundant; and (2) Section 1(3) which was ambiguous.

907 KAR 1:610. Medicaid right to apply and reapply. This administrative regulation was amended in: (1) Section 6(1) to clearly state the office in which voter registration shall occur; and (2) reformat Section 6(2), pursuant to KRS 13A.220(4).

907 KAR 1:640. Income standards for Medicaid. This administrative regulation was amended to: (1) reformat a number of sections, pursuant to KRS 13A.220(4); and (2) delete prohibited language, pursuant to KRS 13A.222.

907 KAR 1:650. Trust and transferred resource requirements for Medicaid. This administrative regulation was amended to: (1) delete prohibited language, pursuant to KRS 13A.222, in Sections 2(2)(f)1.; (2) reformat Sections 2(5) & (6); 3(1), pursuant to KRS 13A.220(4); and (3) clarify the Department's policy relating to disclaiming of an inheritance which is considered to be a transfer of resources in Section 2(9).

907 KAR 1:660. Relative responsibility requirements for Medicaid. This administrative regulation was amended to: (1) add a definition in Section 1(4) for the term "Medically Needy Income Level"; and (2) reformat Sections 3(3)(b); and 4(4), pursuant to KRS 13A.220(4).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Board of Accountancy

201 KAR 1:064. Verification of experience for teaching.

Kentucky Real Estate Appraisers Board

201 KAR 30:140. Transitional licensed real property appraiser.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:111. Deer and turkey hunting on federal areas.

Water Patrol

Chairman Crenshaw reminded representatives of the Natural Resources and Environmental Protection Cabinet that, since water patrol was now regulated by the Department of Fish and Wildlife Resources, the Cabinet needs to repeal the existing Natural Resources administrative regulations governing water patrol.

301 KAR 6:001 (& E). Definitions for 301 KAR Chapter 6.

301 KAR 6:010 (& E). Vessel numbering and registration.

301 KAR 6:020 (& E). Boating safety equipment.

301 KAR 6:030 (& E). Waterway safety requirements.

301 KAR 6:040 (& E). Zoning or marking of waterways.

Kentucky Heritage Land Conservation Fund Board

418 KAR 1:010. Definitions for 418 KAR Chapter 1, repeal of 301 KAR 10:010.

418 KAR 1:020. Administrative procedures of the board.

- 418 KAR 1:030. State agency projects.
- 418 KAR 1:040. Competitive grants.
- 418 KAR 1:050. Procedures for acquisition of land.
- 418 KAR 1:060. Management.
- 418 KAR 1:070. Remedies.

Department of Corrections: Office of the Secretary
501 KAR 6:130. Western Kentucky Correctional Complex.

Education Professional Standards Board

704 KAR 20:020. Fifth-year program for renewal of teaching certificates. Betty Lindsey appeared before the Subcommittee representing the Board. Representative Bruce noted that this administrative regulation was repealing another administrative regulation and asked Ms. Lindsey to explain the changes being made. Ms. Lindsey stated that the amendment to this administrative regulation will allow some professional development to count toward the fifth-year program.

704 KAR 20:021. Planned fifth-year program. Ms. Lindsey stated that this administrative regulation allows flexibility in the fifth-year program in two different plans. She stated that Plan I offers options in a master's degree in which a master's degree can be pursued in one of three areas: (1) in a professional education specialty for which certification is issued; (2) in an academic subject for which teacher certification is issued; or (3) in professional education with emphasis in an academic subject for which certification is issued. Senator Preston asked how Plan II would work. She stated that Plan II allows some professional development to count toward a portion of the coursework required in the Plan II Fifth Year Program.

Cabinet for Human Resources: Department for Social Insurance: Public Assistance

904 KAR 2:017 & E. Job opportunities and basic skills (JOBS) child care and supportive services. Subcommittee staff advised the Subcommittee that Cabinet representatives, in response to questions raised by Senator Kafoglis and Senator Preston at the Subcommittee's June meeting, agreed to withdraw a proposed amendment concerning retroactive collection of overpayments to "providers".

In June, the Subcommittee: (1) considered the proposed amendment to Section 16(2)(a) which would permit the agency to recover provider overpayments for any past years; and (2) commented that it would appear unfair to allow unlimited collection of overpayments without a specified number of years.

Senator Preston: (1) requested that the Subcommittee examine whether any federal law establishes or prohibits the imposition of time frames or limits on the number of retroactive years collections may be made by the state; and (2) stated that limits could not be imposed by administrative regulation if federal or state statutory authority does not exist for such limitations.

Cabinet representatives agreed to defer consideration of the administrative regulation and the proposed amendment until the July Subcommittee meeting to allow staff and Cabinet representatives time to determine if federal law requires a specified time within which to conduct collection of overpayments to providers.

Ms. Hager stated that she was not aware of a federal time limit for collection of overpayments.

At the July meeting, Subcommittee staff and Cabinet representatives reported to the Subcommittee: (1) that federal law does not impose time limitations on the numbers of years the state may seek recovery of overpayments to recipients or providers; and (2) the Cabinet has directives from the Federal Government Administration of Children and Families agency that advised "there is not a time frame on recouping overpayments" and that the same policy should apply to reimbursement for overpayment for the JOBS program.

Cabinet representatives stated that: (1) because of concerns regarding the provider recoupment provision, the Cabinet plans to file a Notice of Intent relating to this amendment; and (2) the Notice of

Intent public hearing will allow providers the opportunity to express their opinions over this issue.

Department for Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services. Senator Preston stated that the initial reviewer stated that the administrative regulation may violate statutory authority.

Representative Bruce moved to defer consideration of the issues, as the administrative regulation is only an emergency and cannot be amended by the Subcommittee, until the August Subcommittee meeting to give the Cabinet time to address the concerns.

Deputy Commissioner Karen Sullivan assured the members that the Cabinet is taking all public comments and issues raised by Legislative Research Commission staff into consideration.

The Subcommittee approved the motion to defer consideration of the issues raised.

907 KAR 1:585E. Estate recovery.

907 KAR 1:680 & E. Vaccines for Children Program.

Kentucky Health Policy Board: Administration

909 KAR 1:090E. Risk assessment and risk adjustment system.

The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:

Finance and Administration Cabinet: Personnel Pilot Programs

200 KAR 22:030E. Comprehensive Employment Manual of Department of Vocational Rehabilitation for Use in the Pilot Personnel Program.

Kentucky Board of Certification of Marriage and Family Therapists

201 KAR 32:010E. Definitions.

201 KAR 32:020E. Equivalent course of study.

201 KAR 32:030E. Fees.

Department of Agriculture: Livestock Sanitation

302 KAR 20:076E. Identification of "farm fresh" cattle.

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.

Cabinet for Human Resources: Department for Social Insurance: Food Stamp Program

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

907 KAR 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:560. Medicaid hearings and appeals for recipients. This administrative regulation was amended to: (1) delete prohibited language in violation of KRS 13A.222; (2) change the reference to the "Department for Medicaid Services designated hearing agency" to "Designated hearing agency"; (3) clarify language in Section 11(6)

that contains additional standards setting forth the order of proof in a hearing; (4) insert language in Section 11(7)(c) requiring parties to a telephonic hearing to submit all documentary evidence to the hearing officer and opposing party in advance of the hearing; and (5) insert language in Section 12(1) to provide that the hearing officer's decision shall: (a) state the issues; (b) contain a finding of facts; (c) present the officer's conclusions of law; (d) contain a decision with regard to the issues; and (e) contain a statement explaining the appellant's further hearing rights.

Senator Preston stated that: (1) Section 19(1), providing for a limitation on attorney fees for any action brought by a recipient for termination of Medicaid benefits, is so restrictive that it effectively denies the recipient the right to an attorney; (2) he did not believe there is an attorney in the state of Kentucky who would agree to take a case for \$300 dollars for "preparation, briefs and all other matters incident to an appeal to the Court of Appeals", as provided in Section 19(1)(d).

Kid Fitzpatrick, representing the Department of Medicaid, stated that: (1) the fee levels have been in effect for several years; (2) the applicants and recipients are indigent, and an attorney representing them will likely do so only on a pro bono basis; and (3) in establishing the new fee levels the Department hopes that attorneys will recognize: (a) the financial situation of the indigent, and limit their charges accordingly; and (b) that the fees are fairly low; and (4) the Department is willing to reexamine the fee structure.

Senator Preston: (1) asked why the Department feels it necessary to interfere between a client and an attorney with respect to the fees; and (2) stated that this provision would restrict a family member, such as an uncle of the recipient, from contracting for reasonable legal services.

Chairman Crenshaw: (1) agreed that the limited fees effectively deny legal representation to indigents; (2) the provision limits payment for an appeal to \$300, regardless of whether a person: (a) wants to pay more; or (b) has some other means of payment for the legal assistance; and (3) with regard to persons who file for Social Security benefits who are indigent, the Social Security Administration: (a) looks at the amount and time of legal work performed on a given case; and (b) approves or disapproves the legal fee without setting a limiting, unreasonable fee that may be charged or received.

Mr. Fitzpatrick stated that: (1) KRS 205.237 requires that the Department set a maximum fee that an attorney may charge or receive for representation of an applicant or recipient; and (2) these recipients are not denied legal representation as most receive representation from legal aid society attorneys.

Representative Bruce: (1) recommended that the administrative regulation be deferred for further consideration of the fee structure; and (2) stated that the statute does not set a maximum fee but merely requires the Cabinet to establish an amount that may be charged or received by the attorney.

The Department agreed to the deferral and to reconsider the fee issue.

The Subcommittee adjourned at 1:15 p.m. until August 7, 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 LABOR AND INDUSTRY
Meeting of June 15, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Labor and Industry during its meeting of June 15, 1995, having been referred to the Committee on June 6, 1995, pursuant to KRS 13A.290(6):

803 KAR 25:010
803 KAR 25:021
803 KAR 25:026

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 June 15, 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 June 21, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of June 21, 1995, having been referred to the Committee on June 6, 1995, pursuant to KRS 13A.290(6):

904 KAR 2:015 & E
904 KAR 2:035 & E
904 KAR 2:400
904 KAR 2:410
904 KAR 3:025
904 KAR 3:030 & E
904 KAR 3:035
905 KAR 2:140 & E
907 KAR 1:016 & E
907 KAR 1:600
907 KAR 1:671
909 KAR 1:040
909 KAR 1:050
909 KAR 1:060
909 KAR 1:080 & E

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320: 907 KAR 1:600.

The wording of the amendment of the administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 21, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CHR AMENDMENT TO 907 KAR 1:600

Amend Section 2(1)(d) to read as follows: The applicant fails to keep the appointment for an interview without good cause;

Amend Section 2(2)(e) to read as follows: The recipient fails to keep the appointment for an interview without good cause.

Interim Joint Committee on
Agriculture and Natural Resources
Meeting of June 14, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of June 14, 1995, having been referred to the Committee on June 6, 1995, pursuant to KRS 13A.290(6):

Department of Fish and Wildlife Resources

301 KAR 2:050
301 KAR 2:125
301 KAR 6:001E
301 KAR 6:010E
301 KAR 6:020E
301 KAR 6:030E
301 KAR 6:040E

Department of Agriculture

302 KAR 15:010
302 KAR 31:015

Natural Resources and Environmental Protection Cabinet

416 KAR 1:010E

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 June 14, 1995 meeting, which are hereby incorporated by reference. Addition-

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al committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of July 6, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of July 6, 1995, having been referred to the Committee in June 1995, pursuant to KRS 13A.290(6):

11 KAR 12:060
11 KAR 12:070
702 KAR 1:140
702 KAR 7:020
702 KAR 7:031
702 KAR 7:041
702 KAR 7:050
735 KAR 1:010 & E
735 KAR 1:020 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none.

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 6, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Meeting of July 12, 1995

The following administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of July 12, 1995, having been referred to the Committee on July 11, 1995, pursuant to KRS 13A.290(6):

Department of Fish and Wildlife Resources

301 KAR 6:001
301 KAR 6:010
301 KAR 6:020
301 KAR 6:030
301 KAR 6:040
301 KAR 2:111

Natural Resources and Environmental Protection Cabinet: Kentucky Heritage Land Conservation Fund Board

418 KAR 1:010
418 KAR 1:020
418 KAR 1:030
418 KAR 1:040
418 KAR 1:050

418 KAR 1:060
418 KAR 1:070
Division of Water
401 KAR 5:030

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 July 12, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

ADMINISTRATIVE REGISTER - B1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates B2

The Locator Index lists all administrative regulations published in VOLUME 22 of the Administrative Register from July, 1995 through June, 1996. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 21 are those administrative regulations that were originally published in the Volume 21 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1995 bound Volumes were published.

KRS Index B8

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 22 of the Administrative Register.

Subject Index B11

The Subject Index is a general index of administrative regulations published in VOLUME 22 of the Administrative Register, and is mainly broken down by agency.

ADMINISTRATIVE REGISTER - B2

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
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VOLUME 21

The administrative regulations listed under VOLUME 21 are those administrative regulations that were originally published in the Volume 21 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1995 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

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 1:150E	2646	3-22-95
200 KAR 22:020E	2051	2-14-95
Replaced		7-6-95
200 KAR 22:030E	2648	3-24-95
201 KAR 32:010E	2969	4-27-95
201 KAR 32:020E	2970	4-27-95
201 KAR 32:030E	2972	4-27-95
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 20:076E	2972	5-12-95
401 KAR 42:060E	20 Ky.R.	2-15-94
401 KAR 42:070E	20 Ky.R.	2-15-94
401 KAR 42:080E	20 Ky.R.	2-15-94
416 KAR 1:010E	2657	3-24-95
500 KAR 11:001E	2430	3-15-95
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
600 KAR 5:010E	2973	5-11-95
735 KAR 1:010E	2661	4-4-95
Replaced		7-6-95
735 KAR 1:020E	2663	4-4-95
Replaced		7-6-95
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
903 KAR 5:290E	2453	3-15-95
Withdrawn		7-6-95
904 KAR 2:015E	2061	1-18-95
Replaced	2804	6-21-95
904 KAR 2:017E	2065	1-18-95
904 KAR 2:035E	2075	1-18-95
Replaced	2817	6-21-95
904 KAR 3:030E	2077	1-18-95
Replaced	2822	6-21-95
904 KAR 3:050E	2454	2-17-95
904 KAR 3:060E	2458	2-17-95

905 KAR 2:140E	2079	1-18-95
Replaced		6-21-95
905 KAR 7:250E	2461	2-17-95
907 KAR 1:009E	1276	9-30-94
Replaced	1981	5-17-95
907 KAR 1:010E	1277	9-30-94
Replaced	1982	5-17-95
907 KAR 1:013E	2974	5-12-95
907 KAR 1:016E	1873	12-29-94
Replaced	2837	6-21-95
907 KAR 1:585E	2665	3-21-95
907 KAR 1:671E	1701	12-13-94
Replaced		6-21-95
907 KAR 1:680E	2979	4-19-95
908 KAR 2:090E	1710	11-29-94
Replaced	2718	5-17-95
909 KAR 1:070E	1714	12-15-94
Replaced	3028	5-17-95
909 KAR 1:080E	2667	4-14-95
909 KAR 1:090E	2980	5-2-95

ORDINARY ADMINISTRATIVE REGULATIONS:

9 KAR 1:010		
Amended	3059	(See Volume 22)
9 KAR 1:015	2566	(See Volume 22)
9 KAR 1:020		
Amended	2516	
Withdrawn		6-5-95
9 KAR 1:030		
Amended	2517	(See Volume 22)
9 KAR 1:035	2568	(See Volume 22)
9 KAR 1:040		
Amended	3060	(See Volume 22)
11 KAR 12:060		
Amended	2723	(See Volume 22)
11 KAR 12:070		
Amended	2724	(See Volume 22)
31 KAR 4:100	3086	(See Volume 22)
31 KAR 4:110	3087	(See Volume 22)
200 KAR 20:010		
Amended	2725	(See Volume 22)
200 KAR 22:020	2840	(See Volume 22)
201 KAR 1:064	3088	
201 KAR 1:300		
Amended	3061	(See Volume 22)
201 KAR 11:400	3089	
201 KAR 30:050		
Amended	2727	(See Volume 22)
201 KAR 30:120		
Amended	2729	(See Volume 22)
201 KAR 30:140		
Amended	2731	
301 KAR 2:050		
Amended	2732	6-14-95
301 KAR 2:111		
Amended	3064	7-12-95

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Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
301 KAR 2:125	2841	6-14-95	702 KAR 1:140	2861	(See Volume 22)
301 KAR 2:171			702 KAR 3:120		
Repealed	2569	5-10-95	Amended	2243	6-1-95
301 KAR 6:001	3091	7-12-95	702 KAR 3:130		
301 KAR 6:010	3092	7-12-95	Amended	2244	6-1-95
301 KAR 6:020	3093	7-12-95	702 KAR 3:245		
301 KAR 6:030	3095	7-12-96	Amended	2789	
301 KAR 6:040	3097	7-12-95	702 KAR 3:246	2862	
302 KAR 15:010			702 KAR 3:280	2864	
Amended	2734	(See Volume 22)	702 KAR 7:010		
302 KAR 31:015			Amended	2791	
Amended	2159	(See Volume 22)	702 KAR 7:020		
307 KAR 2:010			Amended	2793	7-6-95
Amended	2737	(See Volume 22)	702 KAR 7:030		
307 KAR 3:010			Repealed	2865	7-6-95
Amended	2739	(See Volume 22)	702 KAR 7:031	2865	7-6-95
401 KAR 5:001			702 KAR 7:040		
Amended	2741		Repealed	2866	7-6-95
Withdrawn		6-15-95	702 KAR 7:041	2866	7-6-95
401 KAR 5:026			702 KAR 7:050		
Amended	2753		Amended	2794	(See Volume 22)
Withdrawn		6-15-95	703 KAR 4:010		
401 KAR 5:029			Amended	2245	
Amended	2771		As Amended	3027	6-1-95
Withdrawn		6-15-95	704 KAR 3:035		
401 KAR 5:030	2843	(See Volume 22)	Amended	2531	6-1-95
401 KAR 5:031			704 KAR 20:020		
Amended	2777		Amended	3073	
Withdrawn		6-15-95	704 KAR 20:021	3100	
418 KAR 1:010	2845	(See Volume 22)	704 KAR 20:305		
418 KAR 1:020	2847	(See Volume 22)	Amended	3076	(See Volume 22)
418 KAR 1:030	2849	(See Volume 22)	735 KAR 1:010	2866	(See Volume 22)
418 KAR 1:040	2852	(See Volume 22)	735 KAR 1:020	2870	(See Volume 22)
418 KAR 1:050	2854	7-12-95	803 KAR 25:010	2576	
418 KAR 1:060	2856	7-12-95	Amended	3032	6-15-95
418 KAR 1:070	2859	(See Volume 22)	803 KAR 25:011		
501 KAR 6:020			Repealed	3032	6-15-95
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501 KAR 6:050			Amended	3036	(See Volume 22)
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501 KAR 6:120			Amended	3039	(See Volume 22)
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603 KAR 9:010			Amended	2537	5-17-95
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904 KAR 2:380 Amended	2548	5-17-95	907 KAR 1:016 Amended	2837	6-21-95
904 KAR 2:390 Amended	2552	5-17-95	907 KAR 1:025 Amended	3079	
904 KAR 2:400 Amended	2554	(See Volume 22)	907 KAR 1:560	2874	
904 KAR 2:410 Amended	2557	(See Volume 22)	907 KAR 1:600	2878	(See Volume 21)
904 KAR 2:440 Amended	2004		907 KAR 1:605	2590	(See Volume 22)
904 KAR 3:010 Amended	2511	5-17-95	907 KAR 1:610	2592	(See Volume 22)
904 KAR 3:025 Amended	2561	5-17-95	907 KAR 1:640	2879	(See Volume 22)
904 KAR 3:030 Amended	2820	6-21-95	907 KAR 1:650	2882	(See Volume 22)
904 KAR 3:035 Amended	2822	6-21-95	907 KAR 1:660	2885	(See Volume 22)
905 KAR 2:140 Amended	2825	6-21-95	907 KAR 1:671 Amended	2346	
907 KAR 1:009 Amended	2829	(See Volume 22)	907 KAR 1:680	3043	(See Volume 22)
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			909 KAR 1:040 Amended	2008	
			909 KAR 1:050	2718	5-17-95
			909 KAR 1:060 Amended	2594	
			909 KAR 1:070 Amended	3051	(See Volume 22)
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*Statement of Consideration not filed by deadline (KRS 13A.280)

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11 KAR 8:030E	215	1-18-96
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101 KAR 3:010E	223	7-14-95
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909 KAR 1:055E	23	6-14-95	301 KAR 1:201		
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31 KAR 4:100			Amended	318	
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